The local politics of mining under decentralisation in Indonesia

Kym Holthouse

November 2020

A thesis submitted for the degree of Doctor of Philosophy of
The Australian National University

Declaration

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university. To the best of the author's knowledge, it contains no material previously published or written by another person, except where due reference is made in the text.

Kym Holthouse

November 2020

Acknowledgements

I am enormously grateful to my chair supervisor, Associate Professor Ben Hillman for his continuous support, guidance and belief in my research project. I would like to thank Associate Professor John McCarthy who was an associate supervisor and provided valuable input in the early stages of my research.

While I was in the field, I was assisted by too many people to name but I wish to convey my sincere thanks to all who patiently shared their local knowledge, views and insights, offered their encouragement and advice, and provided me with practical support and generous hospitality.

Most of all, I want to acknowledge the endless support and patience of my family throughout this journey. Without their encouragement and sacrifices I would not have been able to keep going through some extremely challenging periods and ultimately complete this dissertation.

This research was supported by an Australian Government Research Training Program (RTP) Scholarship (formerly Australian Post-graduate Award), and Prime Minister's Asia-Australia Endeavour Award.

Abstract

Since the late 1990s, artisanal and small-scale mining operations have expanded greatly in Indonesia, heralding new income opportunities for the rural poor in many parts of the country. However, as this study shows, the impact of artisanal and small-scale mining on rural livelihoods has been mixed. In some cases, economically vulnerable populations have become even more vulnerable since the arrival of mining. This dissertation examines the political economy of artisanal and small to medium-scale manganese mining in Nusa Tenggara Timur, one of Indonesia's poorest provinces. It examines contests between individuals, local communities, mining companies, and the state over access to minerals and land, and seeks to explain why an apparently promising alternative livelihood opportunity has produced widespread disappointment, resentment, mistrust and conflict.

The study highlights how national regulations and policies and local government incentives have worked against the interests of the poor. It argues that the rural poor are marginalised by the extractive process because the regulatory environment too easily allows local authorities to dismiss local claims to resources whenever they conflict with elite interests. Contrary to the promises of decentralisation, the lack of political power among the rural peasantry in NTT has deprived them of a voice in decision-making, leaving local elites the primary beneficiaries of the resource boom.

Paradoxically, while democratic decentralisation triggered an expansion of mining activity that provided new mining livelihoods in NTT, and throughout Indonesia, on balance mining became another source of marginalisation and disempowerment for poor rural communities. Meanwhile, the incentives that localised control over mining created for policymakers often had a corrosive effect on local democratic institutions and the public's trust towards them.

List of Abbreviations

ALMADI – *Aliansi Masyarakat Peduli* (Community Care Alliance)

AMDAL – *Analisis mengenai dampak lingkungan* (Analysis Regarding Environmental Impacts)

ANDAL – *Analisis dampak lingkungan* (Analysis of Environmental Impacts)

AMAN – *Aliansi Masyarakat Adat Nusantara* (Archipelagic Alliance of Adat Communities)

BAL – Basic Agrarian Law

BBKSDA – *Balai Besar Konservasi Sumber Daya Alam* – (Office for Natural Resource Conservation)

BPS – *Badan Pusat Statistik* (Central Bureau of Statistics)

CBNRM – Community-Based Natural Resource Management

CoW – Contract of Work

DBH – *Dana Bagi Hasil* (Government funding from shared revenue streams)

DPRD – *Dewan Perwakilan Rakyat Daerah* (Regional People's Representative Assembly, or regional legislature)

HDI – Human Development Index

IMF – International Monetary Fund

IPR – *Izin pertambangan Rakyat* (People's Mining Permit)

IUP – *Izin usaha Pertambangan* (Mining Enterprise Permit)

JPIC-OFM – Justice, Peace and the Integrity of Creation – Order of Friars Minor (a Fransiscan order of the Catholic Church)

Kapolres – *Kepala kepolisian Resor* (District head of police)

KP – *Kuasa pertambangan* (Mining authorisation)

KPK – *Komisi Pemberantasan Korupsi* (Corruption Eradication Commission)

KP2TSP – *Kantor Pelayanan Perizinan Terpadu Satu Pintu* (One-door permit services office)

MEMR – Ministry of Energy and Mineral Resources

NTT – Nusa Tenggara Timur (East Nusa Tenggara)

OBAMA – *ojek bawa mangan* (motorcycle manganese couriers)

PAD – *Pendapatan asli daerah* (Regional income)

Perda (peraturan daerah) – regional regulation

PETI – *Pertambangan tanpa izin* (Mining without a permit)

PKI – *Partai Komunis Indonesia* (Indonesian Communist Party)

PTUN – *Pengadilan Tata Usaha Negara* (Court of State Administration)

SVD – *Societas Verbi Divini* (Society of the Divine Word, an order of the Catholic Church)

TNI – *Tentara Nasional Indonesia* (Indonesian National Defence Force)

TTS – Timor Tengah Selatan (South Central Timor)

UKL – *Upaya keloloa lingkungan* (Environmental Management Measures)

UPL – *Upaya pemantauan lingkungan* (Environmental Monitoring Measures)

WP – *Wilayah pertambangan* (Mining area)

WPR – *Wilayah pertambangan rakyat* (People's Mining Area)

WUP – *Wilayah usaha pertambangan* (Mining enterprise area)

List of translations

Adat – customary law and practice, tradition (also traditional)

anak – child

anak moso (Dawan) – child with heritable land rights

bahasa perusahaan – *lit.* 'company language', or company-speak

Bapedalda – (*Badan Pengendalian Dampak Lingkungan Daerah*) – Regional Office of Environmental Impact Control

Brimob – Mobile police brigade unit used to quell civil unrest

Bumdes – (*Badan Usaha Milik Desa*) – Village-owned enterprise

Bupati – District head

Camat – Sub-district Administrator

Danrem – military leader, usually brigadier general or colonel, of a provincial or district-level command (*komando resor militer*)

desa konsentrasi – consolidated village policy

ganti rugi – compensation

gendang induk (Manggarai) – main or 'parent' traditional house

hak ulayat – communal or collective land rights

halkasih (Dawan) – Timorese/Meto cultural concept, meaning 'one heart, many people' that underpins mutual obligations between members of a group

hukum adat – traditional/customary law

hukum yang berstandar ganda – legal double standard

hutan tutupan – closed forest

instruksi – instruction

izin pinjam pakai – permit to borrow and use

Kabupaten – district

kanaf (Dawan) – kin group based on common name

kawasan lindung – protected area

Kelurahan – urban village (urban equivalent of *desa*)

Kepala desa – Village head

Kepala dusun – Hamlet head

Ketua adat – Customary/ traditional leader

Kota – municipality (urban equivalent of *kabupaten*)

Kua tuaf (Dawan) – 'hamlet lord'/ traditional custodian of land within a hamlet /

lelang gelap – 'dark' or covert auction

lingko (Manggarai) – communally-owned land

Lurah – urban village administrator

Mahkamah Agung – Supreme Court

mangan – manganese

marga – name group

okamama (Dawan) – *lit.* traditional wooden box for presenting symbolic gift of betel nut. Colloquial – payment in exchange for a favour

oknum – unknown actor within state apparatus exploiting official position for other ends

Pah tuaf (Dawan) – traditional authority figure in West Timor who historically exerted practical and symbolic control over territory, land and resources (higher than the *kua tuaf*)

pajak daerah – regional tax

pansus (*panitea khusus*) – special legislative committee established to undertake an inquiry

pemilik – owner

penggarap – cultivator

pengumpul mangan – manganese labourer/ collector

pendatang – immigrant, new settler to an area

peninjauan kembali – judicial review

penyelidikan umum – general surveying (mining)

pertambangan – mining

Polair – Indonesian maritime police command

Polda – Provincial police command

Pol PP (*Polisi Pamong Praja*) – Civil police command under direction of district-level executive

Polres (*Polisi Resor*) – district level police command

Polresta (*Polisi Resor Kota*) – Municipality (urban district) police command

Polri – Indonesian national police command

Primkopad (*Primer Koperasi Angkatan Darat*) – *Army cooperative*

PrimKopPolda (*Primer Koperasi Polisi Polda*) – Regional Police Cooperative

puskesmas – sub-district public health center

rekognisi – modest payments made in recognition of someone's rights to land

retribusi – user fees

rumah gendang (Manggarai) – traditional house

Sekcam – sub-district secretary

siri pinang – betel nut, chewed as a stimulant in many parts of rural Indonesia

sosialisasi – to socialise policies, plans, laws, practices etc

suku – an ethno-lingustic group

sumbangan pihak ketiga – 'third-party' contributions

tanah lingko – (Manggarai) communal land

tongkat kepemimpinan – leadership baton

Tua teno (Manggarai) – traditional leader tied to a hamlet or traditional house

tuak – (alcoholic) palm wine

Table of Contents

List of Figures

Chapter 1 – Introduction

When the manganese mining boom began in Nusa Tenggara Timur (NTT) in 2007 it was overwhelmingly welcomed by the rural poor as a much-needed alternative livelihood source, possibly even a way out of poverty (Yabiku NTT 2010; Kwong & Ronnas 2011; *Pos Kupang* 2010a; Naif 2011). While doing research on school attendance for an NGO in West Timor in 2008 I was approached several times by local villagers offering to sell me manganese and show me where I could find it. By the time I returned in 2009, vast numbers of people had begun to seek a livelihood by extracting and transporting manganese. Local politicians and business elites heralded the sector's potential to drive the regional economy, generate government revenues for spending on local services, and create jobs in a region with little industry and few natural advantages to attract investment. Foreign mining companies and manganese markets became interested in the region's potential at a time of rising prices (Hasiman 2013). Foreign donors also became interested in the sector's potential to alleviate the endemic poverty that afflicts much of the population.[1]

In the years that followed, a small number of people amassed considerable wealth from manganese mining, while for many more it provided a meagre though important supplementary income. Despite this, however, in many areas where mining occurred, the early optimism about its potential to alleviate poverty and transform local economies soon gave way to deep dissatisfaction. This dissatisfaction manifested as various forms of resistance and, in some cases, overt and even risky forms of opposition to mining (Amon 2010; *Kursor* 2010h; *Timor Express* 2010h; *NTT Online News* 2010; *Pos Kupang* 2010q; ARANG TTS 2011; Amsikan 2012d; e; b; *Victory News* 2012k; Jengamal 2012; Lau 2012e).

[1] Personal communications with economic development advisors from AusAID based in Indonesia during 2011 and 2012.

The overarching question this dissertation seeks to answer is: why, and how, did manganese mining fail to deliver its promised benefits for rural communities in NTT?

The manganese mining industry that emerged in NTT in 2007 was part of a nation-wide resurgence of domestic-led mining activity in Indonesia that began in the late 1990s and increased over the following two decades. Driven by rising demand for minerals from China and other rapidly industrialising economies in the region, and facilitated by Indonesia's decentralisation process, much of this mining activity shares some or all of the characteristics of what is here referred to as informal mining. Informal mining differs in many aspects from the formal mining sector but its most important defining characteristics relate to the means of production: relatively low levels of mechanisation and resultant low levels of efficiency and productive output; labour-intensiveness; and the vulnerability of the independent miners and manual labourers that sustain it (Lahiri-Dutt 2004; 2006; 2018).

It is important to make clear that although 'informal mining' is sometimes used to denote mining that is unlicensed or illegal, in this dissertation it is used in the broader sense as defined above. Much of the informal mining activity that increased across Indonesia post-decentralisation, including some of the mining that is the subject of this study, was unauthorised and therefore illegal. It is also the case that illegal mining generally exhibits other makers of informality. However, many of the problems and challenges associated with informal mining can be observed in legal mining operations too. The term is therefore much more useful as an analytical category when focused on various aspects of the means of production rather than legality. Using this broader definition supports comparative analysis of a range of common characteristics including poor working conditions and safety standards for workers, highly informal labour relations, low rates of pay, poorly trained and qualified managers and technical staff, inefficient production processes, low recovery rates, seasonal

fluctuations in activity due to competitition for labour with other livelihoods, and poor environmental standards and practices (Hentschell et al. 2002, p. 7).

Another potential source of confusion about informal mining is how the term relates to scale, and the roles of capital and mechanisation. Again, if the aim is to understand how the markers of informal mining mentioned above shape outcomes for participants, communities and environments, it makes little sense to exclude semi-industrial mining activities just because they employ machinery and capital. As this study demonstrates, the informal characteristics referred to above can apply to a wide spectrum of mining activity, ranging from independent 'artisanal' miners working illegally to extract minerals with their own labour and basic hand tools, to licensed, semi-mechanised industrial projects that are heavily reliant on manual labour.

Attempts by governments, non-government organisations and the corporate mining sector in the 1970s and '80s to further classify or differentiate types of informal mining activity according to scale were ultimately abandoned due to different views about what should be measured to classify mining as 'artisanal', 'small-scale', or 'medium-scale' — often referred to collectively as 'ASM'. The use of machinery, number of employees, production levels, investment levels, and the size of deposits, concessions or excavations were all proposed as measures (Jennings 1999; Centre for Development Studies 2004). That these efforts failed to achieve a consensus perhaps reflects that there was little to be gained from reaching agreement on common definitions based on *scale,* when what really mattered for developing policies and program interventions was understanding the qualitative differences between artisanal and small scale mining and the activities undertaken by the corporate mining sector. It became clear that the key to delineating that distinction was the degree of formality or informality, in all its various forms (Lahiri-Dutt 2004).

What the artisanal miners and mine labourers in this study have in common is that both groups belong to an impoverished rural peasantry that is easily exploited to perform insecure and dangerous work that enriches others further along the global supply chains they support (Lahiri-Dutt 2018, p. 5). Because, in NTT, this informal labour force is drawn from the rural peasantry who reside and depend on the land that contains the mineral to be extracted, they also remain vulnerable to an industrialised extractive process, whether or not they participate directly in it. This dual vulnerability—as miners/labourers and rural peasants—and the particular way that informal mining projects contribute to this, provides the conceptual framework for examining both artisanal (or manual) and semi-mechanised informal mining in the same study. As local actors moved between various identities—independent miners, labourers, peasant farmers and even activists resisting the terms of mining's occupation—the study had to examine the various ways in which communities and individuals viewed mining simultaneously as a livelihood opportunity, a source of their exploitation, and, in some cases, an existential threat to land, livelihoods and health.

Notwithstanding its risks and unfavourable terms of exchange, the labour-intensiveness of informal mining nevertheless means it provides income opportunities to many more people than the capital-intensive formal mining sector in developing countries (Lahiri-Dutt 2004; 2006; 2018; Spiegel 2012, p. 192). This is certainly so in Indonesia, where in the early 2000s informal mining was estimated to employ at least 10 times more people than formal mining (Jennings 1999; 2008).[2] The conditions for the rapid expansion of Indonesia's informal mining sector were created initially by the New Order regime's policy of locking local people out of forests containing mineral resources, while allocating mining rights to foreign mining

[2] In 1999, the ILO estimated that around 500,000 people in Indonesia earned their livelihoods directly from small-scale mining (ILO 1999), while the number of employees in the formal mining sector was only 38,500 in 2007 (PwC 2008), the year that manganese mining took off in NTT. This was up from an average of 33,423 between 2000-2004 (PwC 2006).

firms and a privileged few in the domestic political class with the necessary capital and contacts (Leith 2002; 2003; Gellert 2010). Access to natural resources, both timber and minerals, was predicated on a logic of maximising central government revenues through industrial-scale resource extraction to support spending on national development and to ensure the political surivival of President Suharto's New Order regime (1966-1998). However, the illusory permanence of the nexus between political authority and foreign capital rapidly dissolved when the Asian Financial Crisis of 1997 triggered a collapse in the Indonesian currency, and hence real incomes. This produced a rapid and dramatic decline in the central government's ability to project power and authority in the regions. This erosion of legitimacy and power culminated in the fall of the Suharto regime in 1998, after which Indonesia embraced a dual-track reform process of democratisation and decentralisation, in large part to address grassroots and regional elites' grievances with a system of government that completely centralised political power.

These twin constitutional and political reform processes gave district and municipality-level governments, the most local level of Indonesia's three tier system of government, political powers to generate and manage their own fiscal resources, and responsibility for providing local services and infrastructure, from 2001. In the mining sector, the changes included the authority to issue mining licenses to both domestic and foreign firms, and collect a range of local taxes and charges from mining companies. The transfer of power from the central government to the districts bypassed the middle (provincial) tier of government, which in other jurisdictions such as the United States, Canada and Australia, is responsible for issuing mining licenses.[3] The decentralisation of political power in Indonesia co-incided with, and

[3] The one exception to this was the province of Aceh, which was granted special powers over local resources under special autonomy arrangements.

contributed to, the beginning of a period of substantial growth in the country's domestic-led mining sector.

Conceptual framework and contribution to literature

The analytical or conceptual framework for this study is firmly grounded in the empirical data and observations collected during extensive fieldwork. Rather than narrowing the scope of the study to examine one particular aspect of the mining boom in NTT in isolation, I have purposefully sought to understand the processes and events observed from multiple viewpoints and through a variety of analytical lenses. As a result of this approach, the study draws on, and contributes to, several literatures, including those on democratic decentralisation, natural resource management, artisanal mining, industrial mining, and land tenure.

The moment of Indonesia's 'big bang' democratic decentralisation in 2001 was an essential catalyst for the events that are the subject of the study. A major theme in the literature on democratic, or political, decentralisation is how the proximity of decision-makers to their constituents affects the representativeness of governance and quality of outcomes for constituents. Much of the support for democratic decentralisation reforms in the early 2000s sprang from the belief that local democratic institutions were more likely to represent their constituents' interests than those in state or national capitals, due to communities being able to bring greater political pressure to bear on local priorities and issues (Grindle 2007; Robison & Hadiz 2004; Hadiz 2010; Aditjondro 2009). My study provides an empirical context within which to assess the validity of this claim, by examining the way district government officials managed contests over mineral resources, and in whose interests.

Another focus of the democratic decentralisation literature is the idea that empowering local institutions to manage the use of fiscal resources can incentivise local governments to adopt

policies and make decisions that create a better business environment, increasing local revenue streams, and supporting provision of better local services and infrastructure (World Bank 1997; Bartley et al. 2008; Ito 2011). My study examines what happens when the imperative to generate local revenue through natural resource extraction conflicts with the more immediate interests of local communities, around their livelihood, security, social and environmental needs.

Many scholars working on decentralisation focus specifically on the decentralisation of authority to manage natural resources, in particular renewable resources such as forests and fisheries (Agrawal & Ribot 1999; McCarthy 2002; Casson & Obidzinski 2002; Larson & Ribot 2004, p. 2; McCarthy 2004; Djogo & Syaf 2004; Ribot 2004; Satria & Matsuda 2004; Patlis 2005; Fox et al. 2005; Wollenberg et al. 2006; Ribot et al. 2006; Palmer & Engel 2007; Ribot et al. 2008; Clement 2010). Minerals and mining, by comparison, have been largely overlooked in the decentralisation literature that focuses on natural resources (Duncan 2007). This imbalance reflects that, in contrast to the global trend for decentralising renewable resources that began in the mid-1980s, few national governments in the world have relinquished central government control over minerals (Lemos & Agrawal 2006, p. 306). As a result, in 2001, Indonesia's lawmakers had few precendents to draw on when they considered whether or not to include minerals in the sectors to be decentralised. Two decades later, this remains the case, making it even more important that the experience of Indonesia's experimentation with localised control of mining is understood.

As mentioned above, Indonesia's decentralisation reforms transferred a suite of executive decision-making powers over natural resources, including minerals, to district (*kabupaten*) and municipality (*kota*) level governments. Agrawal & Ribot (1999) identify four kinds of powers that could be extended to local actors by decentralisation: (1) the power to create rules or modify old ones (legislative); (2) discretionary power over the use of resources; (3) the

power to implement and ensure compliance (executive); and (4) the power to adjudicate disputes (judicial). Under Indonesia's decentralisation, although the districts did gain some legislative powers in relation to mining, these were constrained by a requirement for any regional regulations, or *perda* (*peraturan daerah*), to not conflict with national level laws and regulations. The central government retained a wide range of powers over mining, which were not explicitly spelled out until 2007. These included powers to set national mining policy, update and pass new mining laws, set national standards and competency criteria for the sector, set royalty rates, collect and manage geological survey data, and to issue mining permits and oversee mining activities where concessions overlapped provincial boundaries (Republic of Indonesia 2007a). District governments, however, gained full discretionary powers to issue rights to resources, as well as powers to implement and ensure compliance with laws and regulations, and to adjudicate in disputes, for example between mining companies and communities.

Although a radical departure from the monopoly on executive decision-making enjoyed by the central government until then, Indonesia's decentralisation of powers over natural resources was very much designed to fully preserve the state's monopoly power to manage mineral resources. This form of decentralising control of natural resources was not the only option available, however. An extensive literature dealing with community-based natural resource management (CBNRM) frameworks describes forms of environmental governance where local communities are granted prescribed powers to manage the conservation and use of natural resources (McCarthy & Warren 2009).

Although this was not the form Indonesia's decentralisation took, this literature raises issues that have clear intersections with the literature on artisanal mining, including my study. The CBNRM literature and frameworks have evolved out of earlier work on the problem of managing 'common pool resources' for the longer-term benefit of the collective, where it was

difficult to restrict access and individuals had incentives to exploit resources while they could and before others (the 'tragedy of the commons'). As this problem often led to depletion of the resource and environmental degradation, scholars became interested in the kinds of self-governing institutions that tended to promote collective action, or individual restraint, to manage common pool resources sustainably (McCarthy & Warren 2009, p. 9-11).

This pre-occupation with conservation or environmental sustainability outcomes remains a prominent feature of the literature on CBNRM. Underpinning CBNRM approaches in developing countries is an assumption that where communities' longer-term livelihood needs and viability depend on the continued availability of a resource, they will, if empowered to manage the resource, tend to do so sustainably (Neumann 1998; Murray Li 2001; 2007). The assumption often invokes a view of traditional livelihoods and resource management practices as inherently sustainable as long as communities are not excluded from them, or corrupted or threatened by competition with commercial resource users. While this assumption is unlikely to hold true in all instances for renewable resources, its meaning is even more problematic in the context of non-renewable resources such as minerals. Given the primary focus on conservation outcomes in the CBNRM approach it should not surprise that minerals are barely mentioned in this literature (Menyen & Doornbos 2004, p. 246; Lahiri-Dutt 2004, p. 125; Spiegel 2012, p. 190).

Despite this omission, minerals that are accessible to artisanal miners must be considered a common pool resource. It is difficult to prevent local communities and itinerant miners from exploiting them, they are often found on land that is communally owned or subject to complex, overlapping property claims, and individuals have an incentive to extract them before others to ensure a share of the benefit, even if there are also collective costs from the environmental impacts.

Many of the key questions in the literature on CBNRM are therefore applicable to easily accessible minerals: how 'the commons' is defined, and how access is regulated, both through formal state-based rules and customary land tenure systems, to inform individual and collective responses; how rules and decisions are made; how power tied up in social identities informs any rule-making institutions; and how benefits and costs are to be shared. As Indonesia's decentralisation of decision-making authority over natural resources did not take a community-based approach, it is important to understand how the state-based institutions at the district level performed in resolving these issues. As my study shows, rural communities in NTT, as throughout Indonesia, assert similar claims of entitlement to minerals as to other common pool resources. By documenting the struggles by people in NTT to directly exploit manganese on their own terms, my study raises questions about how CBNRM principles and frameworks might be relevant to minerals, as well as examining why governments have been reluctant to experiment with such approaches. The literature on artisanal and small-scale mining also grapples with problems associated with restricting access to common pool resources, including the connection between rights to resources and damaging environmental outcomes.

The discussion of environmental issues stemming from artisanal and small-scale mining in the literature reflects the literature's overwhelming focus on a single commodity – gold (see for example Hilson 2006). Although artisanal miners extract a wide range of commodities, there have been few studies of industrial metals. The worst environmental impacts of artisanal gold mining are related to the use of mercury and other chemicals, which are not a factor in the mining of industrial metals such as manganese. Another characteristic of artisanal gold mining, including in Indonesia, is that miners tend to be highly itinerant, moving from between locations as resources are exhausted or they are moved on by state security forces (Lahiri-Dutt 2004; Spiegel 2012). The itinerant nature of artisanal gold miners reflects the

higher returns. The lower returns from mining industrial ores such as, in the current study, manganese make it more likely that miners will be from local communities in the areas where they work. This creates a significantly different set of dynamics around claims to entitlement. The dominance of gold in the ASM literature, therefore, has tended to overshadow a broader range of issues for artisanal mining and produce an incomplete picture of the sector's potential as an alternative rural livelihood. The informal mining literature is dominated by studies from Africa, with relatively few studies situated in Southeast Asia as a whole and Indonesia in particular. NTT is a new mining frontier in Indonesia. My study of manganese mining therefore helps to broaden the scope of the literature both in terms of commodities and geography.

By documenting the marginalisation of artisanal miners through the criminalisation of their livelihood activities, the informal literature has another set of concerns around the relationship between resource rights, access to markets and incomes. It draws connections between the lack of formal resource rights and the exploitation of artisanal miners by law enforcement and other state officials. A common theme is the precariousness of artisanal mining livelihoods and insecurity faced by miners when they are forced to operate in a 'grey' zone where their activities are outside the law but tacitly facilitated by state officials (Teschner 2012; Fisher 2007; Banchirigah 2008; 2006). My study provides further evidence of the economic and social effects of this on artisanal miners, extending the analysis to interactions between artisanal mining and customary land tenure.

Indonesia's decentralisation model did not empower communities to manage mineral resources, but it did raise expectations that communities would have a greater voice in district government decisions than they had hitherto enjoyed. As outlined in subsequent chapters, community experiences of NTT's manganese mining boom have varied considerably. The

next section provides background information about NTT, where field research for this study was conducted.

NTT – profile of a poor province

Figure 1. Map of Indonesia, showing the province of Nusa Tenggara Timur (East Nusa Tenggara) at the easern end of the Lesser Sunda archipelago, between West Nusa Tenggara and Timor-Leste. Source: ANU Maps.

Like much of outer-island Indonesia, NTT is impoverished. Annual per capita Gross Regional Domestic Product (GRDP) in NTT is the lowest of Indonesia's 34 provinces at just IDR 19,591,000 (USD 1,959), and only around one third of the national average (IDR 59,981,000) (BPS 2020, p. 667). Located on the geographic and economic periphery of the country, the province has few natural advantages, either for agriculture or other industries. An archipelagic province more than 500 islands located in the Lesser Sunda Island chain, NTT stretches out over more than 800 kilometres from east to west in the eastern part of Indonesia. More than 90 per cent of the population resides on the three largest islands of Flores, Sumba, and Timor, and the smaller islands of Alor, Lembata, Rote and Sabu. West Timor, where much of the

study is situated, is not a political unit, but refers to the Indonesian section of the island of Timor, which it shares with the small, independent nation-state of Timor-Leste to the east.

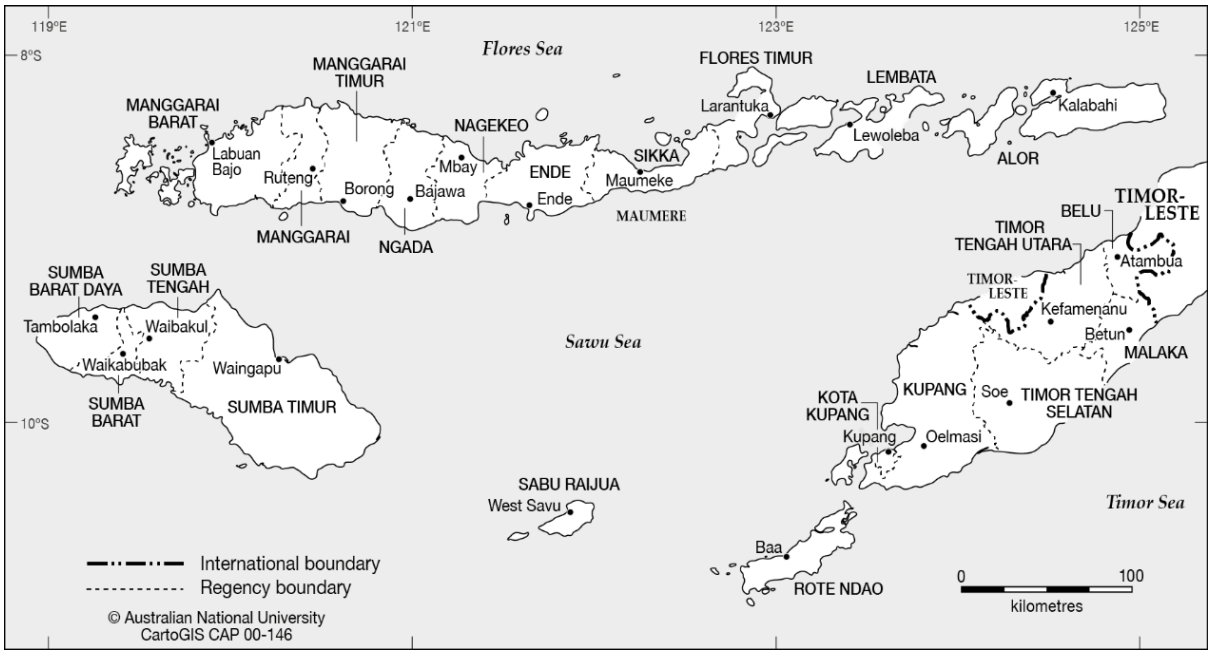

Figure 2. Nusa Tenggara Timur (NTT) province, main islands. Flores is the large island to the north lying on an east-west axis. West Timor is the large landmass to the southeast, adjoined to the independent state of Timor-Leste to the east. Source: ANU Maps.

Since at least the 16th century, the region now known as NTT has occupied a place at the periphery of much larger constellations of economic and political power. This marginal position and the poverty that continues to affect much of its population can be traced in part to the region's geographical remoteness, and its paucity of natural resources. As in most of eastern Indonesia prior to colonial occupation by the Dutch and Portuguese, indigenous mining and processing of metals was limited on the islands of NTT. Historical records show that trading ships visiting Timor as early as 1500 brought metals and finished metal goods from India, which were exchanged for Timor's chief export commodities of sandalwood, honey, beeswax and, underscoring Timor's dependent position in these trading relationships, slaves. Dutch colonialists long believed Timor possessed rich reserves of gold and copper, but their prospecting ultimately proved this to be unfounded. Although the Dutch forced the

Timorese to pan for gold in the rivers, taking their share of any gold collected, this was less profitable than harvesting beeswax (Hagerdal 2012, p.19). Some panning for alluvial gold in West Timor's rivers continues but it remains a marginal livelihood activity practiced by relatively few people.

Some limited and sporadic extraction and trade of manganese from Timor may have occurred long before the 2007 boom. McWilliam (2007) cites residents in the Vermasse region of what is now Timor-Leste (East Timor) referring to 'limited export of a dense grey-black stone which was quarried from the surrounding hills and loaded onto ships' during the more recent Portuguese colonial period (which ended in 1975) and notes that geological evidence from the Vermasse area suggests this was possibly manganese (p. 234).

Figure 3. Samples of manganese ore shown to the author in West Timor in 2008. This is only one of several physical forms the mineral takes in West Timor. Photo by author.

Neither the Portuguese or the Dutch established a significant or sustained manganese export industry on Timor. By 1904, the Dutch colonial administration had established a stable manganese export industry from sites in Java (van der Eng 2014), a much more convenient location for its ports and industries than far-flung Timor. This may partly explain why highly

accessible and visible manganese ore on Timor and Flores lay largely undisturbed until almost a century later. Manganese mining continued in Java under Indonesian independence and until the current day, while the Indonesian government did not issue the first exploration license for manganese in NTT (on Flores) until 1997 (PT Istindo Mitraperdana 2010), and manganese mining in the province did not take off until 2007. Although rural communities in both West and East Timor were undoubtedly aware of the mineral's abundance from working the land, on their own they lacked the connections to national and international commodity supply chains necessary to derive incomes from it.

West Timor also has significant reserves of high quality, distinctive and valuable marble that for a period from the 1990s was exploited in several locations in the districts of South Central Timor (TTS) and North Central Timor (TTU). However, the industry provided very few local livelihoods and caused severe environmental impacts, including the depletion of underground water sources and destruction of culturally significant rock forms, making it deeply unpopular with local communities. Despite the efforts of provincial and district leaders to promote marble mining, by 2008 constant community opposition and conflict had persuaded all but one company to withdraw from the region and made leaders cautious about supporting the industry's return (Campbell-Nelson 2003; Various authors 2006-07; Marbun et al. 2009; Pos Kupang 2010o; Timor Express 2008b).

The natural commodity for which Timor is best known—the aromatic sandalwood that is endemic to the island and few other places—once sustained a thriving export trade with buyers from Java, Malacca, Macau and the Phillippines. Sandalwood was the main prize that sustained a centuries-long struggle between Portuguese and Dutch colonial rivals for control of Timor (Hagerdal 2012, p. 19-20). Although stocks had long been in decline, as recently as the mid-1990s sandalwood remained the region's most important traded commodity, accounting for more than a quarter of regional provincial revenues between 1992 and 1997.

However, the success of this business proved its undoing and by the late 1990s clear felling had depleted stocks almost to exhaustion. As with marble, the flow of income generated by sandalwood tended to also favour business and bureaucratic elites over the rural poor, from whose land the resource was often harvested (McWilliam 2001).

Although some cultural groups in NTT are highly adept seafarers and fishermen, the indigenous cultures of both West Timor and the Manggarai region of Flores where this study is situated are agrarian. Due to the semi-arid climate, scarcity of freshwater sources, mountainous, undulating terrain and rocky, poor soils that characterise much of the region, agriculture provides an unstable source of livelihood. Periods of food shortages are an annual event for many people, particularly in West Timor, when stocks of rice and maize from the previous harvest are frequently exhausted before new crops have been harvested.

In 2010, NTT was home to almost 4.7 million people, 23 per cent of whom were formally classified as below the poverty line. This figure put NTT's poverty rate well above the national rate of 13 per cent, and above the rate for all but four of Indonesia's 33 provinces (BPS 2011, pp. 12; 48). Five years later, in 2015, the percentage of people in NTT living in poverty was still 23 per cent but was now more than double the national rate (at 11 per cent).

According to the Government's Human Development Index (HDI), which ranks provinces according to a composite of four indicators (life expectancy, literacy rate, average length of school participation) and per capita expenditures, in 2010 NTT's provincial population was the third most disadvantaged in the country, and significantly below the national average (BPS 2011, p. 43). In 2014, using a new formula to calculate the HDI, NTT was the fourth most-disadvantaged province in the country, and even further behind the national average (BPS 2016, p. 46).

NTT's monthly average per capita expenditure on food was the second lowest in the country in 2010, at just IDR 196,332 (less than USD $1 per day)[4], more than 20 per cent below the national average of IDR 254,520. However, total per capita expenditure on all items revealed an even greater disparity for discretionary spending. In NTT, monthly per capita spending on all items in 2010 was the lowest of any province, at IDR 333,008, equivalent to just two thirds of the national average, IDR 494,845 (2011, p. 59).

By 2015, per capita monthly expenditure had risen significantly in every province, although not equally. In NTT, per capita spending on food increased 62 per cent, to IDR 318,887, while nationally per capita spending on food had increased 88 per cent, to IDR 478,074. Provincial and national per capita spending on all items revealed NTT being left even further behind the national economy. Per capita spending on all items in NTT increased over the five-year period 2010-2015 by 71 per cent, to IDR 569,441. However, the nation as a whole recorded a 93 per cent increase on all per capita spending, to IDR 954,430 (BPS 2016, p. 63). This meant that in 2015, on average people in NTT were spending just 60 per cent of what the rest of the country was spending (down from 67 per cent in 2010).

Mobile phone ownership is a good indicator of disposable income as phones require capital to purchase and regular income to keep them operative. While by 2010, 72 per cent of Indonesian households owned at least one mobile phone, NTT had the second lowest provincial rate of household mobile phone ownership in the country, at just 50 per cent (BPS 2011, p. 45). By 2014, 72 per cent of NTT households had acquired a mobile phone, but this was still the second lowest provincial rate, and well below the national rate of 87 per cent of households (BPS 2016, p. 49).

[4] A currency conversion rate of USD = IDR 10,000 is used throughout the dissertation.

Access to health services in NTT is below the national average. In 2010, only around half of all births were attended by either a doctor (9 per cent) or qualified midwife (43 per cent), compared to the national average of 79 per cent (BPS 2011, p. 35). By 2015, NTT had dramatically improved access to maternal health, with 72 per cent of births attended by a doctor or midwife. However, still one in four births occurred without any formal medical support (BPS 2016, p. 36).

Although NTT's official provincial unemployment rate was only 2.7 per cent in 2011, one of the lowest in the country and less than half the national rate (6.6 per cent), in fact this largely reflected the heavy reliance on agricultural livelihoods and extremely small size of the formal labour market (BPS 2011, p. 28). By 2016, NTT's unemployment rate had risen slightly, to 3.6 per cent, even as the national rate had fallen to 5.5 per cent (BPS 2016, p. 28). Despite its low unemployment rate, however, in 2016 the province had the lowest official minimum wage in the country, at just IDR 1,425,000 per month, equal to just 71 per cent of the national average across all 33 provinces of IDR 1,997,819 (BPS 2016, p. 30).

It is widely accepted that in the medium term, alleviating poverty for most of the population will need to be based on improvements to existing livelihoods, as well as the development of new livelihoods, utilising locally available resources that can connect people with markets beyond their local communities (Djoeroemana et al. 2006; Nachuk et al. 2006; Hadiz 2006; Marbun et al. 2009; Bottema et al. 2009; Barlow & Gondowarsito 2009; Dendi et al. 2009; Patunru et al. 2010; Kwong & Ronnas 2011). To many, the informal mining industry that emerged in 2007 promised to do just this.

NTT's two largest land masses—West Timor and Flores (see Figure 2, below)—possess widespread manganese reserves. Manganese, known as *mangan* in Indonesian, tends to be close to the surface in West Timor, and deposits widely dispersed, making many deposits

better suited to manual and small-scale semi-mechanised extraction than large-scale mining.

Figure 4. Dark grey manganese ore visible on the surface of undisturbed land in West Timor. Source: Yabiku.

The severe and widespread poverty outlined above that is endemic to the region, and the lack of more rewarding alternatives in a largely marginal environment for agriculture, ensured an abundance of cheap labour was available to support the sector's rapid development. Fortunate geology and desperate economic need notwithstanding, it was not until a sharp spike in global manganese prices attracted investors, prospectors and speculators in 2007 that manganese acquired local significance as a potentially transformative livelihood opportunity. The prevalence of West Timor's manganese deposits in particular was always well known to local people, but mining, however informal, still requires a range of intermediaries to link mining labour with global demand for minerals (Lahiri-Dutt 2018).

As local governments issued mining permits in large numbers, foreign and domestic investors and local brokers provided the missing connection to global markets, and the beginnings of Timor's manganese mining industry were established. The island of Flores had a slightly longer history of semi-mechanised manganese mining, and no artisanal mining, but there too,

a frenzy of new licensing activity took place. At the peak of the boom from 2008 to 2012, it is likely that tens of thousands of people were involved directly in informal manganese mining in NTT, mainly as artisanal miners and labourers on semi-mechanised mines.

The recent history of mining in Indonesia

The manganese mining boom in NTT that is the subject of this study was part of a nation-wide expansion of informal and small-scale mining in Indonesia from the late 1990s. The immediate economic causes of this expansion were economic hardship and opportunities in mining created by the Asian financial crisis in 1997. The collapse of central government authority triggered by the crisis was also a key enabler of much of the mining activity that took place in the first years of the boom. Much of this first wave of informal mining was illegal and could not have occurred while the authoritarian New Order state retained its grip on power and effective control in the regions. When that control abruptly collapsed as the regime's legitimacy was destroyed by the financial crisis, local communities reclaimed, occupied and began mining land that had until then been locked up in the concessions of foreign mining companies. The political decentralisation process, which began in 2001, and the global commodities boom that lasted for most of the 2000s, added further impetus.

There was also a political dimension to the surge in domestic, particularly small-scale, mining activity, which was the result of conditions governing access to land and natural resources that existed for more than three decades under the New Order's rule. The New Order regime, led by General Soeharto, came to power following a period of economic and political turmoil that had crippled the country's economy, and which had culminated in the bloody purge of the Indonesian communist party, the PKI in 1965 (Simpson 2008).

That event signalled the effective annihilation of all political opposition in Indonesia, and as President, General Soeharto strengthened his grip on power through a combination of authoritarian control, enmeshment of the regime with state institutions, and economic development that raised tens of millions of Indonesians out of poverty. This formula proved highly successful in silencing dissent and providing the regime with popular legitimacy. Had the 1997 financial crisis not plunged the Indonesian currency—the rupiah—into freefall, leading to astronomical rates of inflation, the ruling formula might have continued to work for some time. As it was, President Soeharto was forced from power in May 1998, following riots and mass civil unrest, which in the regions included the occupation and claiming of land and minerals within the concessions of foreign mining companies.

The central importance of foreign investment in Indonesia's natural resources to the New Order regime's ability to maintain power for more than three decades has been well documented (Dauvergne 1997; Leith 2003; Simpson 2008; Gellert 2010; Crouch 2010, p. 90; Robinson 2016). It was reflective of the New Order's economic policy orientation that the first new law the regime passed was a new foreign investment law (Law No. 1/1967 on Investment of Foreign Capital) (Republic of Indonesia 1967b). A major priority was to facilitate foreign investment in natural resource extraction and the first new project to be approved under the law was the massive Freeport-McMoRan copper and gold mine in Papua (Leith 2002; 2003). Between 1967 and 1989, mineral resources accounted for more than 40 per cent of foreign investment outside the oil and gas sectors (Gellert 2010, p. 236). Foreign companies were allocated mining, forestry and plantation concessions over large swathes of land that both displaced and excluded local communities from the valuable resources within them (Robinson 1983; Leith 2002; 2003; Lucas & Warren 2003; Peluso 2007).

New national mining and forestry laws followed in 1967, but the national mining law had less significance for the foreign mining firms than the foreign investment law. The mining law

was only designed to regulate the activities of domestic miners, under a system of permits, known as a 'mining authorisation', or KP (*kuasa pertambangan*). The activities of foreign miners, however, were regulated under the foreign investment law, which enabled them to partner with the government as equal parties under Contracts of Work (CoW). The CoW agreements set out all terms and conditions on matters such as taxation, royalties and divestiture. The CoW system locked in these terms and conditions for the duration of the agreement, preventing the government from adjusting tax or royalty rates as prices and profits increased. The first generation CoWs clearly signalled the New Order's policy priorities for the mining sector; they imposed no requirements on mining companies to compensate customary landowners or communities for the loss of land, invest in any development activities to benefit local populations, or implement any form of minimum environmental protection practices (Leith 2002, p. 73).

All state revenues from mining in the form of taxes and royalties were paid to the central government in Jakarta and absorbed into consolidated revenue for redistribution across the nation. Provincial, district and village populations in the regions where mining occurred were not guaranteed to receive any share of the benefits from mining. The foreign-owned mega-projects also generally provided few job opportunities for local people, who lacked the necessary skills. Not surprisingly, these foreign-owned projects and the exploration concessions generated deep resentments with local communities. The New Order's use of the military to protect foreign mining interests from local community anger only exacerbated those resentments (Robinson 1983; 2016; Lucas & Warren 2003; Peluso 2007).

The centralised and authoritarian New Order state excluded local communities from natural resources including minerals, forests and the vast swathes of land that contained them. The *Basic Agrarian Law* (BAL) (Republic of Indonesia 1960) had already paved the way for the mass state appropriation of customary lands by making state recognition of all customary land

claims subject to a condition that they not conflict with the national interest, which the BAL only vaguely defined. This effectively subordinated customary land claims to the state's own interests in controlling land.

The New Order government soon strengthened the state's power over land further by passing the 1967 Law on Forestry (Republic of Indonesia 1967c), which defined more than 70 per cent of the country's landmass as state forest. Interpreting the 'national interest' provisions of the *Basic Agrarian Law* as synonymous with the state's interests, the forestry law stated that even in recognised 'community-owned forests', local communities could not obstruct state development plans (Duncan 2007, p. 715). Mining and forestry companies, however, faced no such restrictions. By 2002, mining concessions were estimated to cover 66.9 million ha of land, equivalent to more than 35 per cent of Indonesia's landmass, or around half the country's designated forest areas (Prabowo 2009, p. 246).

The right to exploit both forests and minerals were reserved for large corporations, most of them foreign or backed by foreign capital. Local communities were not able to participate in decision-making processes about resource use. As the authoritarian government insisted on foreign investors contracting state security forces to protect their assets, there was little local communities could do to challenge their presence. Nevertheless, resentments remained, and when cracks in the state's ability to impose its authority began to appear in 1997, many landowners moved to reclaim land, justifying their actions as reparations for past injustices (Lucas & Warren 2003; Crouch 2010, p. 23).

The collapse of the Indonesian currency as a result of the Asian financial crisis had two effects that pushed greater numbers of rural people to seek minerals to exploit. Firstly, the massive inflation pushed millions of Indonesians who had moved out of poverty back under the poverty line. Ordinary household goods that had long been considered basic items

suddenly became luxuries. Secondly, the currency's loss of value made exports more valuable in relative terms, and most of Indonesia's minerals were exported (Ballard 2002; Resosudarmo et al. 2009, p. 40; Lestari 2011, p. 165). Enabled by the security vacuum that followed the breakdown in central authority, local communities began taking possession of, and exploiting, mineral resources all over the country. Many foreign mining companies were forced to suspend their activities, and some ultimately abandoned their concessions as informal miners took over mining sites (McBeth 1999; 2000; Lucas & Warren 2003; Tsing 2011; Lucarelli 2010; Spiegel 2012; van der Eng 2014, p. 19-20).

Gold, tin and coal were the most-targeted minerals, due to their accessibility and ease of marketing. The number of village cooperatives mining tin on the islands of Bangka and Belitung, for example, rose from 15 in 1994 to more than 4,000 in 2001 (Aspinall 2001). Flooding the market with ore extracted from the concession belonging to state-owned tin-mining company PT Timah, the miners reduced the company's profits by more than 90 per cent (Djalal 2001). State-owned gold producer PT Aneka Tambang's Pongkor gold mine in West Java suffered significant losses from the ore removed by thousands of informal gold miners, as well as the destruction of buildings and vehicles and blockading of access roads (McBeth 2000). These events highlighted the potential benefits of informal mining for Indonesia's rural poor, but they also presaged new conflicts over the governance of natural resources and the distribution of wealth in post-New Order Indonesia (Resosudarmo et al. 2009; Warren & McCarthy 2009).

As the centralised chains of command began to break down from 1997, Indonesia's local political elites began voicing demands for control over local natural resources and the revenues they generated. As grassroots actors across the country were directly taking over land and mines abandoned by the foreign miners, members of the political and business classes in a number of resource-rich provinces, namely the provinces of Riau, Aceh, Papua

and East Kalimantan began demanding a greater share of revenues from natural resources, and greater autonomy over how they could use them. Such demands were sometimes accompanied by an implied or explicit threat of secession if demands were not met (McCarthy 2004, p. 1202; Crouch 2010, p. 97). Aceh and Papua already had long-running secessionist movements. While decentralisation went some way to appeasing regionalist demands in these provinces, it did so by empowering the districts with greater decision-making autonomy and control over resources. It also, however, created opposing pressures that led in many instances to conflict over natural resources. While some saw decentralisation as providing local populations with the ability to control and even prevent the extraction of natural resources locally, at the same time the new fiscal arrangements put pressure on district governments to find local sources of revenue generation. In many cases, natural resources, including minerals, were the most immediately available, or indeed, only means of generating local revenue (Duncan 2007, p. 722-723).

Decentralisation also fuelled demands for new districts, as local elites realised the opportunity to leverage greater control over both fiscal and natural resources (Duncan 2007, p. 726-727). In mineral-rich places like the Bangka Belitung islands (Erman 2007), South Sulawesi (Roth 2007), and NTT (Aditjondro 2009; Kleden 2010), where the current study is situated, demands for new districts, often successful, were in part attributed to the desire of regional elites to control the revenues and other opportunities generated by mining. Aditjondro (2009) concluded from his analysis of the relationship between mining and new district formation across Indonesia that campaigns to form new districts in mineral-rich areas were often financed by businesspeople who either already were, or wished to become, active players in the mining industry (p. 323).

Decentralisation and mining

In 1998 central government lawmakers began working on draft regional autonomy bills, which were passed in 1999, taking effect from 2001. These bills formed part of a strategic decision by the post-Suharto government to decentralise political and administrative responsibilities to lower levels of government and to introduce electoral mechanisms for accountability between local legislatures and their constituents. Due to concerns that devolving power to the provinces would empower regions with strong ethno-cultural identities and thereby risk fanning the flames of secessionism, the architects of Indonesia's decentralisation laws devolved powers to the next level down in the administrative hierarchy—the districts and municipalities (*kota*), which, when the decentralisation laws were enacted in 1998, numbered approximately 300. Given the centrality of natural resources to the case made by the regions for greater autonomy, politically it was important that control over natural resources be included in the suite of powers devolved. Decision-making and unspecified regulatory powers over minerals, forests and fisheries were therefore included in the new powers devolved to local governments by Indonesia's decentralisation laws.[5]

For the foreign mining companies, still yet to regain confidence in Indonesia following the political turmoil that had forced many of them to abandon their concessions and other assets, decentralisation was yet another reason to be wary (US Embassy 2001; World Bank 2005; Bhasin & Venkataramany 2007; Haymon 2008; Resosudarmo et al. 2009; Lucarelli 2010; OCallaghan 2010; Gandataruna & Haymon 2011; van der Eng 2014).

[5] Law 22/1999 on Regional Governance, Law 25/1999 on Fiscal Equalisation between the Central Government and the Regions. Various aspects of Law 22/1999 was subsequently revised in Law 32/2004 on Regional Governance, which included a move from indirect to direct elections for local leaders.

Reasons for this wariness included concerns that district governments lacked the technical capacity and knowledge to govern the mining sector effectively, that they would not be reliable partners in an investment, and that it would create significant regulatory duplication, uncertainty and conflict, in large part due to ambiguity over the demarcation of central and local government responsibilities. Experience showed they also had reason to be concerned about the ability of district governments to withstand the political pressure that local populations could exert on district government officials to use or misuse their authority to coerce mining companies into various wealth redistribution schemes.

Some local governments were indicating a tendency to view foreign-owned mining projects, due to their immobility, as a captive source of local government revenue that could be exploited over and above the provisions in existing regulations and or CoWs at any time. Perceived predatory and corrupt behaviour by some local governments was also a major factor. This included, for example, local governments actively supporting, or at least, tolerating illegal mining within mining company concessions (Lucarelli 2010, p. 56), issuing domestic mining permits (KP) within existing CoWs (PwC 2006), imposing extra-legal taxes and demands for land compensation (OCallaghan 2010, p. 223; Haymon 2008), and, in at least one well-publicised case in Sulawesi, supporting fabricated claims of environmental damage to extort compensation payments from a major foreign mining company (Marohasy 2007; Salcito 2007).

Foreign investment in new mining projects during this period remained at a low level (PwC 2007). Although decentralisation gave district governments the power to enter into new CoWs with foreign mining companies, ultimately only one new CoW was ever concluded by a district government before the CoW system began to be phased out from 2009 (OCallaghan 2010, p. 220). This was despite a global minerals boom that was in full swing during that period, and Indonesia continuing to be regarded by industry surveys as one of the world's

most attractive countries for mining investment when viewed from the perspective of its mineral potential alone (Fraser Institute 2006; 2011).

Decentralisation had the opposite effect on the domestic mining sector, and especially on small-scale, informal and artisanal mining. In contrast to the reluctance shown by the foreign miners to invest post-decentralisation, the domestic business class responded enthusiastically to the opportunity to deal with district-level governments. And district governments turned out to be more than willing to award mining permits to domestic companies, regardless of their mining experience or credentials. Aware that the rapid proliferation of mining concessions was creating a raft of problems on the ground, in 2010 the Ministry of Energy and Mineral Resources (MEMR) commenced an ongoing audit of active concessions, which identified more than 9,000 active permits across the country (Ministry of Energy and Mineral Resources 2011), a more than nine-fold increase compared to 2001 (Prabowo 2009, p. 247).

By 2014, following cooperative efforts with Indonesia's Anti-Corruption Commission, the KPK (*Komisi Pemberantasan Korupsi*), the mining ministry had revised its active concession count to 10,918. Of these, 4,876, or 45 per cent, failed to pass the ministry's 'clean and clear' test. For a mining concession to be designated as 'clean and clear', it had to pass an administrative audit confirming compliance with all relevant regulations. This included a range of technical requirements pertaining to mining permits, which changed with the passing of Law 4/2009 on Mineral and Coal Mining, the permit's currency and appropriateness for the activities undertaken, compatibility with prevailing land use classifications where concessions are located, an absence of overlapping concessions for the same or other resources, and fulfilment of obligations relating to tax and royalty obligations, and post-mining reclamation (KPK 2017).

The most common reasons mining concession-holders failed the clean and clear test were land classification conflicts (usually where concessions were located in a protected forest); overlapping concessions; failure by companies to report the results of exploration activities; failure to submit business feasibility studies and or environmental impact studies; and failure to pay production royalties and land rent (Ministry of Energy and Mineral Resources 2014). These outcomes were widely attributed to corruption in the mining sector, which was widely reported and perceived to be endemic (Erman 2005; 2007; Evaquarta 2010; Erb 2011). All of these fears and negative outcomes were in direct contrast to the hopes many had expressed for democratic decentralisation's potential to improve government decision-making by facilitating greater local representation and participation in the political process, in particular in respect to natural resources (Centre for International Environment Law et al. 2002; Djogo & Syaf 2004; Larson & Ribot 2004; Menyen & Doornbos 2004).

In the context of natural resource governance in particular, this contrast revealed a tension between the democratising ideal of bringing government decision-making closer to the people most affected by resource extraction on the one hand, and issues of local capacity and vulnerability of decision-making processes to capture by local elites on the other. Regional grievances over control of natural resources in a handful of especially resource-rich provinces played a significant part in generating momentum for the decentralisation reforms in the first place (McCarthy 2004, p. 1202; Crouch 2010, p. 97). This meant that once Indonesia's national lawmakers committed to a broad decentralisation agenda, there was strong support for new local powers to encompass natural resources. Strongly opposed to granting sub-national governments significant autonomy to manage local resources were the national sectoral ministries governing forestry, mining, fisheries, and even the environment.[6] Shortly

[6] Interview with officials in the Ministry of Energy and Mineral Resources, Jakarta, 21 August, 2011.

after the central government announced its decision to pursue decentralisation reform, the MEMR mounted intensive lobbying efforts to have mineral resources excluded from regional autonomy laws entirely, or, failing that, for a grace period of five or so years to enable time for a more orderly transfer of power, and to develop the necessary capacity and resources at the regional level (United States Embassy 2001; Erman 2007, p. 181).

The mining, foresty and fisheries ministries also began drafting new sector laws that, while formally acknowledging the new decentralised landscape, also sought to minimise or even negate the effects of decentralisation on their sectors. Often the interaction of these laws, both with each other and the decentralisation laws, created ambiguity and uncertainty about the jurisdictional limits of central, provincial and district government authority, resulting in many contests between governments to impose their own policies and decisions (Casson & Obidzinski 2002; Fox et al. 2005; Patlis 2005; Rosser et al. 2005; Wollenberg et al. 2006; McCarthy et al. 2006; Palmer & Engel 2007; Erman 2007; McCarthy 2007; 2011).

It might be argued that conflicts between the aims of central and local government laws, regulations and policies in the decentralisation era had a precedent during the era of centralised control. Contradictions had existed between the regulation of land rights under the Basic Agrarian Law of 1960 (Republic of Indonesia 1960), and the sectoral forestry and mining laws that effectively neutralised any rights established in the BAL (Peluso 2007, pp. 23-24). As the Asian Development Bank observed, ‘regulations are more often issued and designed to empower the agency issuing them than to provide reliable and fair guidance to people or entities subject to the legislation’. Rather than an unintended consequence, this was often a quite deliberate aim of the lawmaking process (Patlis 2005, p. 453).

As already stated, the decision to devolve powers to the lowest level of government, the districts, rather the provinces, was intended to reduce the risk of separatism along regional

ethnic boundaries. However, it also meant that control over natural resources would be transferred to approximately 300 (now more than 500) district and municipal government units, rather than to the 32 (now 34) provinces. This meant the talent pool of technical expertise for managing natural resources was stretched more thinly, while a vastly larger number of local elites would be positioned to derive personal and political advantage from the extraction of resources.

The decentralisation of authority to make decisions over natural resources was made explicit in Article 10 of Law 22/1999 on Regional Governance, which stipulated that,

> 'the regions have the authority to manage national resources within their territories and are responsible for preserving the environment in accordance with legislative regulations.'

Article 11 further elaborated that 'regions' referred in the first instance to the district (*kabupaten*) and municipal units of government, which were made responsible for all areas of government except for those in a prescribed list that included foreign relations, justice, monetary and fiscal policy, and religion. These areas remained under central government control. A subsequent government regulation, GR 25/2000, made it clear that jurisdiction over natural resources now resided with the districts except where the boundaries of resource concessions overlapped the boundary between two or more districts, in which case authority would lie with the provincial governments. District governments also acquired the power to levy local taxes and charges on resource extraction businesses.

Decentralisation also gave district governments responsibility for delivering basic health and education services and building and maintaining roads and other infrastructure. The districts assumed powers to regulate 'culture, agriculture, transport, industry and trade, investment, the natural environment, land, cooperatives, and labour'. This was a seismic shift compared to the highly centralised state that existed under the New Order regime from 1965 to 1997. Power

and authority in the New Order state flowed down from the presidential palace to governors of the provinces, and through them to the heads of districts and municipalities. Accountability of local officials flowed back up in the opposite direction, rather than downward to the people. The central government appointed district heads, based on recommendations provided by the provincial governors, ensuring the full support of local officials for the policies and decisions made in the center and implemented in the regions.

The decision by Indonesia's central government lawmakers to voluntarily give up power to approximately 300 autonomous districts and municipalities transformed Indonesia from one of the most centralised states in the world, to one of the most decentralised. It was also a decision that was welcomed by a diverse array of actors and institutions, each with different, and indeed often conflicting, reasons. Hopes were high that the reforms would lead to better policy for local communities, and improved governance of local resources.

By the 1990s, political decentralisation had come to be regarded by the International Monetary Fund (IMF) and the World Bank as a means of reducing inefficiencies caused by central government involvement in developing country economies. According to the prevailing doctrine for state reform, decentralising government functions and powers, especially those related to business and investment, would release 'entrepreneurial energies' at the local level by stimulating competition between local governments for investment. This would in turn reward local governments that embraced 'good governance' with greater investment, creating economic opportunities for the local population and increasing public pressure on elected local officials to continually improve the business and investment climate, creating a virtuous cycle (World Bank 1997; Bartley et al. 2008; Ito 2011).

Many NGOs, anthropologists and civil society organisations, however, held a somewhat contradictory set of hopes for political, or democratic, decentralisation. Far from stimulating

investment and economic integration, they saw decentralisation as a bulwark in the defence of local cultures, peoples and environments against what they regarded as the homogenising and ravaging effects of global economic and cultural forces (Bardhan 2002, p. 6-10; Hadiz 2010; Ito 2011).

Political scientists emphasised decentralisation's capacity to consolidate democratic values and institutions in new democracies (Grindle 2007, p. 7). According to this view, if power was devolved to local democratic governments, people would be able to express their preferences and influence policy and decision through the pressure of electoral competition. Decentralisation was thus often seen as automatically facilitating, and indeed conflated with, public participation, and goals of environmental sustainability, that such participation was presumed to produce (Thorburn 2002, p. 621).

Scholars of natural resource governance in the developing world also advocated decentralisation for its perceived potential to increase opportunities for citizen participation in decision-making. This, it was suggested, is a positive outcome and one that can strengthen the functioning of democracy. Scholars also pointed to greater efficiencies in the management of natural resources, greater equity in their use, and overall better management of resources that can be achieved through a decentralised approach due to the superior knowledge that local actors have about local resources (Agrawal & Ribot 1999; Larson 2003; Larson & Ribot 2004; Djogo & Syaf 2004; McCarthy 2004, p. 1202; Lemos & Agrawal 2006, p. 303; Palmer & Engel 2007; Menyen & Doornbos 2004). Because natural resources generate, rather than absorb, government revenue, other scholars claimed that decentralising control over natural resources reinforces the legitimacy of local institutions, by providing them with local sources of revenue that can be returned to communities in the form of government services and infrastructure (Ribot 2002, p. 6; 2004, p. 12).

Two decades after the beginning of Indonesia's big-bang reforms, many of these optimistic hopes for decentralisation were tempered by disappointment in its implementation. Decentralisation in Indonesia generated new problems of accountability, responsiveness and performance, leading to demands for the recentralisation of various powers, including control over natural resources. In many cases, fears that decentralisation would lead to increased corruption and capture of resources by elite interests proved justified (von Luebke 2009; KPK 2018). In NTT, as in other provinces, opportunities to control the allocation of government contracts and the private benefits of political power fuelled intense competition among local elites. In elections this took the form of 'money politics'—a cycle of financial backing for candidates with expectations of repayment (Barlow & Gondowarsito 2009; Sahin et al. 2012). In 2009, NTT's provincial capital, Kota Kupang, was named Indonesia's most corrupt municipality based on a public perception survey conducted by Transparency International Indonesia (Simanjuntak 2008). Many stages of the licensing, supply chain and revenue collection in mining, and other natural resource sectors, were regarded as highly vulnerable to corruption (Heller & Ismalina 2014; Wolfe & Williams 2015).

Meanwhile, following decentralisation, local governments came under pressure to raise revenues to meet increasing expectations about local services and infrastructure. This often meant the imperative of levying local taxes and issuing licenses to raise revenue trumped considerations about creating a conducive environment for investment (von Luebke 2009), or protecting environments and communities. As the tug of war continues, this study shows how the national and local regulatory regimes largely failed to protect the interests of the rural poor in their pursuit of new livelihood opportunities in the booming mining sector.

Overall thesis and outline of the dissertation

The central question addressed by this thesis is why and how informal manganese mining not only failed to deliver expected benefits for NTT's rural poor, but also, in many cases contributed to their further marginalisation. Drawing on two in-depth case studies as well as fieldwork and documentary sources from other parts of NTT, I argue that the potential for manganese mining to support community empowerment and economic and social development in rural NTT was undermined by two key institutional factors—(i) a lack of legal rights to land and minerals, and (ii) the capture of local democratic processes by local elites. These two key factors explain why manganese mining provided only meagre, if any, benefits to the rural poor living nearest the sites of extraction, and in some cases threatened their existence. In turn, these two factors were driven by the failure of democratic decentralisation to create the necessary incentives, or checks and balances on local political power, to facilitate natural resource justice for the poor.

Reflecting the diverse spectrum of experience of manganese mining for the rural poor in NTT, the study deliberately includes instances of various forms of willing participation in mining with various forms of resistance and opposition. This juxtapositioning of identities—miners/ labourers and landowners/ peasant farmers—often within the same communities, and even at times, the same individuals as circumstances and interests change over time, helps to reveal the complexity of interactions between the rural poor and mining, including how questions of scale, mechanisation and social identities inform individuals' responses.

The dissertation is organised as follows. This introductory chapter establishes the context and rationale for the study and describes the methodology used. Chapter 2 describes the way rural people in NTT responded to the opportunities presented by the manganese boom, the risks they take in pursuing livelihoods from mining, and the livelihood benefits. The chapter

examines how NTT's rural poor are marginalised by prevailing laws and bureaucratic processes that prevent them from legally exploiting manganese deposits while making them vulnerable to exploitation by more powerful actors who are able to secure mineral rights. The chapter also reveals how people resisted their exclusion, and how doing so has put them into conflict with mining companies and others holding the exclusive rights.

Chapter 3 expands on the discussion of rights to minerals by focusing on interactions between land tenure and mining. It examines the implications for the rural poor of the current land rights regime on income opportunities and compensation from mining, and negative impacts for social stability. The chapter also highlights the vulnerability of the rural poor to dispossession by mining interests, and the difficulty of determining ownership rights among multiple claimants.

Chapter 4 investigates the role of local governments in regulating mining in Indonesia, and how local governments in NTT facilitated the manganese boom. It investigates the incentives that decentralisation created for local government actors around mining, and how mining, and natural resource sectors generally, often help to underwrite the political ambitions of local leaders.

Chapters 5 and 6 are in-depth case studies from two localities in NTT. Chapter 5 is a case study of a dispute between a small community facing an existential threat from a manganese mine located on the hilltop above them. It also highlights how both winners and losers are created out of mining company negotiations with local communities, setting up conflicts over who has the right to negotiate with mining companies, and how compensation should be distributed.

Chapter 6 is a case study of a dispute over a mine located inside a protected forest, which is prohibited under Indonesia's forestry law. Focusing on government decision-making

processes, the case shows how government institutions at different levels had different interests at stake in the approval of mining licenses, sometimes resulting in disputes between government agencies. It also highlights the double standard in the application of laws that function to exclude the most vulnerable actors from accessing valuable natural resources, while granting access to commercial interests.

In my concluding chapter, Chapter 7, I revisit the main findings and arguments presented in the preceding chapters around three critical factors that limited the benefits of the manganese boom for the rural poor in NTT: the unevenness of access to valuable natural resources; approaches to land rights and land acquisition to facilitate industrial mining; and the political and regulatory environments that shaped decision-making and the implementation of laws and regulations.

Methodology

The fieldwork for this study was carried out in NTT over around 20 months between 2010 and 2012. From early 2010 until early 2011 I lived in NTT's provincial capital, Kota Kupang. After relocating to the national capital, Jakarta, in 2011, I made several trips back to NTT in 2011 and 2012 to supplement the data I had already collected. Following my last visit to the province in April 2012, I continued to monitor mining developments through NTT's local press, on-line NGO forums and mailing lists, and NTT networks in Jakarta through to 2015. At the same time, I also followed with close interest regulatory changes taking place at the national level that began to impact on mining in NTT from 2014, when the central government banned the export of raw minerals.

The way I used my time in NTT reflected the study's aims and focus. The study was not conceived as either a deep account of the daily lives or worlds of miners or mine workers. Nor was it ever my intention to focus on a single mining project or mining company. The aim was instead to present a broader picture of manganese mining in the province, in all its forms, and the many issues it created for local communities and local governments to navigate. This aim suggested a multi-sited approach that highlighted the diversity of experiences, according to local particularities regarding the stage and scale of mining, and land ownership, usage and settlement histories. While this approach obviously meant I did not obtain the depth of knowledge about a single mine or mining location that one might from planting oneself in a single village for months on end, it was better suited to developing the more comprehensive picture of NTT's informal mining boom that was my objective.

Another reason it made sense to incorporate experiences from multiple mining locations was that a major focus of the study was understanding how district government policies, decisions and actions were shaping mining outcomes on the ground. This meant I needed to spend as much time talking to local politicians and bureaucrats in the district capitals about their motivations and constraints as I did in villages.

Similarly, as different district governments were handling their mining powers and responsibilities in different ways, I also chose not to confine my focus on government to a single district. By incorporating mining experiences and governance approaches from several districts I was able to highlight these differences and ask questions about how they could be explained. Therefore, although I was based in the provincial capital of Kupang, I also visited the district capitals of South Central Timor (TTU – Timor Tengah Selatan), North Central Timor (TTU – Timor Tengah Utara), and Belu in West Timor, and Manggarai, East Manggarai and West Manggarai in Flores.

In West Timor, all but one of the mining sites I visited were in the rural district of Kupang, not to be confused with the provincial capital of the same name, (*Kota*) Kupang. I also spent time at a semi-mechanised mine in South Central Timor. In Flores, all mining is semi-mechanised, and although it was not possible to visit mines there, I spent considerable time talking with people in the villages adjacent to the two semi-mechanised mines that are the subjects of the case studies in Chapters 5 and 6.

My approach to collecting the data used in this study combined most of the methods commonly used by ethnographic researchers in field research everywhere. This included collection of local press reports, conducting interviews, talking with people informally, and observing various stakeholders as they interacted. I conducted formal interviews with more than 100 government officials, mining entrepreneurs, artisanal miners, mine labourers, landowners and community leaders, NGO workers, church leaders, journalists and academics. I also had many more spontaneous conversations with people who, while not formal interview subjects, were interested in my research and helped to fill out my understanding of the issues. Some of these were very brief interactions, and due to their unplanned nature it is difficult to estimate their total number over the period that I was in the field. I did not attempt to organise any formal focus group discussions but I did observe many group discussions where participants includes local community members, government officials and representatives of mining companies. I also attended discussions on a draft regional mining regulation at the provincial legislature, and collected any relevant accessible government documents that were publicly available.

During 2010-2012, local newspapers in NTT were carrying stories on an almost daily basis about manganese mining and these articles provided a rich source of information about mining sites across the province that due to time and logistical constraints I was unable to visit. They alerted me to issues of which I was not aware and provided me with many new

questions. I retained both physical clippings and searchable, electronic files of several hundred articles and referred to them frequently during the writing process.

The two semi-mechanised mines that I visited in West Timor were chosen because they were in a more advanced stage of development than other operations and were reasonably accessible from my base in Kupang. One was in the district of Kupang, and the other in South Central Timor. The mine in South Central Timor had been the subject of many stories in the local press, due to the challenges the company had faced in controlling artisanal miners within its concession. In both cases, the company's managers were very accommodating of my questions and helped me greatly to better understand some of the events that had been taking place.

I used a variety of strategies to find informants willing and able to speak knowledgeably about mining in the province. In the district of Kupang, I was greatly assisted by staff from the district mining office and the district head. After having become acquainted, staff from the mining office invited me to join them on their field trips when they were facilitating meetings between communities and mining investors as part of community consultation processes. These opportunities introduced me to villagers and with whom I built a rapport, maintained contact, and subsequently returned to visit. Officials from the mining offices in South Central Timor and Manggarai were also accommodating and supportive, sharing information with me in interviews and in the case of Manggarai even alerting me to opportunities to visit a mining project.

The district head in Kupang, whom I met when I attended a session of the district parliament, several times invited me to accompany him in his car on field trips to villages within his district. He used these trips as an opportunity to lay out his vision to me of how he planned to manage mining in his district.

In Flores, one of my contacts from Jakarta put me in touch with an Australian mining investor, who invited me to accompany him for meetings over several days with communities in an area where he was looking at developing a mine. As with the ones I witnessed in Kupang, these meetings provided great insights into the dynamics around mining, and a point of contrast in terms of approach.

In Flores, but not in West Timor for some reason, the Catholic Church was extremely engaged with mining issues and members of the clergy were very generous in sharing with me their knowledge and perspectives on the issues. In both West Timor, and in Flores, I found both political leaders and bureaucrats who were more than willing to speak with me about mining. Even though there were obviously widespread disputes and grievances around mining in the province between many different stakeholders, overwhelmingly, people from villagers to politicians to bureaucrats and mining investors were more than willing to share their stories and perspectives with me. During 2010 and 2011, it seemed almost everyone in the province was talking about mining.

Most of my interviews were semi-structured. I usually had several questions I wanted to ask. But my preferred approach was usually to find a way to ask them in the natural flow of conversation when the opportunity arose. When I did more formal interviewsI usually recorded the exchange, provided the interview subject was comfortable with doing so, which almost all of my interview subjects were. Particularly as I was working in my second language, Bahasa Indonesia, this allowed me to focus more fully on the conversation and my interlocutors and check my understanding for accuracy later.

Limitations of the study

The study, and the findings and conclusions it generated, are limited in a number of ways in terms of their broader significance or relevance. The data collection was conducted in just one

of Indonesia's 33 provinces. Although it did include multiple research sites in several districts, the sites were not purposively selected, for example according to particular characteristics that might support comparative analysis around particular features of the communities or mining activity. They were also not randomly selected. Rather, the sites were selected through a process of identifying opportunities and what was possible within the practical constraints of time and logistics in a challenging research environment.

The use of multiple sites broadened the study's scope and significantly expanded my understanding of the issues and the way mining was being carried out. The cost of this approach, however, was that I was unable to immerse myself in a single site for a significant and continuous period in the way that some ethnographic studies of single mining projects tend to do. This necessarily limited the extent to which I was able to directly observe the unguarded interactions and conversations among community members, mining company managers and others that tend to occur once researchers have been present for long enough for people to begin to accept their presence as normal.

The study is also limited to a single commodity—manganese—, which as an industrial mineral only becomes valuable in relatively large volumes. This fact meant the artisanal mining scene described in the study is quite different in many respects to the artisanal mining of gold, for example. The miners were not fulltime artisanal miners, and nor were they itinerant. They were members of local communities, usually working on land that either they or other members of the community owned. This aspect means the study's relevance to many of the issues raised in the literature on informal gold mining may be limited.

Finally, fieldwork for the study was conducted between 2010 and 2012, while the period that contains the events it describes is from 2007 to 2014.

Chapter 2 – The Manganese boom in West Timor: incomes and illegality

For many communities across West Timor, manganese mining provided a significant boost in household income. At the same time, however, these mining livelihoods remain constrained and insecure due to legal restrictions on access to the mineral for artisanal miners. The absence of a system of widely accessible artisanal mining rights marginalised the rural poor and criminalised the entire production and marketing chain. This made mining incomes highly subject to fluctuating fortunes in struggles for control between a wide range of state and non-state actors with overlapping and conflicting interests. These struggles created an atmosphere of insecurity and legal uncertainty, and further eroded public trust in state institutions. Criminalisation of the production and marketing chain has benefited most those able to project force, and therefore entrenched the interests in mining of elements within the state security forces. Although at times this might have appeared to benefit artisanal miners, by keeping the marketing channels open, it also came at a cost for communities.

In West Timor, manganese often occurs at shallow depths, and even on the surface of the earth, making it easily accessible to local farmers. The map below shows how widely manganese is distributed across West Timor with more than 50 per cent of villages possessing manganese deposits within their boundaries. The head of the district mining office in North Central Timor claimed manganese could be found beneath 70 per cent of that district's landlandmass (*Pos Kupang* 2010a).

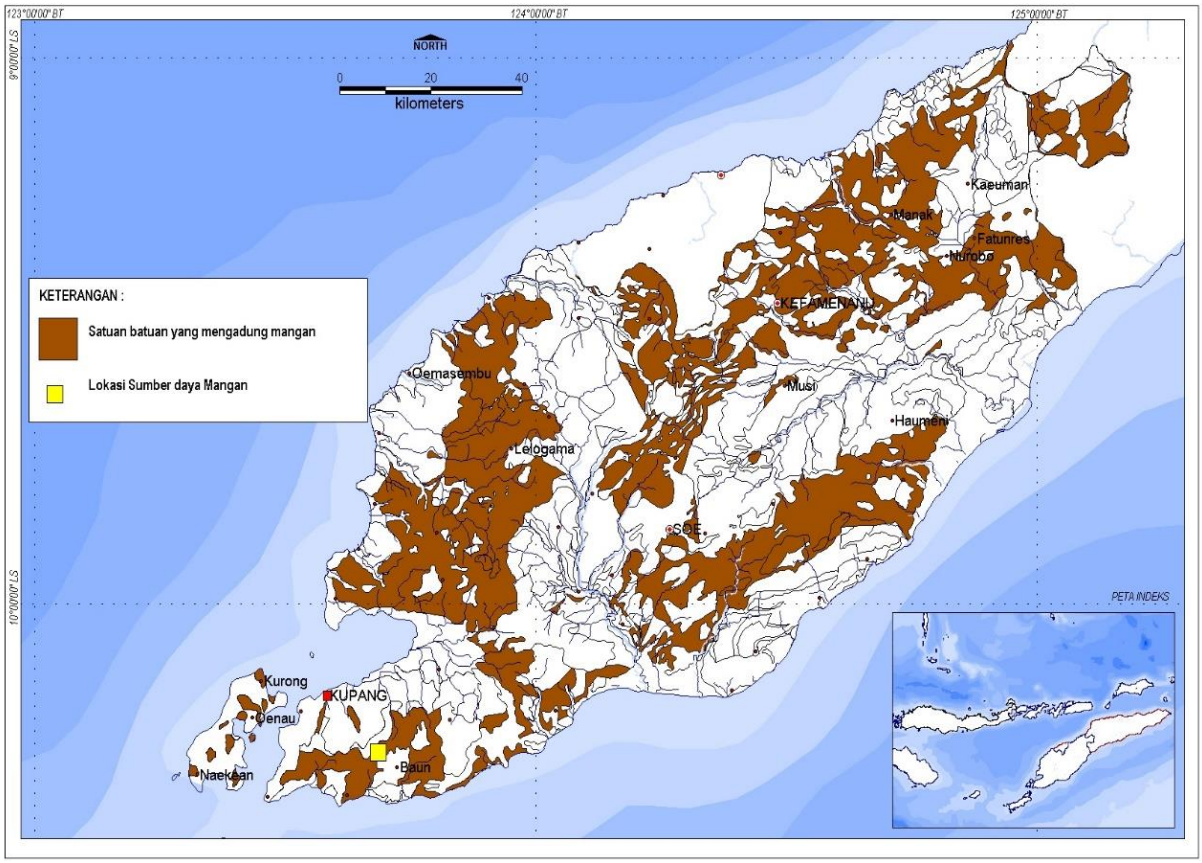

Figure 5. Map showing the distribution (brown shaded areas) of manganese deposits in West Timor. Source: AGB Mining.

Economic impacts of artisanal mining

From 2009 until 2012, driving through rural parts of West Timor it was common to see 50kg rice sacks filled with manganese lining the roadsides, in front of peoples' homes. Some of these homes boasted shiny new zinc rooftops, or TV dishes, and had new motorbikes parked on their verandas, paid for by manganese. Everyone, it seemed, who lived within proximity to manganese, which was much of the rural population, somehow had a stake in the new industry.

Using only crowbars, picks or shovels, artisanal miners burrow into hillsides or riverbanks to extract it. The manganese found in NTT takes a variety of forms, from smooth, round

globules to rough, irregular coral-shaped formations mixed with limestone. All are easily identifiably by both appearance and weight. Different forms are graded and priced according to their purity of manganese. Miners load the ore into rice sacks, usually to be transported by motorbike to a more central point on a road accessible to the large yellow trucks that would come past, sometimes daily at the peak of the boom, to collect them. One of the reasons manganese mining attracted such wide participation was it required no special skills. Women, and sometimes children, also take part, both extracting ore from pits and burrows, and sorting it at stockpiles. Young people who typically would have left their villages to seek income opportunities or further education in the provincial capital, Kota Kupang, were staying or returning home, to make money from manganese mining instead.

Figure 6. Rice sacks filled with manganese ore placed on the side of the road for collection in Oenesu, Kupang District. Photo by author.

The village of Oenesu, a 30-minute drive from the provincial capital, Kota Kupang, in the rural district of Kupang, was typical of many villages in West Timor where artisanal

manganese mining was taking place. Both men and women were involved in mining in Oenesu and it had had an observable and significant impact on the household incomes of many families. By 2011, many homes in Oenesu boasted shiny new zinc roofs and dish antenna to catch the television signal. The village head (*kepala desa*) was said to owe his impressive new house entirely to income from manganese mining. Apart from home improvements, mining income was also being used to prolong children's education, including up to university. Large and small livestock were purchased, and important social events, especially weddings and funerals, were funded with earnings from manganese. Consumer items were also proudly referred to as evidence of the material benefits mining had brought. Motorcycles and mobile phones, both prized as status symbols but also important for amassing economic and social capital, were among the highest priority items.

The economic 'pull' effect of mining was believed to be reversing to some extent the usual rural to urban migration that occurs as young people leave their villages to seek informal income opportunities, jobs and education in Kupang. An official in the provincial mining office claimed that as a result of mining there were now far fewer unemployed or underemployed young men 'loitering' in the provincial capital with nothing to do. Many had been lured back to their home villages by the income opportunities associated with mining.[7] Some were mining, while others made money using their motorbikes to transport ore from artisanal mine sites to collection points.

Depending on the richness and accessibility of manganese deposits, a single miner in West Timor could easily expect to extract at least 100 kg of ore in a single day. Miners who sold their ore to brokers between 2008 and 2011 could usually expect to obtain between IDR 1000

[7] Interview with provincial mining official, Kota Kupang, 2010.

and IDR 1500 (US$0.10 to US$0.15) per kilogram.[8] A miner extracting 100 kg in a day could therefore expect to earn between IDR 100,000 and IDR 150,000. By comparison, the official minimum wage in NTT in 2009 was just IDR 725,000 per month, the equivalent of IDR 32,950 per day (assuming 22 working days in a month) (BPS 2011, p. 30).

Artisanal miners usually earned much more than mine labourers working on semi-mechanised mines in West Timor and Flores. Most mine labourers were paid either a daily rate (for casuals) or a monthly salary (for contracted workers) at the minimum wage. The exception to this, discussed later in this chapter, was one mine in the district of South Central Timor (*Timor Tengah-Selatan* – TTS) that paid its labourers according to the volume (by kilogram) of ore they collected. Mine labourers paid on a per kilo basis earned more than those on a daily rate, but still significantly less than artisanal miners able to sell their ore in what, for a period of two to three years, was a highly competitive brokerage market. The volume-based method of remunerating labourers also proved to be a major source of friction between the mining company and the 'freelance' labour-force.

Other than miners' physical capacities and the geological characteristics of the deposits they worked, the main factor affecting artisanal miners' incomes was their ability to freely market the ore they extracted. This ability—tied to regulations governing access to minerals in Indonesia, their application by local governments, and relations between manganese buyers and local landowners—has heavily influenced the bargaining power of both artisanal miners and labourers.

[8] According to multiple interviews with artisanal miners in Kupang and South Central Timor districts, mining officials in Kupang District and corroborated by various newspaper reports.

Artisanal miners and rights to minerals in Indonesia

Minerals in Indonesia are regarded as the natural endowment of the entire nation, to be controlled by the state on behalf of the people. The state's authority over mineral resources is clearly established in Article 33 of the Constitution:

> 'All minerals occurring within the territory of Indonesia, which constitute a natural endowment that is a bounty from God, are the national wealth of Indonesia, and are therefore to be controlled and exploited by the state to maximise the prosperity of the people'.

Article 33 clearly implies that surface rights to land do not convey any rights to minerals that might be lying beneath the surface. Minerals are a national endowment, with the state enjoying full authority to allocate exploitation rights. This is not unusual around the globe—most countries treat the ownership of subterranean resources in this way. Differences are instead found in how governments allocate rights to minerals.

Although Article 33 refers to 'the people', in connection to 'national wealth' it does not make explicit who 'the people' are. As a result, the phrase can be and often is interpreted in different ways to serve different political ends. Nationalists and national-level politicians equate 'the people' with the nation to critique what they regard as overly generous terms under which multinational mining companies can exploit minerals for profit.

Lawmakers have also used Article 33 as the basis for mining laws that regard any mining activity not authorised by a government-issued mining license as illegal (Republic of Indonesia 1967a; 2009a). Advocates for local communities impacted by mining invoke Article 33 to argue that local communities should receive a greater share of the benefits from industrial mining. One local NGO that undertakes research and community advocacy on mining issues even adopted 'Article 33' as its name.

Many indigenous groups in Indonesia claim that their customary land rights extend vertically as well as horizontally, and that they therefore have a right to exploit minerals on their own land (Centre for International Environment Law et al. 2002, p. 65). A national body representing Indonesia's customary, or *adat*, communities, known as AMAN, (*Aliansi Masyarakat Adat Nusantara* – Archipelagic Alliance of Customary Communities), has demanded the government recognise the rights of communities to exploit minerals on their own land. A statement published on AMAN's website in 2012 argued that Article 33 of the Constitution establishes the legal basis for such rights and that the government only needed to explicitly recognise their existence to allow traditional landowners to realise their 'political sovereignty, economic self-sufficiency and cultural dignity' (AMAN 2012).

> 'Whatever natural resources exist in an *adat* area, it is the right of *adat* communities to look after, manage, and fully exploit them, for the collective wellbeing of all citizens of the *adat* community' (AMAN 2012).

AMAN's statement also called for a shift away from industrial mining, which it claims generates conflict with local communities, towards what it describes as 'sustainable' artisanal and small-scale operations run by community cooperatives. To achieve this, AMAN's declaration also demanded revisions to the most recent national mining law, Law 4/2009 on Mineral and Coal Mining, which, it argued, 'restricts the participation of local communities in mining' (AMAN 2012).

Since at least 1967, Indonesia's regulatory framework for mining has acknowledged the existence of artisanal mining. Law 11/1967 on Key Mining Provisions established a special class of mining permit for artisanal, or 'people's mining'. These permits, known as People's Mining Permits, or IPR (*Izin Pertambangan Rakyat*), allowed individuals, small groups or cooperatives to extract minerals in a small area without the use of machinery. Limitations included that IPR permits were non-transferrable and had a maximum initial term of only five

years. However, these limitations mattered little in practice since the permits were all but impossible to obtain (Republic of Indonesia 1967a).

Up until 2001, one major obstacle to obtaining an IPR was that applicants needed to travel to the capital Jakarta to lodge the necessary paperwork with MEMR. This was because prior to decentralisation, only the central government had the authority to issue mining licenses for minerals. The costs in time and travel, not to mention navigating the bureaucratic channels of an institution unsympathetic to informal mining, meant that few, if any, artisanal miners managed to secure IPRs during the New Order period.

Many community and environmental advocates and proponents of democratic reform in Indonesia expected local governments to give greater acknowledgment to the natural resource rights claims of local communities under decentralisation. However, there was little change in respect to rights to minerals (Spiegel 2012, p. 192). In West Timor, where I collected the field data for this chapter, almost all artisanal miners of manganese lacked formal rights to the deposits they exploited.

Unauthorised mining in Indonesia is referred to as 'PETI', a word derived from the phrase 'Mining without a permit' (*Pertambangan tanpa izin*). The persistent official view of PETI was summed up in a presentation by mining ministry officials to a conference on mining held in Nusa Tenggara Timur's capital, Kota Kupang, in June 2010. The presentation was titled, 'Socialising the Management and Prevention of PETI' (Ministry of Energy and Mineral Resources 2010).

> 'PETI is a criminal activity, the theft of minerals, so it is incumbent on all government sectors to support the control of it... PETI has spread to all areas with mineral and coal potential in Indonesia, both in areas free of mining permits, and in areas with mining permits. Understanding mining means having a system that adheres to the principles of "*good mining practice*" – mining practice based on adherence

> to technical aspects, work safety, environmental protection, value-adding, and development of the region and community in the area around mining areas'

The presentation went on to list problems associated with PETI. It was

> 'undertaken without access to capital and technical support and was based on limited knowledge and data. This resulted in inefficient exploitation of deposits, unsafe work practices including the use of child labour, high accident rates, high levels of inward migration from outside mining areas, an increase in social vulnerability and sexually transmitted disease, unchecked environmental damage, violation of regulations, difficulties in marketing the raw product, and a negative impact on prices obtained by legal mining operations'.

Official discourses relating to PETI tend to highlight miners' illegal status, and attribute many of the problems associated with the sector to the illegality of their activities. However, the discourse fails to acknowledge that miners' illegality is a function of the formal mineral rights regime and its implementation by governments. Rather than proposing ways to regulate the sector to address some of the other problems associated with artisanal mining, Indonesian governments have consistently advocated for prohibition and strengthened law enforcement. While this approach further marginalises miners, it rarely achieves its stated objective—of ending artisanal mining—in areas where economic conditions make it attractive, creating opportunities for multiple sets of interests.

Highlighting the many other challenges and limitations of artisanal miners, whether authorised or unauthorised—access to capital, data, technology and marketing channels, adherence to environmental and labour standards, and capacity to develop surrounding communities and regions—suggests that policymakers oppose PETI not only, or even primarily, because they are unauthorised, but also because they are not commercial mining companies with industrial-scale capacity. There is nothing unusual in this. Artisanal miners compete for access to land and limited resources with the formal mining industry throughout

the developing world, including in Indonesia. Looking to maximise state revenue streams, governments in most countries have tended to back industrial miners in these contests (Dove 1993; Barry 1995; Jennings 1999; Aspinall 2001; IIED 2002; Lahiri-Dutt 2004; 2006; Fisher 2007; Banchirigah 2008; Lange 2008; Hilson 2009; Ali 2009; Tschakert 2009; Maconachie & Hilson 2011; USAID 2011; Teschner 2012; Spiegel 2012; Geenen 2012; Sahin et al. 2012).

Although the negative characterisation of artisanal mining above was made by central government officials from MEMR, its intended audience of district government officials from all over NTT were already acting on its core message for mineral licensing policy. From the outset of the manganese boom in West Timor, district governments showed little interest in allocating artisanal mining rights to individuals or groups of landowners.

According to district government mining office records, only one of the (then) four rural districts in West Timor issued any IPR; North Central Timor issued 14 IPR permits, all in 2008. All of these permits were for either 15 or 25 ha each, which meant they were issued to groups or cooperatives, rather than individuals.[9] The North Central Timor district government also issued around 70 commercial mining licenses (KP) between 2008 and 2010, all with much bigger footprints, of up to 1000 ha (North Central Timor District Legislature 2010). All of the IPR and commercial permits issued in North Central Timor went to powerful local actors with control over large areas of land and strong family, political and/ or business or connections with the political leadership in the district (Usboko 2010).

Although the mining office map of mining permits in Kupang District did not indicate any IPRs having been issued in that district, one village head told me he believed one IPR had been issued, in the sub-district of Fatuleu, where the village head also resided. The recipient

[9] Under the 1967 General Mining Law, 25 hectares was the maximum area allowed. This was reduced to one, five and 10 hectares respectively for individuals, groups and formal cooperatives under General Mining Law 4/2009.

of this sole IPR, he claimed, was a very powerful local landowner and important figure in the traditional Timorese social structure. According to a local community leader, the man's ownership of large swathes of land close to the Trans-Timor highway had enabled him to forge close ties with the army, which had helped him to secure the IPR permit, and protect him from the Kupang District government's attempts to stop mining activity in the district from 2009. The man had reportedly gifted some of his land to the army to enable them to construct an army base.

> 'It's only because he's the head of the largest clan in Fatuleu (that he has so much power). He probably doesn't speak Indonesian very well, but his influence is extraordinary. He refers to the *bupati* (district head) as his little brother, and the governor as his child. So, in the district of Kupang, he's the most influential figure. People don't call him *Bapak* Hendrik anymore, but *Bapak Raja* (Father King). Including the (military) commander.[10] With manganese, he has bought a luxurious house amongst the homes of all the military commanders in Jakarta. He's incredibly wealthy. He can lobby anyone directly because he's so wealthy.'[11]

The district governments of Kupang, North Central Timor and Belu issued more than 50, 80 and 80 commercial mining permits respectively (Kupang District Government 2010; North Central Timor District Government 2009; Purwanto 2012). This rapid expansion in the area covered by commercial mining permits precluded the possibility of issuing large numbers of people's mining permits in the most promising areas for manganese.

The district of South Central Timor (TTS) issued only eight commercial permits (Faot 2010), despite manganese deposits reportedly being distributed across 70 per cent of the district (*Pos Kupang* 2010a) (see also map above), and experiencing equally strong demand from investors and speculators as in the other districts However, in an interview with a local newspaper, the

[10] An army base located nearby.

[11] Interview with community leader, Oebola Dalam, Fatuleu sub-district, Kupang District, 26 July 2011.

deputy district head made it clear that this was not because the TTS district govern wanted to promote artisanal mining.

> 'Should we just rely on people's mining then? What is the capacity of people's mining? At the most they mine for one or two meters and then stop. Investors use heavy equipment, which can reach much further and wider. Actually, between the community and the investor there should be cooperation so that nobody feels disadvantaged' (*Pos Kupang* 2010r).

By 2010, commercial mining concessions collectively covered more than one third of West Timor. Most of the entities that secured these concessions had only been formed in response to the manganese boom in West Timor. As such, many shared some of the defining characteristics of artisanal miners, in lacking technical knowledge and capacity, experience, and, in many cases, access to enough capital to exploit a resource on an industrial scale.

It was not for lack of interest that communities failed to obtain IPR permits. In the village of Oenesu in Kupang district, a company seeking community support to operate in the village met resistance from many members of the community who believed they should be granted an IPR to extract manganese ore for themselves. According to a local community leader,

> 'The people weren't rejecting mining (per se), but they had a view that the community should also be able to apply for a permit.
>
> 'There were many people who wanted to mine by themselves, 'people's mining'. When we met with the district head (*bupati*), he said there was a permit available for people's mining (IPR), but until now that hasn't been realised.
>
> 'In my opinion, people's mining permits were never going to be issued, because on what basis could the permit be issued? Secondly, we each only have a few hectares of land. For example, if I have one hectare, after I've finished (mining), where else am I going to go? There's no more land.'[12]

[12] Interview with traditional leader, Oenesu village, Kupang District, 16 September, 2010.

Apart from the fact that district governments had not established the People's Mining Areas, in many cases, including this one, villagers had no chance of obtaining IPR permits in the areas where they needed them, because the sites had already been included in commercial mining concessions applied for and approved under the tenets of the previous law. There is no provision in the mining law for IPR permits to be issued within a commercial mining concession. In many locations, district governments therefore were unable to establish People's Mining Areas for the same reason, even if they wanted to.

This nevertheless raises the question of why so much land was allocated for commercial mining concessions under the previous law, while so few IPR permits were issued to local people, despite the large numbers of people mining manganese. Often, by the time villagers even knew that a company was interested in their land, the company was already well advanced in the process of obtaining the rights, if it had not already done so. With no provision under Indonesian mining law for IPR concessions to be established within the boundaries of commercial concessions, once land had been allocated it was no longer available to communities. The map below shows the manganese mining concessions issued in Kupang District, all in 2008. The blue patterned boxes represent mining concessions. As can be seen, in some areas, particularly along the southeast coast, commercial mining concessions covered extensive area where manganese occurred.

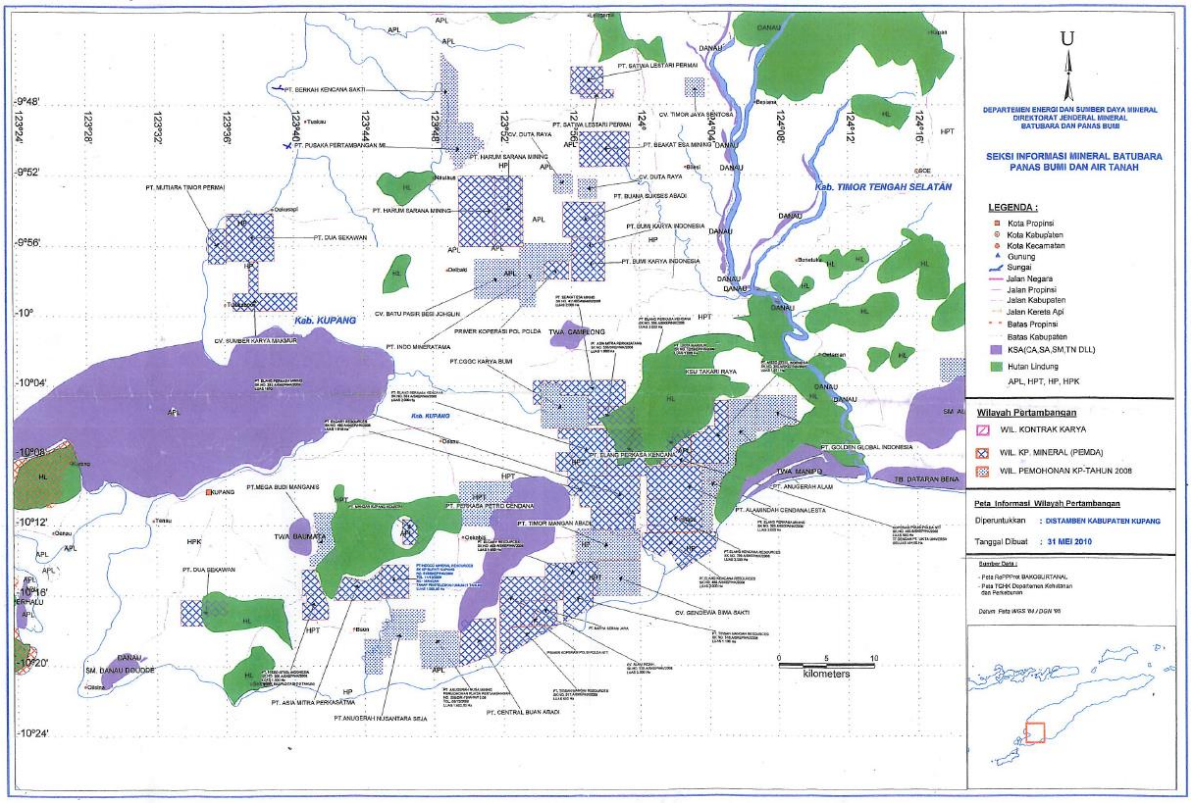

Figure 7. Map showing manganese mining concessions (blue lattice areas) in Kupang District, 2010. Source: Directorate General of Minerals Coal and Thermal Energy, 2010.

Commercial entities, often owned by members of the local business, political or bureaucratic classes, were well ahead of communities in navigating the bureaucratic processes to obtain mining rights. They had stronger bureaucratic and legal literacy, and the connections needed to navigate the informal aspects of negotiations, including bribery where needed. Poor villagers who are desperate enough to undertake the arduous, often dangerous work of manganese mining did not have money for bribes or other inducements to help obtain favourable outcomes from administrative processes. These networks and systems of patronage are discussed in greater detail in Chapter 4.

In January 2009, Law 4/2009 on Mineral and Coal Mining took effect, Indonesia's first attempt at overhauling its regulatory framework for mining since 1967 (Republic of Indonesia 2009a). The new law implied the possibility of limited recognition of artisanal mining rights based on pre-existing livelihood activities. Under the new law, all people's mining activities

were to be undertaken in a People's Mining Area (WPR – *Wilayah Pertambangan Rakyat*) (Article 20), to be defined by the district head/mayor in consultation with the district legislature (Article 21). Limited recognition of resource rights based on prior livelihood activity was expressed in Article 24, which states that

> 'areas or places where people's mining is already occurring but have not yet been designated as People's Mining Areas shall be prioritised for designation as People's Mining Areas'.

However, the basis for extending artisanal mining rights to individuals or groups remained a formal mining permit, to be issued by district heads, or even sub-district administrators (*camat*) if leaders chose to delegate their authority. The law also emphasised that IPR permits were intended mainly for local residents in the areas where mining was taking place, and that to obtain IPR permits, residents would need to submit a letter of request (Republic of Indonesia 2009a, Article 67).

Before they could do so, however, they needed district governments to first establish the People's Mining Areas (WPR) within which their small concessions would be located. Despite widespread artisanal mining taking place across West Timor at the time that the law entered into force, none of the district governments in West Timor had established a single WPR to late 2012 when I was visiting the region regularly.[13] This problem was not exclusive to people's mining areas. Under the new mining law, district governments also had to define 'Mining Areas', known as 'WP' (*Wilayah Pertambangan*), where industrial mining could take place. Before they could do this, however, they needed to undertake detailed geological surveys to map areas of mineral potential (*Timor Express* 2010a). District governments were reluctant to zone areas for 'people's mining' until they had a clearer picture of an area's potential and suitability for industrial mining. As neither provincial or district governments

[13] Personal communication with local informants in Kota Kupang.

had the expertise or funds to undertake this kind of survey work, it was expected to be many years before these 'Mining Area' maps were created.[14] Unil then, mining would continue according to the existing approach that excluded artisanal miners.

Rent seekers and access to markets

In many cases, exploration permit-holders were doing little more than positioning themselves as 'middlemen' to extract a rent from the labour of artisanal miners, while also engaging in a form of land speculation. Many lacked the expertise and financial capacity necessary to undertake exploration work, let alone to develop a resource. Holding the rights to land would, however, allow them to negotiate deals with mining companies seeking access to resources in the future. In the meantime, allowing artisanal miners to work within their concessions provided an immediate and potentially significant income stream.[15]

> 'There are really only one or two companies who can realistically be called investors, from the size of their investment. The rest are basically middlemen, who buy up concessions with the intention of selling them, or selling the company if necessary, later. There are a lot of 'takeovers', where the company isn't capable (of exploiting the resource). Or they have the permit but aren't capable of shipping it between islands. So, we're really being deceived by the investors.'[16]

Another strong indication that many of the permit-holders were not serious investors, but rather rent-seeking middlemen, was that most permits issued in West Timor between 2008 and 2010 were for only for exploration, not production. Despite this, mining within

[14] Interview with Kupang District Deputy Head, December 2010.

[15] Interviews with Kupang District mining office official in Kupang District, November, 2010.

[16] Interview with Frengky Saunaoah, Deputy Leader of the North Central Timor District Legislature, 7 January, 2011.

exploration concessions, utilising the manual labour of local people, was widespread, and, in the view of many, well beyond the volumes of ore needed to establish the viability of deposits before proceeding to a production licence. Under the mining law, serious penalties can apply for exploration permit-holders who undertake production work.[17]

A challenge, however, for enforcing this restriction is that under the mining law, exploration permit-holders are permitted to sell the ore they extract for testing purposes as part of the exploration process.[18] Officials at the central government, provincial, district and sub-district level believed that many exploration permit-holders in West Timor were blatantly exploiting this provision in the mining law. However, they had different views about whether it was a problem, and how it should be handled.

The mining ministry's view was that the law was clear in prohibiting commercial production activities under an exploration license and needed to be enforced. Mining ministry officials monitoring developments in NTT also argued that the abuse of the provision in Article 43 that allowed exploration permit-holders to sell minerals could be readily differentiated from the legitimate sale of ore extracted during exploration by the volume and frequency of shipments.[19] According to officials in the Ministry of Energy and Mineral Resources, exploration permit-holders in NTT were known to be sending shipments on a weekly basis.

> 'There are minerals, including manganese, that during exploration need to be excavated, it's not enough just to drill. But transporting and selling ore during exploration phase is only permitted once. The

[17] Article 160 (2) of the 2009 Law on Mineral and Coal Mining provides for prison sentences of up to five years and fines of up to IDR 10 billion (US$10 million) for exploration permit-holders who are found to be undertaking production activities.

[18] Article 43 of the 2009 mining law states that exploration permit-holders that discover minerals must report their results to the authority at whichever level of government has granted the permit. If the permit-holder wishes to sell the minerals extracted, they must obtain a temporary shipping and marketing permit, and pay the usual royalties that would apply.

[19] Interview with official from the Directorate General Minerals and Coal, Ministry of Energy and Mineral Resources, Jakarta, November 2010.

> problem is, manganese traders in NTT repeatedly sell their ore by exploiting the conditions of Article 43, paragraph 2. It can be deduced that the manganese that is sold is deliberately extracted for commercial purposes. In which case, it's a criminal offence (Lagaligo 2010).'

However, the NTT provincial government took a different view. The NTT mining office boss argued that with the support of the provincial governor he had merely helped to facilitate shipments from the province by issuing the necessary temporary sales and shipping permits.

> 'In several districts the manganese is just piling up because there are no documents. So, to facilitate the economic activities of the people, the governor issued temporary shipping and sales documents […].
>
> 'This is regulated clearly and firmly by Article 43 of Mining Law 4/2009, so there is no manipulation and I don't mean just to defend the exploration permit-holders…the rules are very clear that even holders of exploration permits have the right to sell the product in large quantities, for laboratory testing but also for research and factory production testing.
>
> 'Because Article 43 is still grey – we don't have the implementing regulations such as ministerial regulation or circular, that's why different perceptions have emerged. The reality on the ground is that they (police) only look for people's mistakes but don't give a solution for the people to improve the economy in the regions (Lagaligo 2010).'

However, the 'grey' area in Article 43 that the provincial mining head alluded to created problems for, himself, investors, and, ultimately, also for artisanal miners in NTT. In June 2010, media reported that 114 containers of manganese from three West Timorese districts—South Central Timor, North Central Timor, and Belu—had been seized by port police at the Tanjung Perak Port in Surabaya, the provincial capital of East Java. The containers were only transiting in Surabaya, on their way to final destinations in China and South Korea.

Port police in Surabaya launched an investigation into the NTT mining boss for his role in organising the paperwork. The case that the police sought to make against the mining boss, which they ultimately dropped, was based on the restriction on production activities under

exploration permits under the mining law. Police alleged that by issuing six permit-holders who owned the manganese with temporary shipping and sales documents, the provincial government had overstepped its jurisdiction. The mining boss countered that it was entirely appropriate for the provincial government to issue the temporary sales and transportation permits because the manganese had crossed district boundaries on its way to port (*Timor Express* 2010d).

The Surabaya police also alleged that the permit-holders were knowingly carrying out production activities, using artisanal miners, for purely commercial objectives, rather than as part of exploration work (*Timor Express* 2010c). They also claimed that some of the manganese, which had originated from Kupang District, lacked a mining permit from that district (Purwanto 2012). The provincial mining office boss defended his actions in issuing the sales and transportation permits as an attempt to help West Timor's poor population. He also pointed out that the state had not suffered any losses, as volumes had been reported and royalties paid on the ore. In his view, it was therefore better for the ore to be shipped and sold, and royalties received by the state, than seized and stored, as had happened elsewhere in West Timor (Lagaligo 2010).

A research report on manganese mining revenues by Indonesian natural resources NGO Article 33 cited a claim by one of the permit-holders that the police case was motivated by a disagreement with the permit-holders over the amounts of informal payments they had to make to police. The report describes a range of payments to state security forces in the context of broader 'negotiations' over the amounts to be paid to the state in royalties, land-rents, and so-called 'third-party' contributions. One permit-holder said he ultimately decided to abandon his manganese, rather than pay the bribe, as the amount asked was more than the reserve price for the ore (Purwanto 2012).

The key point is that the lack of artisanal mining rights effectively turned much of the manganese ore into a contraband product. This both threatened the flow of manganese from the province and allowed more powerful actors, particularly state security forces, to exploit opportunities arising directly from the criminalisation of the entire marketing chain. As has been widely acknowledged throughout the developing world wherever artisanal mining takes place, governments that try to close down artisanal mining entirely rarely succeed for long (IIED 2002, p. 323). Where the income opportunities remain greater than from any of the available alternatives, miners continue to accept the risks, both physical and legal (Tschakert 2009). International experience also shows that criminalisation of artisanal mining does, however, further marginalise the miners, while advantaging more powerful actors in both legal and illegal marketing chains (Fisher 2007; Teschner 2012, p. 312). This is precisely what has occurred in West Timor.

Although professing to be sympathetic to the artisanal miners, NTT's provincial mining boss was not advocating unfettered access to the resource, and markets, for artisanal miners. Rather, he was defending the business model of the exploration permit-holders and their monopoly rights to the resource. Although implying that some of the permit-holders might be in a legal 'grey' zone due to the volumes and frequency of shipments, the ambiguity in the law allowed him to defend his actions as legal. Neither the provincial mining boss, nor anybody else in NTT, was calling for artisanal miners to be granted IPR permits, whether to resolve the legal ambiguity around the activities of the exploration permit-holders, or to maximise the incomes of artisanal miners.

Although artisanal miners in West Timor were denied direct access to the resource, the proliferation of commercial mining permits still left them with a legal opportunity to mine manganese. Artisanal miners who worked within a concession and sold the ore they extracted exclusively to the permit-holder would be safe from the threat of arrest, harassment and

extortion for illegal mining. Artisanal miners in Kupang District, however, faced an additional barrier: from April 2009, the district head of Kupang District imposed a temporary (though indefinite) ban on all exploration and production activity for manganese in that district, the effect of which was to make *all* mining and transportation of manganese in Kupang District illegal (Kupang District Head 2009). He told me he took this action because he wanted to ensure manganese was not being exported from the district before the facilities had been developed to process and add value locally. He was also aware that under the new mining law all minerals had to be processed domestically. As much of the manganese was being mined illegally from within licensed concessions, and sold to third parties, he was also under significant pressure from the concession owners to stop the leakage of their resource.[20]

However, even before the ban was applied in Kupang District, and in other districts, if miners submitted to the requirement to trade exclusively with the permit-holder, artisanal miners were in a weak position to negotiate on price. As a man who had been engaged in artisanal mining in the village of Buraen said,

> 'We want to be able to sell our ore to the highest bidder, but we need IPR permits to be able to do that, and we can't get one.'[21]

Not surprisingly, many artisanal miners refused to accept this monopoly trading arrangement, and instead sold their ore to one of many brokers operating in the region between 2007 and 2012.

> 'In the beginning many people opposed cooperating with the permit-holder. Why? Because from 2007 to 2010 there were still so many "wild" buyers coming here, outside of the formal government channels, and competing on price. And the community also saw that if they worked with the company

[20] Multiple interviews and conversations with Ayub Titu Eki, the Kupang District Head, throughout 2010 and 2011.

[21] Interview with villager, Buraen, Kupang District, 27 July, 2011.

> (permit-holder) it would be a long time before they would see any money, but if they just sell to brokers, they could sell it every day.'[22]

Permit-holders were aware that artisanal miners working within their concessions were selling ore to brokers offering higher prices. Had they wished to prevent this, permit-holders always had the option of matching, or bettering, the prices offered by brokers to maintain their monopoly control over the resource. However, they naturally wanted to minimise labour costs, and as they had usually spent significant capital to obtain exclusive rights to the resource, they regarded brokers as interlopers with no right to extract the resource or sell it without their permission. They therefore resented being forced to outbid brokers to retain control of the resource and prevent losses from artisanal mining.

If permit-holders did not want to match the prices brokers were offering, they were left with trying to prevent the loss of manganese from their concessions by either enlisting the support of local individuals or groups to monitor the activities of other miners and keep a watch on stockpiles, or try to engage police to enforce their monopoly rights for them. Some concession-owners recruited members of security forces or local men to act on their behalf and intimidate artisanal miners into compliance. The report of a 'Special Committee' of the district parliament set up in the district of North Central Timor (TTU) to investigate a range of governance and human rights issues arising from the manganese boom noted that,

> 'The community is being intimidated by investors and there is a lot of opposition from the community of landowners because […] of the reality that the landowners must accept that they are becoming slaves on their own land (North Central Timor District Legislature 2010).'

In conversations with people from all levels of society in West Timor, including politicians, journalists, NGO workers and artisanal miners themselves, I frequently heard the view

[22] Interview with community leader, Oebola Dalam, Kupang District, 26 July, 2011.

expressed that the tensions between artisanal miners and permit-holders over prices could be resolved by district governments adopting a standard, uniform, but fair minimum price for a kilogram of manganese traded by miners within a district (*Pos Kupang* 2010f; *NTT Online* 2010).

> 'The people try to sell manganese to whichever buyer offers the highest price. But the problem is the mining rights, which oblige us to sell manganese to the permit-holder in that location. We ask that if possible, the district government and legislature (DPRD) raise the sale price of manganese in accordance with the market rate (*Pos Kupang 2009*).'

Only one district government, in North Central Timor (TTU), attempted to fix the price, however, with an executive decree in 2008. In the local press, the head of the TTU mining office justified the fixed price policy as necessary to prevent 'unhealthy competition' between investors (*Pos Kupang* 2009). The rate was set at IDR 450 per kilogram, which was less than half of the lower end of the range being paid by brokers in that district. Indeed, according to some reports in 2010 suggested that miners in North Central Timor were receiving as much as IDR 1,750 per kilogram (*Pos Kupang* 2010c).

More than a year after introducing the policy, and with widespread conflict between permit-holders and miners, the North Central Timor district government conceded its fixed price had been too low, unfairly disadvantaging artisanal miners that accepted it, and encouraging others to trade with illegal brokers. In December 2009, the district government withdrew the decree, and miners were able to negotiate with the permit-holder where they were working. Although the district mining head flagged that the government was planning to introduce a new, higher, fixed price—IDR 1000 per kilogram was mentioned (*Timor Express* 2010b)—this did not eventuate. The special committee of the North Central Timor legislature on manganese included as one of its recommendations abandoning any attempt to set prices, in favour of a 'market mechanism' (North Central Timor District Legislature 2010). However, a

genuine mineral market requires both the freedom for sellers to set prices according to what buyers will pay, and competition between multiple (legal) buyers. Artisanal miners in North Central Timor enjoyed neither of these conditions.

Attempting to control the prices that could be paid to miners for manganese overlooked the fundamental nature of the problem—that is, that manganese was an 'open access' resource by local people in West Timor, but that this was not reflected in its regulation. Although people took risks in mining and selling it without authorisation, there were limits to the extent to which they could be prevented from doing so. A black market emerged for manganese in West Timor for the same reason that black markets emerge for any product: the attempt to impose monopolistic trading arrangements and artificially control prices created lucrative opportunities for buyers and sellers in circumventing the restricted market.

Illegality, incomes and insecurity

From the point of view of the rural poor in West Timor seeking to maximise their incomes from manganese mining, collaborating with brokers to market their ore through illegal networks was a rational response to being denied mining rights. At the same time, however, there were also costs and risks for miners, and others, which were directly related to the illegality of the trade. Artisanal miners faced the threat of arrest, extortion and intimidation, as well as a loss of income when intermittently security forces acted to interrupt the supply chain. It was not difficult for security forces to identify illegally mined manganese. Ore that had been mined or sold illegally invariably lacked complete documentation declaring its source, and the temporary shipping and sales permits required for transportation.

There was ample evidence, including even the occasional public admission by a security official, that state security forces were heavily involved in the manganese business in West Timor. At times, members of the security forces used the power of their institutions and positions to keep the supply chain moving, while siphoning off a share of the proceeds. At other times, they intercepted shipments and seized the ore.

There is nothing unusual about the involvement of security forces in business in Indonesia, including mining. However, it is a significant risk for communities residing in areas where resources are extracted. The financial interests of state security forces in mining and other natural resource sectors are also intrinsically connected to the threat of violence routinely used to safeguard those interests (Baker 2011). As described later in this chapter, at least one government official in West Timor discovered the dangers for ordinary civilians of attempting to challenge those interests.

Criminalisation of the marketing chain created many opportunities for the security forces in West Timor and ensured miners who might wish to resist were also vulnerable and compromised. It also kept artisanal miners' activities in the shadows and created an atmosphere of fear and insecurity that affected the way people talked about mining, almost as an inherently illicit and 'corrupt' enterprise. (The word 'mafia' was commonly joined to 'mining'.) As mining gradually became more mechanised, and villagers started to lose control over the extractive process, the threat posed to communities by the interests of security forces would also grow, as outlined in other chapters.

Finally, criminalisation of the supply chain robbed district populations of indirect benefits of mining in the form of royalties and other revenues that should flow to district governments from mining. When illegally mined manganese had to be smuggled out of West Timor

because it lacked documentation, as it often was, it meant that these payments to the state were not made.

Payments to security forces

According to a local truck driver who had driven a truck carrying hundreds of containers of manganese to Kupang's main port at Tenau, the extraction of income by security forces from the transport of contraband ore was a highly organised business.[23] To ensure their safe passage from stockpiles to port, brokers would arrange for trucks to be escorted by police officers, who also coordinated in advance with checkpoints along the route. Without such 'coordination' vehicles could not be assured of reaching the port with their load. Fees paid to police for these escort services took a variety of forms. Larger amounts were paid on a regular basis to senior officers. Smaller amounts were paid to officers handling the logistics, in the villages, at checkpoints along the land routes, and at ports.

While the illegality of much manganese mining in West Timor helped create these income opportunities for security forces, which in turn helped to keep the contraband product moving towards markets, it also meant security forces were in a position to interrupt the flow of manganese at any time. Reports of manganese being seized, and individuals arrested were frequently reported in the local press. Local informants gave a variety of possible explanations for why this occurred: to apply pressure to extract greater payments from the manganese owners; as a public relations exercise, to counter the widespread perception of security force involvement; in response to pressure from local politicians; or simply as part of genuine efforts to fulfil their duty to enforce laws and policies against 'rogue' elements within the same or other security forces.

[23] Interview with truck driver, Kupang District, 6 December 2010.

These variables produced significant instability in relations between state security forces and other actors involved in the manganese mining sector. Having multiple state security forces operating simultaneously in the region, all with their own competing interests and agendas, and sometimes overlapping jurisdictions, added yet another layer of complexity that contributed to inconsistent enforcement approaches towards illegal' mining. Sometimes when manganese was seized, police made a significant 'show' of their success. It was often deposited in highly conspicuous public places for a long period of time, suggesting to anybody who saw it that, at least some of the time, parts of the state security apparatus were working to disrupt the manganese smuggling business.

Figure 8. Confiscated manganese out the front of the old Kupang District legislature and district head's offices in Kota Kupang on 17 September, 2010. Photo by author.

For several months in 2010, whenever I visited the Kupang district government offices in Kota Kupang, I parked across from a shipping container laden with rice sacks containing manganese that had been confiscated by security forces. When I visited the district parliament

building in Soe, the district capital of South Central Timor (TTS), in 2011, I saw large piles of confiscated manganese dumped on the grass in front of the building.

Figure 9. Manganese dumped out the front of the South Central Timor District Legislature (DPRD) in the district capital, Soe, in 2010. Photo by author.

Sometimes, it was the 'civil police', known as the PolPP (*Polisi Pamong Praja*), who report directly to district government heads, and sit outside the national police command structure, who acted to seize manganese shipments. For example, in 2009, the South Central Timor District civil police and officials from the district mining office seized 17 tonnes of illegally extracted manganese (*Timor Express* 2009b).

The district level branches of the regular police also disrupted shipments and made arrests. In May, 2012, district police in South Central Timor arrested a man caught transporting 5 tonnes of manganese that he admitted to buying from artisanal miners in the village of Supul, the same village that is also the location of the largest semi-industrial manganese mining operation in West Timor, and the center of a major smuggling operation described in detail later in this chapter (*Victory News* 2012e).

In another incident, in June 2012, local newspaper *Victory News* reported that sub-district police in Molo, South Central Timor had impounded a truck loaded with five tonnes of manganese and carrying two men believed by local residents to be members of the Indonesian armed forces, the TNI (*Tentara Nasional Indonesia*). The district TNI commander rejected the suggestion any of his men were involved in the smuggling of manganese, and assured the newspaper he would investigate the claims and apply severe sanctions against any members of his force found to be involved (*Victory News* 2012d).

Then, in August 2012, five people from the villages of Bokong and Tuataum in South Central Timor were arrested for transporting 4 tonnes of manganese without any documentation. Police alleged the men were on their way to Belu district, where they planned to sell the ore, when they were intercepted, arrested, and charged with charged with illegal mining (*Victory News* 2012g).

At various times, units of the provincial police (*Polda*) and national police (*Polri*) from Jakarta also carried out activities to verify the legality of manganese shipments in West Timor. In 2010, the NTT provincial branch of the national water police (*Polair*) intercepted and detained a Vietnamese-registered ship, the Thai Long, off the coast of the district of Belu with 2500 tonnes of manganese and no documentation whatsoever relating to its cargo (*Timor Express* 2010f; *Kursor* 2010e). The ore could not have been transported to Belu's Atapupu port without passing through a number of security checkpoints, and also could not have been loaded onto the ship without the knowledge of port officials responsible for checking outgoing cargo against shipping documents.

In December 2010, national police headquarters in Jakarta dispatched a team of investigators to Kupang to assess the situation regarding manganese shipments from West Timor. The national police apprehended a second large Vietnamese-registered ship, at the Tenau port in

Kupang, loaded with around 3000 tonnes of manganese and bound for China. They also intercepted and impounded for one week 23 trucks transporting manganese to the ship (*Pos Kupang* 2010h).

The ore belonged to a company called PT SMR, which had the largest mining manganese operation in West Timor, in the village of Supul, in South Central Timor. The national police initially alleged that the shipments were not accompanied by all of the necessary documentation, and the ship was sealed off with a police line, its Vietnamese crew prevented from disembarking. After further checking, it was finally announced that all the documents were in fact in order, and the ore was released back to the company (*Suara Pembaruan* 2010).

The inconsistent approach of security forces to the manganese supply chain, both between and within the various forces, and over time, suggests that although their involvement at times enabled miners to be connected with markets that were otherwise out of reach, it was far from an open market. As the not infrequent seizures of ore and arrests of brokers demonstrated, the protection and immunity available to some actors was not available to others. Furthermore, it is clear that obtaining such protection entailed significant costs, thus reducing the surplus available to be shared among other actors in the supply chain, including artisanal miners.

The role of security forces in facilitating the trade and transportation of illegal manganese also had a deleterious effect on the overall security atmosphere in West Timor. An incident that occurred in the village of Naioni, in the hills behind Kota Kupang, in March 2010, illustrates how. Although a semi-rural village just beyond the urban fringe, Naioni is formally situated within the Kota Kupang municipality. Although the Kota Kupang mayor (*walikota*) had not issued any mining permits, and was trying to stamp out illegal mining in the city's hinterland,

it was well known that artisanal mining was taking place in Naioni (*Kursor* 2010c; Naif 2011).[24]

The Kota Kupang mayor had instructed all of his village-level officials to monitor trucks and stop any that they suspected might be carrying manganese sourced from Kota Kupang. One night at around midnight, the Naioni village head (*lurah*) stopped two trucks carrying sacks of manganese and asked the drivers to produce documents for it. He claimed that not only was he refused but two men threatened him, and finally attempted to drag him into one of the trucks. After a struggle, he managed to break free, and flee. He alleged that one of the two men in the truck then fired two shots in his direction. Residents were woken and panicked by the sound of gunshots in the middle of the night (*Pos Kupang* 2010k).

The village head claimed to recognise both the driver and passenger as active police officers. Provincial police soon learned of the incident and attended the scene. The village head and several local residents were taken to provincial police headquarters that night to provide statements (*Pos Kupang* 2010k). Following an internal investigation, two police officers faced disciplinary hearings, but no formal charges were laid. The Naioni village head told me he was invited to attend the hearings, but did not, citing fear of recriminations.[25]

The Kota Kupang mayor lodged a formal complaint with Polda NTT about the incident. One of NTT's representatives in the national parliament, Herman Heri, also publicly alleged there were 'unknown actors' (*oknum*) within the members of the police force in NTT who were

> 'hiding behind the police uniform in order to "play" manganese. This can be seen from the operation of trucks bearing the logo "Primkopol", which often collect manganese in NTT. There is so much

[24] One group of artisanal miners in Naioni had even written to the municipal legislature to ask for support in resolving a dispute with a local landowner and broker over a monopoly trading arrangement. Interviews with villagers in Naioni, Kota Kupang, 17 June, 2011.

[25] Interview with the Naioni village head, Kota Kupang, 12 July, 2011.

> information from the community that unknown actors within the police are often involved in the illegal manganese business […]' (*Pos Kupang* 2010k).

Heri warned that if the illegal manganese business activities suspected of being conducted by members of the police force was allowed to continue, while laws were enforced against ordinary members of the civilian community that engaged in the same activities, it would have a 'negative impact' (*Pos Kupang* 2010k).

Stopping the flow of illegal manganese in Kupang District

> 'The brokers are still operating until now. The arms of the government are too short. I mean we can't monitor them all through the night, and our manpower is limited. They operate when they can't be detected.'[26]

Government officials at both the provincial and district level in NTT were united in their opposition to illegal mining activity. What most sought to promote was a permit-based system that allowed artisanal miners to work within concessions and sell their ore to the permit-holder. In Kupang District, however, from April 2009, the district head imposed a blanket ban on the mining and transportation of manganese in his district, irrespective of where the ore was extracted (Kupang District Head 2009).

The district head, Ayub Titu Eki, had been in office for one month when he imposed the ban. Over a period of two years from 2010 to 2012 he frequently told me his ban had been motivated by his concerns about the amount of illegally mined manganese leaving the district, and the integrity of administrative processes by which permits had been issued. He wanted mining to stop while he assessed the situation on the ground in mining areas, undertook an administrative audit of the permits, and imposed some order on the whole sector. He also

[26] Interview with Head of the Kupang Environmental Protection Office (Bapedalda), Kupang district, 30 June, 2011.

wanted to attract investment in processing facilities in his district, to capture some of the added value from processing, and wanted to minimise the amount of ore that left the district until such facilities had been built.[27]

Eki established a special task force, 'Team 13', of the district civil police (*PolPP*), to lead efforts to enforce the ban. As long as the ban was in place, all manganese mining and transportation activities in Kupang District would be regarded as illegal. The ban, however, pitted district government officials and the civil police under his command against brokers and other interests profiting from the illegal trade and transportation of manganese, as well as the artisanal miners. Enforcing it proved extremely difficult, primarily due to the powerful vested interests who stood to lose a significant new source of income.

During a five month period between July and November 2010, Team 13 claimed to have seized 2,897 (50 kg) rice sacks (around 145 tonnes) containing manganese ore (*Kursor* 2010f). However, this was likely only a small proportion of the manganese being extracted and shipped from the district during this period. In 2012, after three years of efforts to enforce the ban, Eki told me that he was 'well aware' that 'thousands of tonnes' of manganese were still being shipped from Kupang District.[28] There was significant opposition to the ban from those whose interests it affected, which included artisanal miners, permit-holders, brokers, and the unknown 'rogue' actors ('*oknum*') within the security forces keeping the transportation and marketing routes open.

Another reason that enforcement of the ban was difficult was that the three other districts in West Timor that had issued mining permits—North Central Timor, South Central Timor, and Belu—had no such ban in place, and continued to allow permit-holders to undertake

[27] Several interviews with the District Head for Kupang District, Ayub Titu Eki, between 2010 and 2012.

[28] Interview with Kupang district head, Ayub Titu Eki, 2012.

exploration and production activities within licensed concessions. This meant manganese extracted in Kupang District, once removed from its source, could sometimes be passed off as originating from mining sites in one of the other three districts, provided some form of documentation could be obtained purporting to show it belonged to companies with concessions in those districts.

The head of the Kupang District civil police told local newspaper *Kursor,*

> 'if (the trucks) don't have documents, then that needs to be investigated, and we have good reason, because many companies that do have permits, but for sites in North Central Timor or South Central Timor, are taking manganese ore from Kupang District. That's why, if they don't have documents, we tell them to unload (*Kursor 2010f*).'

In September 2010, the civil police chief said he was approached by two men asking for a container of manganese seized by the PolPP in Kupang District to be released on the grounds that it had been mined in Belu, not Kupang. The men claimed the ore had only been warehoused at a stockpile in the Kupang village. Natonis was unconvinced by the photo-copied documents from the Belu district government the men provided to support their story, and refused to release the ore without original documentation (*Pos Kupang* 2010g).

In May 2011, local media reported the seizure of 3,000 tonnes of manganese near the Tenau port by Kota Kupang police. The incident was noteworthy not only because of the volume of ore involved, but also because, at least in initial newspaper reporting, it was alleged to belong to a cooperative attached to the local army command (*Primkopad – Primer Koperasi Angkatan Darat).* The *Timor Express* reported that the ore, which was reported to lack documents, had been stockpiled at an army base known as Brigif 21/Komodo located on the Trans-Timor highway in Kupang District. It was also alleged that the ore had been extracted from three nearby villages in the sub-district of Fatuleu, also in Kupang District, making it

illegal on two counts. The ore had allegedly then been transferred from the base to a warehouse near the port, before once again being moved from the warehouse to a ship bound for Surabaya. It was in this final movement that Kota Kupang police intercepted the trucks, seized the ore and began to investigate its origins and paperwork (*Timor Express* 2011b).

The first *Timor Express* article even quoted an army source attached to the Brigif 21/Komodo base confirming that the manganese did in fact belong to the army cooperative. The newspaper also claimed it had information from several sources who said that the manganese was 'the business of senior officials in the security apparatus, both the Indonesian military (TNI) and the national police (*Polri*)'. It reported that a 'trusted source' had informed the newspaper that a senior army official in Kupang District had lobbied police to allow the shipment safe passage to the Tanjung Lontar port, and onward to Surabaya.[29]

Three days later, however, the newspaper printed a follow-up article presenting a very different set of facts. The army source quoted in the original article was now quoted as saying that the ore had only been 'stored' at the army base but did not belong to the army. The second story also quoted the Kota Kupang police chief as saying that all of the documents had now been checked and found to be in order. The head of the port authority for Kupang also said all of the documents were in order, and therefore questioned why the ore had been seized by the Kota Kupang police in the first place (*Timor Express* 2011a).

The manganese, it was now claimed, belonged to a company called PT Elang Perkasa Mining. Furthermore, it was now claimed that the ore had not been extracted in Kupang District as

[29] Although state security forces are legally prohibited from involving themselves in business activities that could create a conflict of interest with their official duties, all of Indonesia's state security forces rely heavily on various sources of 'off-book' revenue, in part to make up the shortfall from inadequate government funding . Cooperatives, such as the army one referred to above, and a police cooperative mentioned later in this chapter are important vehicles for generating this revenue (Baker 2012). Mining is one of the most lucrative sectors for generating this revenue.

previously claimed, but in the district of North Central Timor, where PT Elang Perkasa had a concession. In fact, PT Elang Perkasa Mining had concessions in both North Central Timor and Kupang districts (Directorate General of Minerals Coal and Thermal Energy 2010; North Central Timor District Legislature 2010).

Assuming the ore had originated from the company's concession in North Central Timor, it was not clear why it had needed to store the manganese at an army base in another district before moving it again to a warehouse near the port. If the ore had been mined in North Central Timor, it would have required shipping and transportation documents from the provincial government, due to the need to cross district boundaries on its way to port. The NTT provincial mining boss, however, said he had not issued any transportation permits for the ore, and did not know from which district it had originated (*Timor Express* 2011a). If the ore had been mined in Kupang, as originally claimed, it would have been in open defiance of the district head's executive order.

The second article also quoted a local politician asking police to investigate and investigate the case thoroughly, because "this has been happening again and again and the violations are the same, because it's never investigated thoroughly". Another politician was quoted as saying "at the moment the legal process only applies to the small people, meanwhile the mafia and actors behind illegal trading are never touched by the law. That's why cases such as this keep occurring" (*Timor Express* 2011a).

The Kupang district government and civil police also claimed that their efforts to enforce the district head's executive order were hampered by a lack of cooperation from other security forces in West Timor. In September 2010, officers from the Kupang District civil police and the Kota Kupang regular police (*Polresta*) squared off in an incident that escalated to the point of the commanders of both forces publicly exchanging barbs and accusations through

the local press (*Pos Kupang* 2010l).The Kupang District civil police had observed a truck in Kupang District, which they suspected of carrying manganese illegally obtained in Kupang District. They pursued the truck across the district boundary between Kupang District and Kota Kupang, where they no longer had jurisdictional authority. There, they stopped the truck and asked the driver for documentation for its 23-tonne load of manganese, which he could not produce.

The Kupang District civil police alleged that at that point two 'unknown' (*oknum*) members of the Kota Kupang branch of the national police, dressed in civilian clothing, suddenly appeared and insisted on escorting the manganese to the Kota Kupang police compound to have the ore and the truck impounded while they investigated. Reporters from *Pos Kupang*, who followed the truck, claimed to observe it being escorted to the Kota Kupang police compound, where it paused briefly, before continuing on to the container port at Tenau (*Pos Kupang* 2010e).

The Kota Kupang police chief denied any involvement by its members in escorting manganese and affirmed that such activities would not be tolerated. In response, the Kupang District civil police claimed to have video evidence proving the involvement of Kota Kupang police officers, which they were willing to share (*Pos Kupang* 2010m). Following the incident, the Kupang District's District Head, Ayub Titu Eki, was quoted in the local press demanding that,

> 'whoever the unknown actors are, whether from the police, the investors or the community, those who steal or take manganese illegally, without transportation documents and other permits, must be arrested' (*Pos Kupang* 2010p).

Whether or not the timing was merely a coincidence, a few days later, the local press reported that Kota Kupang police had arrested four men for separately and illegally transporting between eight and 15 tonnes of manganese each (*Pos Kupang* 2010j).

Yet another incident, one month later, once again exposed the different interests and agendas of different parts of the state security apparatus. It also caused the leadership of the Kupang District civil police to express frustration at a perceived lack of support from the regular police of their own district. *Pos Kupang* newspaper reported that 24 tonnes of manganese that had been seized at a joint security checkpoint in the village of Pantai Beringin in Sulamu sub-district had been quietly returned to its owners, on the orders of a former district police chief. The ore had been seized during a cooperative security operation involving the sub-district administrator, Kupang civil police, the head of the sub-district branch of the regular police, and the sub-district army command. In addition to violating the Kupang district head's mining and transportation ban, the shipment was not accompanied by any documentation.

The newspaper quoted the Sulamu sub-district police chief confirming that the ore had been returned to its owners, based on a directive from his former commander.

> 'I had a dilemma. On the one hand I wanted to uphold the district head's instruction, but on the other hand I also have to be loyal towards the order of my (former, *author*) supervisor. I had a real dilemma (*Pos Kupang* 2010i).'

The Sulamu sub-district police chief also said that his supervisor had told him the ore belonged to two individuals who had provided significant support to the Kupang District police to help them build their new function hall. The sub-district police chief said the former district police chief told him the order to release the ore to its owners had come from further up the chain of command.

Once again, the incident revealed tensions between the constantly shifting agendas of different security forces in relation to manganese. The local army officer stationed in Sulamu was supportive of the Team 13 taskforce, and openly expressed anger that the ore had been unilaterally removed by police. He said he had asked the Sulamu sub-district police chief for the identity of the officer who had given the order but had not received an answer.

> 'I'm very annoyed. The cooperation that we've already established until now has been wrecked because of the actions of some irresponsible people (*Pos Kupang* 2010i).'

None of the sub-district administrator, the head of Team 13, the army commander, or the village head had been informed in advance that the ore was to be removed. To the extent that the tactics of security forces worked to undermine and circumvent the district head's mining ban, and keep the marketing channels open, they did allow artisanal miners to continue to generate income, even if less than before the ban was imposed. Permit-holders in Kupang District had little choice but to comply with the ban, under threat of having their permits cancelled. However, illegal brokers who were operating outside the law anyway had less at stake, and continued to buy ore from artisanal miners surreptitiously, including from within the permit holders' concessions.

> 'There are still companies (buying), but it's just the "wild" (unauthorised) ones. If you get caught, well that's that. But it's all on the quiet. Late at night. It's still happening but it's all hidden.'[30]

This was a source of deep frustration to permit-holders in Kupang District, who constantly lobbied the district head to do more to either stop the flow of ore from within their concessions or allow them to operate too. One permit-holder complained to me that he was

[30] Interview with a traditional leader, Oenesu, Kupang District, 16 September, 2010.

still spending money on his concession but had no revenue, while the resource was gradually being reduced by illegal mining.

> 'If the district head has a policy that all of the mining activities in Kupang District are to be halted, OK, OK, fine. But the illegal mining is continuing like crazy in Kupang District.'[31]

However, artisanal miners were understandably reluctant to give up their new source of income.

> 'Most of Oebolo people are farmers. The returns for farmers depend on the weather, which determines whether the crops fail or not. Here, in 2010/2011, most of the crops failed because of climate change. The rainfall was too much. So, the pressure from the government to stop manganese mining continues, but the community's needs demand that they mine manganese.' [32]

As the Kupang District government stepped up its efforts to enforce the ban, it did exert an impact on the artisanal miners and their level of mining activity, by reducing the prices brokers were prepared to pay them. In Oenesu, for example, a traditional leader reported that before the ban began to be enforced miners were being paid IDR 1200 per kg, but this fell to IDR 600 per kg from late 2010 as the district government stepped up its enforcement efforts.[33] This was due to two factors: a decrease in the number of brokers, which according to villagers did occur, reducing competition among those remaining, and the increased costs of 'security fees' for transportation due to the crackdown.[34]

To enforce his ban, the Kupang district head did not rely solely on his civil police unit. He also instructed all government officials and village heads to work to stop manganese mining in their local areas, and to intercept and seize any manganese being transported. However, as

[31] Interview with exploration permit-holder, Kupang District, 23 November, 2010.

[32] Interview with community leader in Oebola Dalam, Kupang District, 26 July, 2011.

[33] Interview with traditional leader in Oenesu Village, Kupang District, 16 September, 2010.

[34] Interview with member of the civil police, Oenesu Village, Kupang District, 16 September, 2010.

the Naioni village head in Kota Kupang discovered, the actors behind these networks were not necessarily willing to bow to the civilian authority of district governments, or indeed to the law. Another incident, in Kupang District, suggested that police there also had a very different agenda to the district head, and were willing to go to some lengths to protect their interests.

The incident occurred in the village of To'obaun, in the sub-district of West Amarasi in 2010. The To'obaun village head (*kepala desa*) and a hamlet head (*kepala dusun*) from To'obaun intercepted a truck carrying manganese with no documentation. The hamlet head knew exactly where it had been mined, as it was within his hamlet. Together, the village and hamlet heads confiscated it and reported it to the district head.[35]

The village head also reported the matter to the sub-district police station, hoping they would act against the brokers who owned the ore. However, not only were police unwilling to act against the broker, the village and hamlet heads themselves became the target of a vexatious police investigation. The broker lodged a formal complaint against the village head with the district court in Kupang. The judge summonsed the village head and hamlet head for a meeting with the complainant and ordered the two parties to participate in a mediation process facilitated by the head of the district legal office. During mediation, the lawyer representing the villagers suggested they would let the matter rest in return for a compensation payment of IDR 20 million, an offer rejected by the village head and hamlet head. Ultimately, the judge brokered an agreement whereby the village head would return the ore to the broker, and the

[35] Interviews with village head of To'obaun and head of To'obaun Hamlet (Dusun) One, To'obaun, Kupang District, 27 July, 2011.

artisanal miners would cease their mining activities.[36] This agreement was put in writing and signed by the village head and representatives of the broker and miners.[37]

However, after the broker failed to collect the ore, he sought to have the village head and hamlet head charged for theft, alleging the village head had sold the confiscated ore and returned a smaller quantity of a lower grade of ore in its place. Police acted on this allegation, arrested the village head and hamlet head and held them both in custody for four days. Both the village head and hamlet head strenuously denied the allegations. They were finally released upon payment of a bond, but were required to report once a week to the district police headquarters in Kota Kupang, pending the district prosecutor's decision as to whether to press ahead with formal charges.[38] The prosecutor ultimately opted not to press charges, but the actions of police suggested they wanted send a warning to other local government and village level officials, and ultimately, the district head. The district head certainly became aware of the case, as the village head had sought his intervention, which he had provided.[39]

Viewed from the narrow perspective of maintaining access to markets and, therefore, their mining incomes, it might be tempting to view incidents such as this and the one in Naioni as positive outcomes for artisanal miners. Clearly, artisanal miners, brokers, truck owners and drivers and security forces all had a common interest in maintaining the flow of manganese from Kupang District, and throughout West Timor. However, this overlooks the broader implications for communities of security forces abusing their powers to protect their own material interests in extractive industries.

[36] Interviews with the To'obaun village head and head of Hamlet (Dusun) One, To'obaun, 27 July, 2011. Also corroborated in an interview with the head of Hamlet Five, To'obaun, 1 August, 2011.

[37] Staff in the district government legal office also shared with me a copy of the written agreement.

[38] Interviews with the To'obaun village head and head of Hamlet (Dusun) One To'obaun, 27 July, 2011.

[39] Interview with the Kupang District Head, Ayub Titu Eki, Kupang, 10 June 2012..

The deep involvement of security forces was facilitated by the criminalisation of the supply chain in the first place, which is also what prevents artisanal miners from accessing competitive markets and maximising their incomes. The constant shifts in the balance of power between governments, and various branches and individuals of the state security apparatus, and their different and changing agendas, also meant that mining income was both more uncertain and less than it might have been without their involvement.

The arbitrary use of state power by security forces also created an atmosphere of uncertainty, insecurity and fear in West Timor around manganese mining. The word 'mafia' was frequently used in connection with the networks that facilitated illegal mining, and communities were well aware that if the networks were not directly controlled by state security forces, they were only able to operate with their protection. If as occurred in the two case studies presented below, the law enforcement environment suddenly changed, artisanal miners working outside the law would find themselves vulnerable to arrest. Even though security force protection of illegal marketing chains for manganese might have benefited artisanal miners in a narrow sense, it also diminished wider public trust in state institutions in general, and the security apparatus in particular. As mining became more industrialised and more intrusive, many communities in West Timor did not see their interests as aligned with those of security forces.

Case study 1: Buraen, Kupang District

The village of Buraen is located in the sub-district of South Amarasi in the district of Kupang, about a 45-minute drive from the provincial capital, Kota Kupang. Buraen is a *kelurahan*, an administrative unit characterised by higher population density than the rural villages known

as *desa*. The village sits on the south-facing slopes of the mountain range running along the southern coast of West Timor, a position that attracts higher rainfall than most of West Timor. A favourable climate and fertile soils make Buraen one of the most productive parts of West Timor for agriculture. The sub-district in which it is situated, South Amarasi, is known as the 'food bowl' of Kota Kupang. The slopes around Buraen, however, also contain rich manganese deposits, and South Amarasi has one of the highest proportions of land under mining concessions of any sub-district.

Artisanal mining was taking place in Buraen from the outset of the manganese boom in 2007, when many brokers, prospectors and speculators were visiting the area seeking out locals to help them find deposits, negotiate with communities, and extract ore. Competition between multiple interests for access to resources resulted in confusion, claims and counterclaims, and, in many cases, conflict. From April 2009, the District Head's ban on mining and transportation of manganese also applied. However, before Titu Eki came into office, his predecessor approved four mining concessions in Buraen.

In 2008, the Kupang district government granted mining concessions to four companies in the Buraen area: PT Karya Serasi Jaya (1000 ha); PT Titisan Mangan (two concessions,1100 ha and 650 ha), CV Alam Indah (2000 ha), and PT Elgary Resources, 1650 ha). The edges of these concessions butted up against each other, and together with several other concessions collectively covered most of South Amarasi sub-district. A close-up section of the map of mining concessions in Kupang District (below) shows the joint boundaries of these concessions (the five co-joined shapes with large criss-cross pattern).

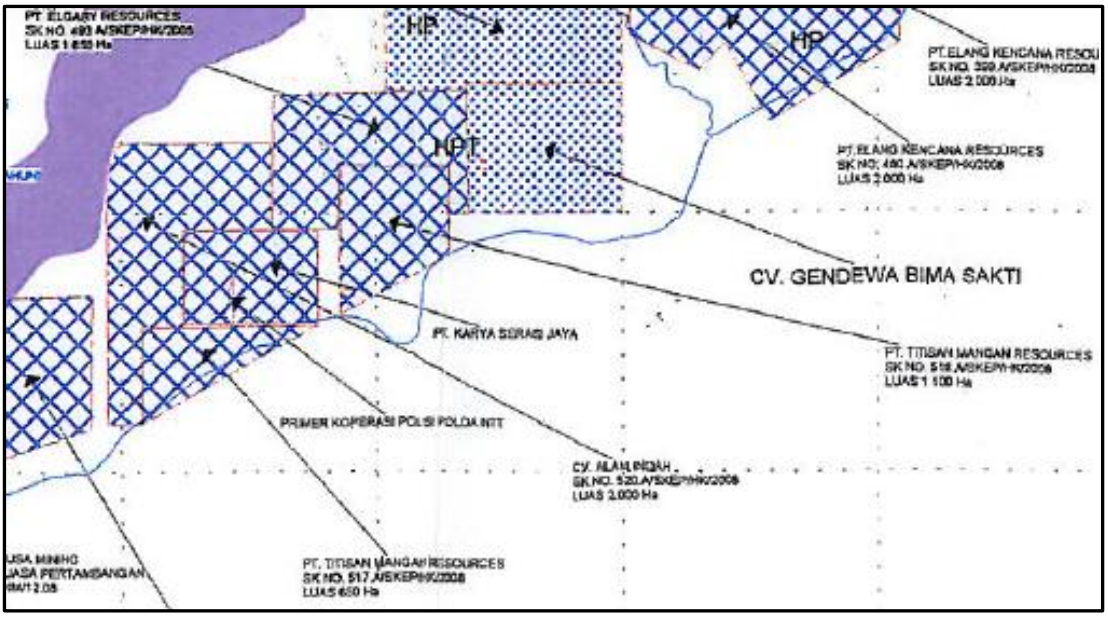

Figure 10. Cut-out of map showing the locations of the mining concessions in Buraen, Kupang District. Source: Directorate General of Minerals Coal and Thermal Energy 2010.

According to local villagers I spoke with, there was no agreement on the ground about where the boundaries of these concessions lay.[40] In addition, another entity is indicated on the map as having rights to manganese in the area: *PrimKopPolda (Primer Koperasi Polisi Polda NTT*), the NTT Regional Police Cooperative. The police cooperative's concession is shown as a thin sliver of land fully contained within PT Karya Serasi Jaya's concession. The police cooperative also had several much larger, concessions elsewhere in Kupang district, near Camplong and Takari.

There was certainly nothing secretive about the police cooperative's mining interests in Buraen. Its presence was welcomed by the local community. According to Buraen locals, relations between the police cooperative and villagers were positive from the outset, and better than relations between the villagers and one of the mining companies.

> 'It was the head of the cooperative who came down initially and surveyed the land with us. He is a policeman. They said later when we have all the permits in place, then maybe we'll agree together to

[40] Interview with multiple villagers in Buraen, Kupang District, July, 2011.

> bring in heavy equipment, but if not, we'll just work manually. The most important thing (he said) was that we strive to ensure that the little people could eat (benefit).'[41]

From 2007 until 2010, there was no shortage of willing buyers bidding up the price in Buraen. During this period the cooperative was said to be buying ore from artisanal miners for IDR 700-800 per kg, but villagers, Buraen was also 'overrun' with brokers looking for ore, pushing prices as high as IDR 1500 per kg.

Villagers claimed they sometimes mined within company concessions only because they were unaware of the boundary lines of the four mining concessions in Buraen. While there was undoubtedly confusion as to the exact location of concession boundaries, as the map shows, there was almost no land in Buraen that was not contained within one concession or another. Many artisanal miners who wanted to sell their ore to brokers, therefore, were selling ore belonging to the permit-holders.

> 'At the beginning there were people just taking ore belonging to others. In 2008 and 2009 it was really busy, with so many people coming to buy manganese. Lots of buyers were coming without permits.'[42]

After the Kupang district head issued his mining ban, the permit-holders were no longer able to extract or transport manganese without risking revocation of their permits. In 2011, villagers, sub-district officials and one of the mining companies all told me that the mining companies did cease buying ore from artisanal miners soon after the ban took effect, as they could no longer transport it.[43] Artisanal mining continued in Buraen long after the mining companies stopped buying their ore, due to the continued activity of brokers for some time.

[41] Interview with villager, Buraen, Kupang, 27-29 July, 2011.

[42] Interview with villager, Buraen, Kupang District, 27-29 July, 2011.

[43] Interviews with PT Karya Serasi Jaya, sub-district officials, and villagers in Buraen, 27-29 July, 2011.

However, as the district government stepped up its efforts at enforcing the mining ban, as elsewhere in the district it became increasingly difficult, and costly, for many brokers to transport ore extracted in Kupang. As a result, the broker presence also gradually began to decline in Buraen in 2010 and 2011. Meanwhile, villagers said the police cooperative continued to pay them IDR 700-800 per kilogram and facilitate the movement of ore out of Buraen. One local official explained the process.

> 'These days with mobile phones everywhere, when the villagers have mined some ore, and ask for help for the ore to be taken to someone's house and stockpiled where it's safe, the police chief will suddenly appear and take control and the manganese will be taken to the sub-district police office. But we don't know what happens to it after that. Once it's in the possession of the police, there's really nothing more to say. But there is no stockpile at the police station, so you can probably guess what happens to it.'[44]

Despite the involvement of the police cooperative in the manganese supply chain, artisanal miners remained vulnerable to arrest and intimidation for illegal mining. In March 2011, three artisanal miners in Buraen who, according to locals, had been working with the police cooperative and extracting ore on their own land, but within PT Karya Serasi Jaya's concession, were arrested after the company lost patience with the illegal artisanal miners. The company reported the theft of its ore to police, who arrested the men for illegal mining. The three men were held in custody for four months before appearing in court. They were convicted of mining without a permit and sentenced to two months and two weeks imprisonment, and immediately released for time served.[45]

The fact that police were willing to act against illegal artisanal in such circumstances, despite police also being involved in their activities, highlights the dangers for artisanal miners of relying on authorities not to enforce the law. Although the police actions against the men

[44] Interview with local government official, Buraen, Kupang District, 3 August, 2011.

[45] Group interview with locals in Buraen, 27 July, 2011.

appeared to be at odds with their own mining interests, they highlighted the heterogenous, and fluid, nature of police interests around mining, and possibly of the security forces more broadly. Buraen locals perceived the arrests and convictions as an absolute injustice and found it difficult to accept that their land rights did not extend to the manganese found on their land.

> 'When the police came down to investigate, we said "he hasn't done anything wrong, he was only taking manganese from his own land". But the police said, "Yeah, but we have to act in accordance with the accusation that's been made, that he's a thief. You only own the land; the rocks belong to the state."'[46]

The community in Buraen might have felt justified mining within the company's concession, given they also had grievances towards the company relating to negotiations over access to their land, and the meagre rates of pay the company had offered miners before the mining ban was imposed. PT Karya Serasi Jaya was the first company to establish a permanent presence and begin semi-mechanised mining production in Buraen. Immediately after securing its exploration permit in 2008, the company built a basecamp and began excavating two pits of around 50 hectares each. When I visited the company in 2011, it had a large stockpile of manganese ore, stacked in large rice sacks, which it had been unable to transport and sell since the mining moratorium.

Buraen locals claimed that when the company first arrived in Buraen, it promised to provide many local jobs. Like other companies in West Timor, the company preferred to pay workers by the kilogram, than an hourly or daily wage. However, the rate the company offered fell so far below community expectations that very few people were willing to accept it. Local expectations had been informed by the much more favourable rates that both the police

[46] Interview with villager, Buraen, Kupang District, 27-29 July, 2011.

cooperative and brokers were offering artisanal miners for ore they extracted independently. Like other semi-mechanised mines in West Timor and Flores, PT Serasi Jaya used heavy equipment to break open the earth, and manual labourers to collect the ore by hand.

PT Karya Serasi Jaya initially offered villagers IDR 75 per kg (USD 0.075) to work as manual labourers collecting ore. Other companies operating semi-mechanised mines in West Timor were paying labourers at least IDR 200, and possibly up to IDR 500, per kilogram to collect ore in the same way.[47] Whether IDR 75 per kg was sufficient to make it worthwhile for villagers in Buraen to expend the energy needed and forego other income-generating activities would depend on the volume of ore that villagers could collect in a day. This in turn would be affected by the concentration of manganese in the mining area. Clearly, however, villagers did not believe IDR 75 per kg would be worth their time and energy.

> 'What the company said was that because they have all the official letters and permits in place, they have the right to buy for IDR 75 per kg. It's almost free! But they insisted that it's because they've got all the permits and complete paperwork. So that's what we've ended up with, and that's why there's only a few people still working on the mine site – the rest have all stopped.'[48]

As a follow-up offer, PT Karya Serasi Jaya offered to pay labourers a flat daily rate of IDR 20,000. This was also the same amount reported to be being paid by a number of companies operating in South Central Timor (Lau 2012e). A daily wage of IDR 20,000 was well below the minimum wage in NTT, which in 2009 was IDR 725,000 per month (or around IDR 32,950 per day, assuming 22 working days in a month) (BPS 2011, p. 30). A local NGO based in North Central Timor that took a particular interest in labour conditions for artisanal

[47] Labourers at the PT SMR mine in South Central Timor for example were paid IDR 200. They also complained that they were being underpaid compared to labourers in North Central Timor, who they claimed were receiving up to IDR 500.

[48] A small number of employees remained to maintain the base camp facilities and look after the needs of the company's managers. Interviews with villagers in Buraen, 29 July, 2011.

miners and mine workers reported companies in that district were generally paying IDR 30,000 per day or IDR 800,000 per month for labourers to sort manganese at company stockpiles (Yabiku NTT 2010). Labourers on semi-mechanised manganese mines on Flores were also paid a daily wage of around IDR 30,000.[49] Preferring to work as artisanal miners, villagers initially requested IDR 2,500 per kg for ore they mined independently and sold to the company from within its concession. However, the company's counteroffer of just IDR 250 per kg also failed to attract much interest for working with the company as artisanal miners. Villagers then requested IDR 1000 per kg, which was what many brokers operating in the area from 2007 to 2010 were also offering, but the company rejected this too.[50]

Another issue that affected relations between the company and Buraen locals was that the company eventually brought in workers from Java to do other jobs at the basecamp. A company manager explained that imported workers were more reliable than the locals, who invariably wanted to combine their work at the mine with other livelihood activities. This was corroborated by villagers.

> 'PT Serasi Jaya, when they came, they promised that all the community around here would be given jobs. But it turned out that didn't happen, the people employed were all Javanese. The problem was that the local people have to feed their cattle in the morning. So, they couldn't arrive at work by 8 am. The company felt they were losing out. The Javanese workers live there with their wives and children. There's no benefits or distribution of wealth for us. That's the problem. So, in the end, we're just spectators.'[51]

For local people in Buraen, artisanal mining was much more attractive than working as a labourer with the company, both because it was more lucrative and more flexible, allowing

[49] Interview with mine labourers at a mine in East Manggarai district on the island of Flores, April 2011.

[50] Interview with villagers in Buraen, 29 July, 2011.

[51] Interview with villagers in Buraen, 29 July, 2011.

people to combine mining with their agricultural activities. After the district head imposed his mining ban, working for the company was no longer an option in any case, as the company ceased its activities. As occurred elsewhere in Kupang District, as the district government gradually began to make it more difficult for brokers to operate in Buraen, prices for artisanal miners also dropped. Finally, when police began to arrest and charge artisanal miners working in company concessions and selling ore to brokers, the risk/reward ratio for most people was no longer attractive. When I visited Buraen in 2012, villagers told me there was almost no mining activity.

The single greatest factor that suppressed prices and ultimately stopped artisanal mining in Kupang District was the district head's ban on mining. The ban effectively deprived the rural poor of a new source of livelihood, indefinitely. But even if the ban had been lifted, miners would still have been disadvantaged by their lack of rights to resources. In other districts, mining continued, as did the struggles between mining companies or permit-holders and artisanal miners over the surplus generated.

Case study 2: Supul, South Central Timor

The struggles over access to manganese in West Timor were most visible in the case of a mine operating in the district of South Central Timor. The company that operates the mine, PT Soe Makmur Resources (PT SMR), has a basecamp on the Trans-Timor highway that connects all of the district capitals of West Timor, around 20-minute drive from the district capital, Soe. The company's concession is one of the largest manganese concessions in NTT, at 4,550 ha spread over six villages: Supul, Noebesa, Lakat, Tumu, Tubmonas, and Nobi-Nobi. The basecamp consists of offices and facilities for washing and stockpiling manganese

ore before it is loaded onto trucks to be transported to the Tenau port, around two hours away on the other side of Kota Kupang. A dirt road built by the company winds its way from the base camp to the mining site a few kilometres off the highway.

Compared to other manganese mining operations in West Timor at the time, in 2010 PT SMR's project was closer to the industrialised, formal end of the mining spectrum. The company obtained an exploration permit from the South Central Timor district government in 2008, and a full production permit from the NTT provincial government in January 2010.[52] In October 2011, PT SMR listed on the Jakarta Stock Exchange as a public company, another point of difference to most operators in West Timor, and one that made the business both more visible and, in some respects, more formal (PT SMR Utama 2011).

The mining project was, nevertheless, still only a semi-industrial model, heavily reliant on manual labourers, or 'manganese collectors' (*pengumpul mangan*) as they were known, to collect ore after it had been exposed by heavy digging equipment. When the legislative team from the NTT provincial legislature preparing a draft mining regulation visited the mine, they held it up as an ideal model for all manganese mines in West Timor to emulate (*Timor Express* 2010e; g).

The company's basecamp presented as one might expect of a professional, formal mining business. When I visited in June 2012, I was offered a guided tour of the excavation site by the company's professional staff. I was also given a compulsory safety briefing, and provided with a hardhat, high visibility vest and steel capped boots. Safety notices warning of various dangers and demonstrating safe work practices were displayed around the compound. People were busy working in offices and communicating on two-way radios with employees at the

[52] Production permits need to be issued by the provincial government where shipments of manganese will cross district boundaries, as, under the Law 4/2009 on Mineral and Coal Mining, production permits also cover transportation and sale.

mine site. There were many vehicles moving back and forth between the basecamp on the highway and the mine site a few kilometres away.

However, this facade of formality and professionalism presented at the basecamp did not extend to the excavation site. Labourers were wearing only rubber sandals and no protective gloves, helmets or masks. There were several children on the mine site, only a short distance from where heavy earthmovers were working. The labourers were not formally employed by the company. They were paid by the kilogram, IDR 200, for the manganese they collect. None of the workers I observed was wearing protective footwear, gloves, hardhats, or masks. Although PT SMR claimed the company had provided masks and gloves, it clearly did not insist workers wore them, as it did for visitors.[53]

Figure 11. Mine labourers at the PT SMR mine in South Central Timor wait for the excavator to turn over the earth and expose pieces of manganese for them to collect. Photo by author.

[53] In November, 2012, local newspaper *Victory News* ran a series of articles on the health of labourers working at the PT SMR mining project, which claimed that workers were complaining of bad coughs, including coughing up blood, respiratory infections, and lethargy (*Victory News* 2012a).

During my visit, I observed each time the excavator unearthed a new section of ground, dozens of labourers, known as *pengumpul mangan* (manganese collectors or gatherers), scrambled to collect the largest pieces before others. Often the excavator had not yet moved away before the most daring labourers rush in to secure the largest, and most valuable, fragments of ore.

Figure 12. Workers collecting ore at the PT SMR mine. Photo by author.

A village head from Kupang explained why all companies in West Timor were likely to want to use the same weight-based system of remunerating labour once they got to the stage of production.

> 'If you pay them a daily rate, both parties will surely lose. The company will lose in the sense that if the salary is guaranteed in a daily rate, the production target won't be reached. There'll be those who collect (ore), and those who feel hot and run to the shade to rest. But if you pay by the kilo, automatically the workers have a strong incentive to work to their maximum to produce a large volume.'[54]

It also means the company's labour costs are always closely in step with production. For the labourers, however, the output-based system represented a brutal form of competition among workers. How much money labourers made in a day depended not only on what the earthmovers uncovered, but also their ability to move more quickly and aggressively, and for longer periods, than other workers.

In 2010, shortly after the company commenced its production activities, *Pos Kupang* quoted several labourers at PT SMR's mine who said they could collect up to 500kg in one day, earning IDR 100,000, working from 6 am to 6 pm (Manyella 2010a). Even allowing for a three-hour shorter timeframe, the labourers I spoke with in 2012 were reporting significantly smaller output than those *Pos Kupang* interviewed in 2010. Most workers I spoke with at PT SMR in June 2012 said they could collect 100 kg, and sometimes up to 200 kg in a day, working from 8 am to 5 pm. At IDR 200 per kg, 200 kg would translate into earnings of only IDR 40,000, which was still well below what most artisanal miners were able to make in a day. If workers collected only 100 kg, they would earn IDR 20,000, the same as was offered to labourers as a flat daily rate at the PT Karya Serasi Jaya mine in Buraen, Kupang.

[54] Interview with Oebola Dalam village head,Oebola Dalam, Kupang District, 26 July 2011.

Aside from the hours worked and differences in individual physical capacities, two other factors would affect the amount of manganese an average labourer could collect working in this way: the concentration of manganese in the ground, and the number of workers competing for it. If either the richness of deposits decreased, or the number of labourers increased, labourers would find it difficult to maintain their individual productivity, and hence their earnings. Despite the often-meagre returns, many people living in the vicinity of the PT SMR mine wanted to work for the company. The company only paid for the volume of ore collected, regardless of how many workers collected it. For the labourers, however, the greater the number of workers, the more competitors they faced, and the harder they had to work to earn the same amount.

Figure 13. Individual labourers' collections of manganese ore on the PT SMR mine before weighing and recording.

The company also asked landowner in the location where excavation was taking place to decide who would work on the mine site. The outsourcing arrangement had clear benefits for the company, creating a degree of separation between workers and company management. By paying the landowners a royalty based on the output of workers, the company provided its de facto labour agents with a strong incentive to recruit the most able and willing workers. As the labourers were paid according to the volume or ore that they collected, they had an incentive to not only work hard, but also to take risks around the excavators to compete with each other for the largest pieces of ore, something I observed.

The size of the earnings gap between labourers at PT SMR and artisanal miners working with illegal brokers led to a new, well-organised smuggling network that emerged in early 2010, and continued until early 2011. Its emergence coincided with the commencement of production activities by PT SMR, soon after the company obtained its production permit in January 2010. The network, dubbed 'OBAMA' (a contraction of the Indonesian words for 'motorcycle taxis or couriers' (***o****jek*) 'carrying' (***ba****wa*) 'manganese' (*mangan*) operated exclusively out of PT SMR's concession, and, despite its visibility, did so for around 12 months before it was finally shut down.

Illegal manganese mining in South Central Timor had been widespread since 2008 (*Timor Express* 2008a; 2009b; *Kursor* 2010d). What made the OBAMA network both distinctive and highly visible was that it used hundreds of motorcycles driven by local youths to transport ore from the villages of Supul and Noebesa inside PT SMR's concession along a section of the Trans-Timor highway to stockpiles between 15 and 30 km away. Local newspaper *Kursor* reported that each of the motorbikes would carry several plastic sacks each filled with 20-40 kilograms of manganese ore. The couriers, also locals from Supul and Noebesi (and the miners), believed they were doing nothing wrong, because they were only selling rocks taken from their own land.

> ‘These are our rocks; we took them from our own land. If it can be turned into money, why can’t we take them to sell? (*Kursor* 2010d)’.

The couriers drove the manganese to locations in the nearby villages of Nobi Nobi and Niki Niki on the Trans-Timor highway, where they sold it to a broker. Couriers said the prices they received varied but were ‘above IDR 1,000 per kg’. After being sold at Nobi Nobi and Niki Niki the manganese was loaded onto trucks to be taken to a stockpile in North Central Timor. The broker who was ultimately transporting the ore to port for shipping from West Timor reportedly had a mining permit in North Central Timor so relocating it to stockpiles there could help to conceal the ore’s origins during its transportation to port (*Kursor* 2010d).

The head of the district mining office, who told me he had spent weeks investigating the OBAMA network, estimated that on an average day between 80 and 120 motorcycles would make four to five trips from Supul to the stockpiles at Niki-Niki. Although they could each only carry relatively small volumes of ore on a single trip, collectively the couriers could move up to 100 tonnes of ore in a single day, or around 3000 tonnes per month. This was roughly equivalent to PT SMR’s average monthly production, according to district mining office data. Couriers were reportedly able to earn up to IDR 400,000 per day. The mining boss also said that brokers had helped some of the couriers to buy new motorbikes, costing between IDR 12 million and IDR 16 million to ramp up the scale of the operation. They were quickly able to pay off the debt.[55]

To many observers, the fact that the smugglers were able to operate so visibly for 12 months indicated the activities had at least the tacit support of security forces. Couriers quoted by local newspaper *Kursor* in July 2010 said they had been working for ‘several months’, and

[55] Interview with head of the South Central Timor district mining office, Simon Raja Bono, Soe, 28 August, 2012.

had not been asked to stop their activities, either by the district government or any state agency (*Kursor* 2010d). An official in the South Central Timor mining office told me in 2011 that the security posts were not really intended to prevent smuggling, but rather to collect informal taxes.[56]

> 'If the security forces and government wanted to stop it of course they could. We also have a monitoring agency, but they also have their own interests.'[57]

Although the district government and civil police in South Central Timor had identified manganese smuggling operations in several locations in the district, and successfully closed down some of them, the district mining office boss said publicly in July 2010 that the operation to 'clean up' the illegal mining activity in the district had not applied to the motorcycle couriers.

> 'They're brave because they have a commandant, who is behind them. That's what they admitted to me and the head of the civil police. I think if you arrest them there will be conflict, because they say that there is "someone" behind them' (*Kursor* 2010a).

Although the tolerance of security forces towards the network allowed people from villages encircled by PT SMR's mining concession to generate higher levels of income than were obtainable working for the company, their bargaining power and ability to maximise their income was still limited by the requirement to sell their ore to the broker/s that was part of the network. They did not enjoy free access to a competitive market. Also, the network's ability to operate almost certainly entailed costs in payments to actors with the ability to close it down, reducing the surplus available to be shared among miners, couriers and brokers.

[56] Interview with district government official, South Central Timor District, Soe, 24 August, 2011.

[57] Interview with South Central Timor district mining office official, Soe, 24 August, 2011.

Long before any arrests were made, conflict did break out between local communities in Supul and Noebesa and PT SMR. Although there were several issues creating tension, the trigger was the closure of routes used by the motorbike couriers. The residents of Supul and Noebesa attributed this to a government 'crackdown' on the illegal sale and stockpiling of manganese throughout South Central Timor (*Kursor* 2010h). Whether or not the route closures were related to the extensive local press coverage of the OBAMA network the day before, on 21 July, 2010 people from Supul and Noebesa villages blockaded a road in Supul used by PT SMR's vehicles to reach the mine site. Villagers told *Kursor* that their actions were in response to three issues: the closure of routes used by the motorbike couriers; grievances over the rate and method used by the company to pay labourers, and; a perceived failure by the company to obtain consent from a large number of landowners. The villagers demanded either to be allowed to continue mining inside the company's concession and selling ore to brokers, or that PT SMR agree to pay them IDR 1,000 per kg for any ore they mined independently in the company's concession (*Kursor* 2010h; b).

With tensions escalating, PT SMR appealed to the district and provincial governments and police to close down the OBAMA network, as it acknowledged that its attempts at 'persuasion' had failed (*Kursor* 2010g). The road remained blocked for one week before the head of the South Central Timor mining office visited the villagers and persuaded them to remove the blockade (*Kursor* 2010b). Villagers later destroyed the gates the company had installed on the access road to stop the couriers, and the OBAMA network soon started up again (Manyella 2010b).

The company continued to appeal to the district government for help. By December 2010, PT SMR's executive director, Dodi Wijaya, had resorted to paying for editorial space in a local newspaper to pressure the relevant authorities to act against the OBAMA operation.

> ‘It seems the operation has been approved or effectively ‘legalised’ by certain powerful figures within the district government and the state security apparatus. If the government and security forces cannot, or will not, protect companies against such threats to their business’s viability, in future investors will not be willing to risk their capital in the district’ (Lati 2010b).

The high level of organisation and visibility around the OBAMA operation suggests that as the executive director claimed, it was unlikely to be possible without some level of support from security forces (Lati 2010b). In response to the company’s complaints, the TTS district head acknowledged publicly that although a series of checkpoints had been set up precisely to prevent such activities, their performance had not yet been ‘optimal’. To improve their effectiveness, he promised that a representative from each of the three state security forces would be put on duty at the posts at all times (Lati 2010a).

Meanwhile, in an attempt to appease the local artisanal miners, PT SMR began to allow artisanal miners to dig for manganese within its concession, on the condition that they sell exclusively to the company. The company offered to pay them IDR 500 per kg for ore miners extracted themselves.[58] However, this was still less than half of the price miners could obtain from brokers, and half of what they were demanding. As a result, it failed to resolve local grievances about conditions for labourers and artisanal miners in Supul and the surrounding villages.

The miners appealed to the district head for support in their demands for higher pay rates for labourers working with PT SMR, but the district head refused to intervene directly in the labour arrangements between the company and the workers.

> ‘There’s still dissatisfaction regarding the price, and they express it to the village government, to the landowners and to the district government. They’ve demonstrated in front of the district head’s office,

[58] Interview with Supul village head, Supul, South Central Timor, June 2012.

> and the district parliament. But until now the district government has not yet seriously acknowledged the aspirations of the community. The only response from the district head was that the district government should not determine the price, because the community is the owner of the resource. The district head appealed to the community and the company to resolve it.
>
> 'The bupati says, "it's not ethical if the district government intervenes on the price issue. The community and the company need to compromise. Then, when you have reached an agreement, just let us know what that agreement is so that it can be finalised in a regional regulation (*perda*)".'[59]

In October 2010, the district head suggested to provincial legislators working on a draft provincial mining regulation that the solution to the OBAMA network, and all of the 'wild' manganese buyers, might be if the provincial government could set a minimum rate of pay for manganese labourers in its mining regulation (Manyella 2010b). Obviously, to be effective in negating the black market, any official rate had to be much closer to the rates offered by brokers than had been the case. However, the draft NTT mining regulation was passed later that year without any reference to either methods for rates of pay for remunerating mining labourers (NTT Provincial Legislature 2010).

Advocates for miners and mine labourers in Supul, and other mining locations in West Timor, frequently referred to the 'monopoly' enjoyed by the company, that allowed them to suppress their earning capacity. A community leader from the same sub-district where PT SMR's mine is situated suggested a lack of 'competition' was the root of the problem.

> 'Until now, the community have become the victims of the manganese mining monopoly in South Central Timor. […] It's clear that the community loses with a system like this. I'm amazed there aren't other companies that can come in' (Lau 2012d).

[59] Interview with Supul village head, Supul, South Central Timor, June 2012.

Of course, this view overlooks the exclusive basis of mining rights granted to companies through mining permits. The presence of other legitimate companies in South Central Timor alone would be unlikely to force PT SMR to increase labour rates, as the supply of willing labour far exceeded demand. Only in the unregulated space of illegal artisanal mining and trading does competition increase rates for miners. The view does, however, encapsulate the injustice that villagers living in the vicinity of the PT SMR project perceived at being denied legal access to the resource, and forced to accept extremely low wages for extremely demanding, and dangerous work.

In November 2012, following ongoing advocacy by and on behalf of the labourers in Supul, including by members of the district legislature (Lau 2012e), the district head said he would "ask his mining office to coordinate with the relevant parties including the company and the community to examine the issue of the labour rate" (Lau 2012b). However, up until 2014, when all mining companies in West Timor were forced to suspend their activities for reasons to do with changes in national mining policy, there had been no change in the rate or system of payment for labourers working at PT SMR.

From March/April 2011, the OBAMA smuggling operation in Supul wound down as security forces began to crack down. Many of the motorcycle couriers were arrested, and the most lucrative income source for both artisanal miners and the couriers disappeared. As predicted in 2010 by the head of the South Central Timor mining office, the crackdown was followed by conflict. In April, 2011, a group of OBAMA couriers demonstrated outside the Polen sub-district police station where police were detaining several members of the network, demanding to know why they had been arrested. The police suggested the demonstrators should ask the company. Shortly after OBAMA network members and supporters clashed violently with PT SMR management and a group said to be supporters of PT SMR, in Supul and Noebesa villages (ARANG TTS 2011; *Pos Kupang* 2011).

Landowners who had forged agreements with the company were also pleased to see the network shut down.

> 'They've created chaos in the community by throwing around high prices, so this ignorant community is seduced by the high price. They've been demonstrating continually, and PT SMR has even had several cars burned. But because the company is following the regulations, ultimately the government is supportive of PT SMR, so all of those troublemakers have been arrested, and many have been imprisoned, some in Kupang and some here in Soe.'[60]

The OBAMA network highlighted the divergent interests of artisanal miners, who were seeking access to competitive brokerage markets, and landowners, able to negotiate favourable terms with mining companies based on a principle of exclusivity. Landowners received nothing for any kilogram of ore that artisanal miners sold from the company's concession to brokers, and the collective impact of the network over time could have had a significant effect on landowners' total earnings over the longer term. Although a system of artisanal mining rights could potentially provide artisanal miners with access to competitive markets, and remove opportunities for predatory actors to profit from criminalisation of the marketing chain, (Barry 1995, p.12), this was of little use to artisanal miners if all the available resources were already encircled within commercial mining concessions with exclusive rights. A related challenge for the rural poor in NTT is the intersection between mining rights and land rights, which is the subject of the next chapter.

[60] Interview with Cornelius Betty, landowner, Supul, South Central Timor, June 2012.

Chapter 3 – Land tenure, consent and compensation

As highlighted in the previous chapter, although most people who earned an income from manganese mining did so as artisanal miners, Indonesian national, provincial and district governments were more interested in promoting semi-industrial mining because it could be more easily regulated and taxed. This policy preference created tensions between mining companies and communities over the processes by which mining companies acquired access to land, and the terms under which that access was granted. It also generated tensions between individuals and groups within communities over their rights to land and the authority to negotiate access, and benefits, with mining companies.

Negotiations (and conflicts) typically involved questions of consent and compensation. They included the rights of communities to give or withhold permission to mining companies; decision-making mechanisms and the question of who was authorized to allow mining companies access to land; and the terms of any compensation or revenue sharing agreements.

Indonesian mining law requires mining companies to compensate landowners for the use of their land. However, as this chapter reveals, using landownership as the sole basis for negotiating consent and compensation/ revenue-sharing with communities presents multiple political and social justice challenges in places such as West Timor where customary systems of land tenure are still in place.

The problem for recognition for customary land tenure claims in the context of mining and other extractive industries that has received the most attention is the weak recognition of customary tenure rights under Indonesian land law. Since the passing of the Basic Agrarian Law (BAL) in 1960, mining and other resource companies have often been able to acquire unregistered and uncultivated land ‘without triggering the legal obligation to pay “adequate” compensation’ to customary landowners (Fitzpatrick 2007, p. 137).

Another set of problems for rural farmers stem from the ambiguity and inequality that are inherent features of systems of customary land tenure themselves. Such inequalities are often reinforced in interaction with mining companies due to the exclusive focus on landownership as the basis for negotiating consent and compensation. In West Timor, as I will show in the chapter, this has contributed to highly uneven outcomes within communities (and sometimes families), encouraged multiple, competing claims to land, marginalised many local people who lack defensible claims to landownership, strained social relations, and, ultimately, fuelled organised opposition to semi-industrial mining.

I argue that, by promising substantial rewards to recognised landowners, mining has strained the social principles underpinning land practices in West Timor. Local actors compete for recognition as landowners from mining companies in order to establish their right to negotiate deals on compensation and revenue sharing, and even control the recruitment of labour, which most mining companies in West Timor outsourced to landowners.[61]

Land tenure and artisanal mining

As mining companies only offered compensation or revenue-sharing agreements to a small number of local people whom, through whatever process, they had identified and recognised as landowners, many local people within mining concessions stood to receive nothing, even for land they were routinely cultivating. Rather than meekly accepting their designation as 'landless' tenants, many land-users with multi-generational ties to land instead asserted ownership claims of their own, challenging their subordinate, and dependent position in

[61] Interview with Oebola Dalam village head, Oebola Dalam, Kupang District, 26 July, 2011.

relation to land. The village head in Supul, for example, explained to me that this was a common cause of mining-related land disputes.

> 'It stems from the cultivation system. (For example) you own the land as the holder of collective rights, and I ask you, according to *adat*, to give me the rights to one plot to cultivate. Then suddenly, I claim private property rights. That's how it happens. There'll be someone who is just cultivating the land, but then suddenly he claims he's not just a cultivator (*penggarap*) anymore, but the owner (*pemilik*). Usually there isn't a (land) certificate. Before there was manganese (mining) we didn't have these problems. But since mining arrived, there have been disputes everywhere.'[62]

Villagers in Naioni, Kota Kupang, told me about a land dispute over mining that illustrated these different interpretations of the meanings of land rights. Although the Kota Kupang municipal government had not issued any permits in Naioni, as described in Chapter 2, many locals were engaged in illegal artisanal mining and selling ore to brokers. Meanwhile, in 2010, a local landowning family had negotiated an agreement with an investor to help the investor obtain an exploration permit and work towards the development of a semi-mechanised mine. The landowners, the Omnesi family, tried to persuade the villagers in Naioni to stop their artisanal mining activities and wait for the investor to obtain a permit.

The artisanal miners, however, who were not party to the agreement, wanted to keep mining, and also challenged the Omnesi family's claims to landownership. The household heads of 35 families sent a letter to the Kota Kupang mayor (*walikota*), rejecting the family's claims to the land, and declaring the agreement it had with the investor to be illegitimate. The household heads claimed that each of them 'owned' the land on which they were working. According to the Omnesi family, however, the villagers enjoyed only usufruct rights to cultivate their

[62] Interview with Supul village head, Supul, South Central Timor, June 2012.

individual plots of land, rights granted to them by the household bearing the traditional title of *kua tuaf*, roughly akin to a custodian of land within a hamlet.

> 'They signed a letter saying they rejected the investor, so they could work independently. But they don't have rights over the land. The heir to the land is my brother. Those 35 people, they knew if the investor came in, they wouldn't be able to work anymore.
>
> 'And they reported that the land is in dispute, but it's not. It's the "hamlet lord" (*kua tuaf*) who has the (overall) rights. The 300 hectares has already been mapped, all of it, from boundary to boundary. Those 35 men are just cultivators, just farmers, all of them.[63]

According to the Omnesi family, the miners were violating customary law by refusing to recognise the 'hamlet lord's' traditional authority over the land. The authority of the *kua tuaf*, or 'hamlet lord', to which Simon Omnesi referred, derives from this household's status as descendants of the original or earliest settler group in the area. The order of different groups' arrival and settlement in an area is an important determinant of social status and rights to land, which are reflected in political and social relationships. One of the *kua tuaf* figure's traditional functions was to allocate land to new arrivals in an area to grow crops (McWilliam 2002, p. 161). As McWilliam (2002) describes it:

> '[...] the underlying character of indigenous Meto (Atoni) land rights and claims in the region can be said to rest on a sequence of 'nested' delegatory rights with the claims of each subsequent group resting on those that preceded it' (p. 142).

By referring to the 35 household heads as 'only cultivators, not landowners' Omnesi was asserting the continued authority of his family, as hamlet lord, over land that might have been used by others for generations. Although land-users can come to be recognised as landowners

[63] Interview with Simon Omnesi, Naioni, Kota Kupang, 12 July, 2011.

through continuous use of land over time, there is no clear process or timeline for this to occur and even continuous use by multiple generations is no guarantee that usufruct rights will become outright property rights (Meitzner Yoder 2005, p. 226-27). The dispute was ultimately resolved through a mediation process facilitated by the Naioni village head, and the 35 household heads agreed to stop mining.[64] Given their mining activity was illegal, they were not in a strong position to refuse.

The Omnesi family's agreement with the investor was potentially another reason to stop mining. Many mining companies in West Timor were outsourcing the task of recruiting and managing labour to the landowners they recognised through formal agreements. This provided landowners with enormous social capital as everyone understood that social relations were the key factor in how landowners distributed these opportunities.

> 'If before there was manganese, I, as the landowner and you, as a miner, didn't have a close relationship, then automatically, when I organise the labour, I won't include you, that's just automatic. The same goes for your family. That's why I think it's better if the landowners don't have the right to organise the labour anymore. It would be better if it was the company's right. Whenever I meet with officials or people from other villages, almost everyone agrees with what I'm saying, because they all have the same problem.'[65]

Hendrik Omnesi claimed that the *kua tuaf* family would distribute the income generated by mining on their land but waiting for that to occur involved a degree of trust. As in any other context, people in West Timor also compared their incomes to what others around them were receiving to evaluate whether the distribution of wealth was just or not.

[64] Interview with Naioni village head, 12 July, 2011.

[65] Interview with village head, Oebola Dalam, Kupang District, 26 July, 2011.

> It's just social jealousy. It's not that they wouldn't get anything from the investor, because the elders would be sure to share out the benefits, but living in a big family group, people get their own ideas.'[66]

The fear of missing out on income opportunities because of weaker claims to land was also a factor in a dispute in Oebola Dalam in Kupang District that turned violent in 2011. From 2007 to 2010, many brokers were buying manganese from artisanal miners in Oebola Dalam, and high prices were driving a high level of artisanal mining activity. From 2010 to 2011, increasing pressure from the Kupang district government's efforts to enforce its mining ban led to a decline in broker activity. Much of this activity had been within the concession of a company called PT Asia Mitra, which had received an exploration permit in 2007, but which was not buying ore from the villagers due to the ban.

As the brokers became scarcer, and prices dropped, many of the villagers in Oebola Dalam ceased mining and focused on establishing closer relations with PT Asia Mitra. As the village head explained to me, landowners were very keen to ensure that if the company was doing anything at all on their land that created work, the opportunity went to them.

> 'For example, when PT Asia Mitra wanted to undertake their detailed survey, the director contacted me to ask if I could recommend two good men to guard the drilling equipment in the field. I said, "Ok, I can choose two men, later please meet them at my house to discuss the remuneration." After they agreed and started work, others came and started to try to persuade the company (to change the workers). They said, "please change Mesak with Ari, for example. I asked why, and they said, "because they're not landowners".[67]

The company was changing its boring location every two to three days and wanted to employ two or three men it could trust to stay with the equipment from the start to the finish of the

[66] Interview with Hendrik Omnesi, Naioni, Kota Kupang, 12 July, 2011.

[67] Interview with Oebola Dalam village head, Oebola Dalam, Kupang District, 26 July, 2011.

drilling work. The village head agreed that looking for new men who were the right landowners every time it changed its drilling location would 'create headaches' for the company, but this was the clear expectation of landowners.

> 'Here, everyone has just one mindset, money. So, if the landowner sees another person guarding (the equipment), he knows he's certain to be getting money. Now, if I'm the landowner, I'll be thinking, "when do I get my money?". But once the mining activities have started, and prices have been agreed, in a few years, that's the time to talk about money.'[68]

The larger dispute over land, however, occurred when members of one clan, which the village head labelled 'immigrants' (*pendatang*) (to the village), continued mining after others had stopped. The immigrant group, members of the Sonbai clan, were not new arrivals in Oebola Dalam, but rather the descendants of later arrivals who traced their ancestral origins to an area over the district border, in South Central Timor. As such, their claims to place and land in Oebola Dalam were weaker than those of others.

The land on which the Sonbai miners were working was devoid of trees and regarded as too poor to grow crops. The Sonbai clan claimed to hold collective rights (*hak ulayat*) to the land, but another group, the Kono, who could claim 'original' settler status in Oebola Dalam, also claimed it as their own. The trigger for the conflict was the withdrawal of the Kono group from artisanal mining activity in 2011. In support of the permit-holder, PT Asia Mitra, the Kono group also tried to stop the Sonbai miners from working in the company's concession.[69]

According to the Oebola Dalam village head, in early 2011, around 70 men from the Sonbai group gathered to demand access to the mining site but met a similar number from the Kono

[68] Interview with Oebola Dalam village head, Oebola Dalam, Kupang District, 26 July, 2011.

[69] Ibid.

group standing in their way. A violent clash between the two groups ensued and several men were seriously injured.

> 'It was a Sonbai kid who was the main victim. He didn't die, but he was beaten until he had to be taken to the hospital. In one sense, manganese has indeed answered many of the community's needs. But from another perspective, manganese has caused family relations to be drowned and split, and there are (also) many disputes between families.'[70]

Ultimately, the sub-district administrator and district police had to intervene to restore the peace, and, together with traditional and village leaders, facilitated a conflict resolution process. According to the village head, members of the Sonbai group continually approached him and asked him to 'coordinate' so that they would be able to continue to work within the company's concession.[71]

Other disputes over land caused by manganese occurred between members of the same family, where siblings held equal rights to collectively owned land. A village official in Naioni explained to me that conflicts over land related to manganese often resulted from a breakdown in trust between siblings. Often the trigger for such disputes was one of the claimants negotiating an agreement with a mining investor to use family-owned land, without consulting with the other group or family members.

> 'When it's revealed that there's a manganese deposit and they start fighting over land rights, it's often between members of the same name-group (*marga* or *kanaf*). The land is subject to communal rights (*hak ulayat*) and, for example, four of us might own it. But because there's a (material) interest at stake suddenly one of the four of us abuses our authority. Even without manganese, these contests over land

[70] Interview with Oebola Dalam village head, Oebola Dalam, Kupang, 26 July, 2011.

[71] Interview with Oebola Dalam village head, Oebola Dalam, Kupang, 26 July, 2011.

> between family members are constantly occurring, but they're much worse with manganese. Most of them are between siblings.' [72]

All of these conflicts highlight that although customary land tenure systems continue to be important in the absence of systems based on formal land registration and titles, they do not necessarily provide people with the certainty they need, nor a way to manage access to, or the transfer of, land and resources without conflict (Fitzpatrick 2007, p. 131). This is especially true when the potential rewards for recognition of landownership claims suddenly and massively increase.

Broader resentments expressed by whole communities in West Timor about issues of consent and compensation also reflected the mining companies' priorities: to minimise both exposure to claims and the time spent negotiating, and also to manage communities' expectations. Although the ambiguity, opacity, contestability and complexity of customary land tenure and land relations was no doubt challenging for outsiders to grasp, some companies were simply pursuing the most expedient approach to satisfy government bureaucrats that permission has been obtained. The failure to work through the land tenure issues thoroughly and patiently would ultimately lead in many cases to strong community opposition and resistance to the mining companies.

[72] Interview with Naoini village official, Naioni, Kota Kupang, 6 July, 2011.

Contests over land tenure and consent

Buraen

Most of the community grievances I heard about mining companies alleged a failure to adequately consult with them and obtain their consent to go ahead with their mine development plans on local land. In many cases, a mining company met with an individual or small group of landowners claiming the authority to speak for all, a claim that others would reject as false.

In Buraen, Kupang District, discussed in the previous chapter, three companies held mining concessions. All of the community grievances I heard, however, focused on just one company, PT Karya Serasi Jaya, the one company that had progressed to the stage of building an office, processing facility and stockpile and, prior to the district head imposing his ban, carrying out significant exploration activity using heavy equipment.

Villagers in Buraen told me that the company's first formal attempt at 'consultation' was in 2008. It staged two meetings at hotels in Kota Kupang, with the company paying for the transport costs of villagers to attend. Villagers referred to these events as '*sosialisasi*', an Indonesian adaptation of the English verb, to 'socialise', in the sense of 'educate' people about an idea, plan or policy.[73]

[73] The term '*sosialisasi*' often implies a largely one-way process of educating, informing, indoctrinating or persuading a target audience, and is often used in the context of government programs designed to change behaviour. The extent to which a particular event was a two-way exchange or merely a forum for the transmission of information by the mining company is difficult to know without observing directly. Most Indonesians would immediately understand that an invitation to participate in such events is not an opportunity to signal their consent. It should also be noted that even the meaning of 'consent' has become clouded by the concept of "free, prior and informed consent" in the context of the extractive industries, and whether this does or does not imply a power of veto (Macintyre 2007).

At these events, the company communicated in broad terms its mining plans, including its intentions to prioritise local people for job opportunities and a number of community development projects it promised to fund. These included a paved road extending about five kilometres from the center of Buraen down to villagers' main gardens and rice fields near the shoreline. As is usual at events such as this, those in attendance signed attendance lists. Usually such lists would be submitted to the district mining office in support of the company's application for a production license in order to demonstrate that such consultations had taken place. Community members claimed the company had misrepresented their signatures on the attendance list as an indication of their support for the company's plans. Others claimed signatures of some absent landowners were forged to create the impression of their participation in the consultations, and wider support.

> 'The problem is that at the first consultation event, we signed the attendance list, but the company used those signatures as evidence of support.'

> 'The social conflict around PT Serasi Jaya is like this. I know the landowners down below are so and so. I write their names, and then I myself write their initials as a signature. This is the manipulation. So, we asked the mining office to investigate this and to gather together the community again so we can see how many supporters there really are.' [74]

Around 400 households claimed to have rights to land within the company's 1000ha concession and the company had managed to obtain the support of only a small number of landowners.

> 'PT Serasi Jaya claims 1000ha, but most of the community don't accept PT Serasi Jaya's claims to their land. More precisely, PT Serasi Jaya hasn't yet obtained agreements from all the landowners.'[75]

[74] Interviews with villagers in Buraen, Kupang District, 26-28 July 2011.

[75] Ibid.

In protest at what the other landowners perceived as the company's refusal to acknowledge their rights, 172 local landowners signed a letter to the district head and the provincial and central governments declaring they had not consented to the use of their land by the company, and demanding it cease its activities while immediately opening negotiations over individual compensation agreements. The landowners claimed that soon after they sent the letter, the company, government officials and police subjected them to intimidation and persecution.

> 'I don't know how they (the company) organised it, but because of the letter of opposition, signed by 172 people, all of them were very nearly arrested. To avoid going to prison they had to pay IDR 500 million (IDR 2.9 million each). There were some who ran away. They left the village. There was a meeting between the company, the government and the community the next day, but only about 30 people attended, because everyone was too afraid. The sub-district secretary (*sekcam*) and village head (*lurah*) were there, but the secretary just said, "you can't keep going like this". He put it all back on the community again, but did he explore the failings of the company? No. Most people were just continually reported (to police).'[76]

There was a widespread view within the community that government officials in the district mining office and other government agencies had colluded with the company to help it acquire access to land without obtaining their consent or agreeing to compensation.

> 'The government only made a superficial effort at consulting with the people. The little people see that if the government really ordered the company to consult with the people, they would have to make agreements with all the landowners. But what us "little people" see is, the companies "own" the government. So, they just stay quiet.'[77]

Although the landowners in Buraen were genuinely angry that the company had not yet formally sought permission from them to use their land, or negotiated compensation

[76] Interview with villagers, Buraen, Kupang District, 26-28 July 2011.

[77] Ibid.

agreements, it was not clear that the company had breached any of its obligations to them under the mining law. Rather, the anger expressed by landowners towards the company and the district government reflected the wide gulf between community expectations about matters of consent and compensation, including the timing of discussions around these, and the reality of the legal framework.

When PT Karya Serasi Jaya received its exploration permit in 2007, the 1967 mining law was still in effect, and would be until January 2009. Reflecting the overwhelmingly pro-investment bias of government policy at the time, protections for landowners under the 1967 mining law were particularly weak. Although Law 11/1967 (Article 25) required permit-holders to 'compensate' landowners for all losses arising from their use of the land, mining companies were not required to obtain a permit-holder's consent to use their land. As long as the permit-holder had provided a 'guarantee' of compensation, worked out by 'mutual agreement', and shown the landowner their mining permit (Article 26), they were entitled to commence mining. If landowners thought the compensation offered inadequate, and refused to accept it, it would be up to the Minister of Energy and Mineral Resources, or the courts, to arbitrate (Republic of Indonesia 1967a). As long as compensation had been 'agreed to', or deemed adequate by the state, the law expressly forbade landowners from obstructing mining permit-holders.

As it obtained its exploration permit in 2007, PT Karya Serasi Jaya was obligated under the 1967 mining law to negotiate compensation with the landowners before undertaking any exploration activities that would cause them losses. Demonstrating material losses from exploration activity was difficult for many of the shifting cultivators in Buraen to do, given much of the land to which they laid claim was not in active use, but being fallowed for future use. Further, due to the district government's ban, the company had yet to expand the footprint of its activities beyond the few hectares containing its basecamp, stockpile and small

test pits. It had therefore not yet needed to disturb much of the land within its concession. As long as the company negotiated compensation with landowners before it did so, it was following the law. The landowners, however, perceived the company's mere presence and concession as a violation of their sovereignty over the land.

The new mining law, Law 4/2009, which took effect two years after the manganese boom commenced in NTT, replacing Law 11/1967, strengthened the rights of landowners by requiring exploration permit-holders to obtain agreement from the landowner. But, again, the law only states that the permit-holder must do this before they undertake exploration activities (Republic of Indonesia 2009a, Article 135), rather than as part of the process for obtaining the exploration permit, or within any particular timeframe thereafter. The explanation provided in the law's elaboration also states that this obligation only applies to land that is 'disturbed' by exploration activities, such as excavations or drilling. So again, those who owned land not yet touched by the mining company's limited activities had no basis for exercising their right to give or withhold consent, (assuming such a right existed, as discussed below).

Compensation under the new mining law only applies to production activities. Article 136 (1) states that production permit-holders

> 'must resolve all the land rights with the landowner/s in accordance with the regulations' and, (2) 'production permit-holders can do so in a phased manner according to the land needs of the permit-holder' (Republic of Indonesia 2009a).

The key implementing regulation for the 2009 mining law, Government Regulation 23/2010 regarding the Implementation of Mineral and Coal Mining Business Activities, affirms that 'resolve' means provide compensation':

> 'Production permit-holders must provide compensation based on mutual agreement with the landowner' (Republic of Indonesia 2010b, Article 100).

As Gandataruna & Haymon (2011) note, however, neither Articles 135 or 136, or any other articles of Law 4/2009 or its implementing regulations articulate the grounds on which landowners can refuse to allow mining permit-holders access to their land. As Indonesian law is based on a 'positivist' principle that means acts must be expressly forbidden to be considered illegal, it was not even necessarily clear that landowners had the right to refuse mining companies access to begin drilling or production work where consent had not yet been given, or compensation not yet agreed.

This ambiguity had potentially serious consequences for landowners if it meant they misunderstood the limits of their rights. The 2009 mining law, like the 1967 law, also imposes heavy penalties for anybody who obstructs a permit-holder that has met the conditions of its permit from carrying out mining activities (Republic of Indonesia 2009a, Article 162). These provisions provided ample scope for authorities to issue the fines and threats of imprisonment handed out to the landowners who protested PT Karya Serasi Jaya's presence in Buraen.

As of mid-2011, PT Karya Serasi Jaya had an exploration permit issued in 2007, but did not yet have a production permit as it was still in the process of finalising its environmental impact evaluation for approval (PT Karya Serasi Jaya 2011). In addition, the Kupang district government had not been upgrading any existing exploration permits to production permits since March 2009, when the new district head came into office. The company's on-site manager told me in 2011 that although the company had extracted and stockpiled manganese from its test pit under its exploration permit prior to the ban, it had not undertaken any exploration activities since and had not sold a single kilogram of manganese.[78] Nevertheless, as a visual reminder of the company's presence and plans in Buraen, these facilities became the obvious focal point of community resentments. The fact that the land on which these

[78] Interview with manager, PT Karya Serasi Jaya, Buraen, 28 July, 2010.

facilities were situated was the only land the company had disturbed to date, and therefore the only land it was obligated to pay compensation for, also meant only one family was the beneficiary of a compensation agreement with PT Karya Serasi Jaya.

Claims and counterclaims

To build its basecamp, stockpile and test pit, PT Karya Serasi Jaya had concluded an agreement with the Antonio family. A company manager told me he was very confident that the Antonio clan was the rightful owner of all of the land used by the company to date.[79] This, he said, was because the family were descendants of a former 'king', whose domain had extended over all of Buraen. Other landowners, however, disputed that this clan held exclusive or overall rights to the land used by the company.

> 'There were some who signed an agreement, but their land wasn't in the location of the manganese. And they (PT Serasi Jaya) haven't had an *adat* (customary) ceremony with the whole community yet – only with a few people. Because they know if they gather everyone together, all these conflicts will come out.'[80]

It was impossible to gauge to whether or to what extent the company sincerely tried to understand competing land claims relating to the land in its concession, and at the site of its basecamp specifically. However, even companies that did make such an effort clearly faced a difficult challenge, as anybody with the necessary local knowledge to guide them on land tenure was unlikely to be a disinterested observer. Most claimed to be landowners themselves, and everyone was connected to others through complex webs of social relations. Government officials, even local ones, were of little help, given that customary land tenure persists precisely because land is outside the formal system of land registration.

[79] Ibid.

[80] Interview with landowner, Buraen, Kupang, July 2011.

> ‘In Buraen, almost nobody has a certificate to prove they own the land, but if you want to talk about proof, they pay taxes. They also have their plants and crops on the land. When they pay their taxes, the location (on documents) is just put as ‘Buraen’, but the exact location isn’t specified. So, the government is also confused. Whoever comes forward first, they will just believe them. Even the location of my own land on the terrace is not clear. The government officials, just sitting in their office, say, “oh he comes and goes at Oenakaba”, so they just write “Buraen”. But they don’t know where my land is.’[81]

Landowners challenged the Antonio clan’s claims of exclusive or ultimate authority over the site of the company’s basecamp and stockpile by asserting their own claims, based on the existence of an ancestral burial ground on the site. This implied that the company had desecrated the family heritage of all those with ancestors buried at the site and allowed a large number of households to draw a sacred connection between themselves and what was a very small area of land within the 1000 ha concession.

> ‘Where they built their basecamp, that’s the inheritance from our ancestors, and there are many gravesites there. And the inheritance is not just to one person, but to lots. That location where our ancestors are buried, we didn’t just make that settlement, it’s been there for hundreds of years.’[82]

Even relations within the Antonio family ruptured over its dealings with the company. This dispute, between two siblings, highlighted the complexity and uncertainty of land tenure even within family groups. According to local sources, the exact cause of their dispute could have been one of two things. Both men might have enjoyed rights to different pieces of land within the larger area of land claimed by the clan, but disagreed on the boundaries. Or, the land might have been jointly owned, in which case the dispute was about the decision to let the mining company use it, and who had the authority to decide. What was clear, however, was

[81] Ibid.

[82] Interview with landowner, Buraen, Kupang, 26-28 July 2011.

that one man had closely aligned himself with the company, while the other refused to recognise the company's rights to the land in question.

> 'One of them works for PT Serasi Jaya, and the other works for another company. Now, the one who's in jail, the older one, didn't want to give up the land to PT Serasi Jaya. His younger brother reported him (for illegal mining) and he was arrested by police. Behind the younger brother was some very strong backing.'[83]

As elsewhere in West Timor, the lack of certainty provided by customary tenure propelled disputes over land more generally in Buraen. In Buraen, as in many parts of West Timor, land tenure had been further complicated by the policy for 'village consolidation', or '*desa konsentrasi*' implemented during the 1970s. Under this policy, the New Order government forcibly relocated thousands of widely dispersed households in Timorese hamlets to form modern 'Indonesian villages', enabling more efficient delivery of government services and programs, as well as greater state control. Before the policy was implemented, most of Buraen's population had lived up to five kilometres further down the slope from the current location of the compact village centre. Many of those relocated were given land in areas that were already subject to pre-existing claims. Locals said many current-day disputes over land in Buraen continued to stem from this mass movement of people, homes and farms.

The distinction and complex relationship between usage rights and property rights, which locals admitted was highly opaque to outsiders, was also a feature of land disputes in Buraen.

> 'The problem is, we have a strong tradition here of usage rights, not just ownership rights. They don't just use it for one or two days; it's passed on between generations from our ancestors for us to cultivate and support our lives here. When they (the company) did their research and observations here, they didn't find out clearly who the landowners were. They came down secretly with just one or two people

[83] Ibid.

> as their supporters. But after they finalised the location, they didn't find out clearly who owns the land and ask permission, including from me too. Now one factor that influences the community (to oppose the company) is that they used two or three people who don't own land.'[84]

This was a common story in West Timor. Mining companies would 'recruit' a small number of local people to serve as their local guides to help them acquire land, make introductions and get things done in an area they wanted to explore. In Buraen, even some of those who complained about PT Karya Serasi Jaya using the 'wrong' people for this role, had themselves performed a similar role for other mining companies in Buraen. Tensions and controversy would arise when it was perceived that those working with a company were giving permission to a mining investor to use land that did not belong to them. In reality, however, it was the district government that was effectively allocating their land to mining companies, while the companies did not need permission from individual landowners until they started to work on their land.

Nonbes, Kupang District

The urban village of Nonbes in Kupang District provided another example of the tensions at the intersection of mining and customary land tenure. It also revealed how different understandings of the processes and timing related to mining companies' obligations to obtain permission, and a general lack of open communication, contributed to landowners' mistrust and resentment towards mining companies.

In this case, I observed directly the dispute unfold during a field visit by a multi-agency team of district government officials, and at a follow-up meeting between the landowners, mining office officials and the mining investor the next day. The field visit was a key part of a

[84] Interview with landowner, Buraen, Kupang, 26-28 July 2011.

'verification' process ordered by the incoming Kupang district head. The main objective was to confirm and clarify various aspects of all of the mining concessions he had inherited when he came into office. The district head announced this verification process in his April 2009 executive decree or '*instruksi*' banning mining and sale of manganese until further notice. To carry it out it he formed a 'Kupang District Government Study Team', comprising community leaders, academics, representatives of investors and officials from relevant government agencies (Kupang District Head 2009).

One of the key issues the district head wanted the process to establish was whether permit-holders had informed the affected local communities of their plans and obtained their support. He and many officials within his administration strongly suspected that many had not.[85] The district government was also using the verification process to support the administrative conversion of mining permits issued under the old 1967 mining law, to the new permit under the 2009 mining law (which came into effect just two months before he came into office) (Kupang District Government 2010). As outlined earlier in this chapter, the new mining law had introduced a new requirement for exploration permit-holders to obtain agreement from landowners prior to undertaking exploration activity.

The first of two field visits by the full verification team to Nonbes, in Amarasi sub-district, took place in November 2010. I was invited to attend and observe by an official from the Kupang district mining office. Officials from the district mining office, the environmental protection agency, and the forestry office, joined the sub-district administrator and village head at a meeting with the community and the director of the mining company at a site just

[85] The district head and various government officials from the Kupang District government told me this in interviews and conversations. I also observed this focus during three verification processes that I witnessed.

off the roadside that the company proposed to use for its office, basecamp facilities and stockpile.

In opening the proceedings, the head of the Kupang mining office emphasised several times to the community members present that the company, PT Perkasa Pedro Cendana, already had an exploration permit. He presented the aim of the visit as an administrative exercise, to facilitate the conversion of the company's permit for 'general surveying' issued under the old law, to the new-style exploration permit under the new law. The mining office boss noted that the company had already met the administrative conditions for the permit conversion, including obtaining the necessary support of government officials, from the village head to the district head.

> 'It's not that he's just about to apply for an exploration permit – he already has it. It's only because the change in law requires a conversion from the KP to the IUP permit, there are conditions that have to be met. So, we don't want to make problems, because he already has his permit. And the support is there too. The recommendation from the sub-district administrator and the village head are there. The decision of the district head has already been made. We're only giving information about the process of converting the permit from a KP to an IUP, in accordance with the new law.' [86]

Another senior official from the district mining office reiterated several times that the company's permit was for exploration, not mining activity. He stressed that there should be no misunderstanding—the company was not about to start bringing in heavy equipment to start excavation. For that, he said, a production permit would be required, which first necessitated an environmental impact assessment and approval. He then explained the process for the meeting, which was essentially a 'questionnaire' the verification team used to see

[86] Kupang District Mining Office Head speaking at a meeting with the community, government officials and PT Perkasa Pedro Cendana, Nonbes, Kupang District, 5 November, 2010.

whether various steps had been completed to obtain the necessary approvals and indications of support.[87]

The first question related to the letters of support or recommendation for the mining company from the village head and sub-district administrator. Ostensibly, one of the reasons such letters are required as part of the process for obtaining mining permits, or converting them in this case, is as another check to ensure there is no significant community opposition that is likely to cause conflict if exploration work goes ahead.

Communities therefore often interpret the letters as an official declaration that the community or landowners are favourably oriented towards a mining company's plans. In some cases, as in Buraen and also in Nonbes, they are therefore an official fiction designed for a political purpose and can antagonise the communities they purport to speak for. At this point, the mining investor said there appeared to still be a 'misunderstanding' about why the company had obtained the letters of support from the sub-district administrator and the village head, and their meaning. The company had only requested the letters, he said, because the mining office had asked the company to provide them. The company director also clarified that the land on which the meeting was taking place, two hectares on which he planned to build his office, basecamp and stockpile, was land that he had bought from a local landowner.

> 'So, we came to the sub-district administrator and village head and asked them, "what is it exactly that the mining office is asking for?" We didn't come as though we already owned the land. It's just that at that time we were asked by the mining office to get a letter of support from the sub-district administrator and the village head, as one of the conditions. We were just following the procedures.' [88]

[87] Ibid.

[88] Johnny Mesakh, Director of PT Perkasa Pedro Cendana speaking at a meeting with the community, government officials and PT Perkasa Pedro Cendana, Nonbes, Kupang District, 5 November, 2010.

Because Nonbes, like Buraen, is classified as an urban village, the village head in Nonbes was a civil servant appointed by the district government, rather than an elected member of the local community. Despite this, the village head was eager to communicate her sense of loyalty to the community, and to let all those present know that she had concerns, despite having provided the letter of support. She said that in providing the company with a letter of support she had not meant to imply that the company had the support of the community or agreement of the landowners. Rather, she claimed, she had simply followed a directive from the sub-district administrator, who had told her it was an administrative requirement from the mining office for the company to convert its mining permit.

> 'So, I just signed the letter of support, because I was told that it doesn't mean the company will definitely pass the verification process. I said, "OK, I'll sign". But then standing here today I still don't even know the location (of the mining concession). I'm sorry Sir. So, the other day when I saw that letter (that I signed), I was also shocked – (I thought) shouldn't we be going to see the location first, maybe together with the community? Because there are community there too. But I signed (the letter) because they said the letter was essential to pass the verification process. [89]

A former district mining office head present at the meeting, now an associate of the investor, reacted angrily, telling the village chief that she was just following the regulations as she should, and that she should take responsibility for doing so. Again, however, she expressed her concern that there were people living on the land. Current mining office officials quickly reassured the village head that although she had provided the letter of support without knowing the coordinates of the mining concession, she should not worry as it was only for surveying work. The company would need many other approvals before it could proceed to

[89] Village head, Nonbes, Kupang District speaking at a meeting with the community, government officials and PT Perkasa Pedro Cendana, Nonbes, Kupang District, 5 November, 2010.

mining. One of the mining office officials even teased that she was worried that she might have done something that would land her in jail, which lightened the mood of the meeting.

After mining office officials quickly dismissed concerns raised by the forestry office representative about the possibility that part of the concession might be in a protected state forest, the verification team turned to the question of landowners' consent or agreement, actually referred to throughout as 'support'. A mining office official said that to establish the support of the community in the location they needed to meet with the relevant community leaders. The mining office head then began reading out names from a list of 32 landowning household heads who owned land within the concession and, he claimed, had previously indicated their support for the company. Ten of the names belonged to the Honin clan, and six to the Abineno clan. A mining office official asked whether anybody from the Honin clan was present. However, not one of the 32 people whose names were on the list was present.

A mining official asked several times whether the company had held any *sosialisasi* events prior to the landowners signing the list of 32 names that was being referred to as a 'letter of support'. The company director said they had had four such events, although he had not been present, at which they had provided information. These had been held in March 2010, some eight months earlier, with the main aim of introducing the company to the community. The community members had gone into the forest with the mining company representatives and helped them to survey the land. They had also had an '*adat*' ritual with traditional coins at the location the company planned to survey. When the mining investor revealed that the village head had not participated, however, the head of the environment office challenged him that there had not yet been any real socialisation event. Raising his voice, the mining investor retorted that they were 'confused' as to what they were supposed to do to satisfy this socialisation obligation. This prompted an angry lecture from the environment boss.

> 'The most important thing when it comes to the stage of the environmental impact assessment will be evidence that the socialisation (events) has occurred. That's why I'm asking. You're saying the socialisation has been done, but where's the evidence? I've asked the community here again and again. What I say to you from the mining company is that the community is often deceived. The neighbourhood chief has signed, the village head has signed, the sub-district administrator has signed, the village head has signed, but when we come to do the verification in the field, the community hasn't been informed. Later there will be a letter opposing (the project) – that's what we're anticipating. So, I say again, socialisation is very important to avoid these problems.'[90]

The former head of the mining office tried to defuse the situation, saying there were "many ways to do the socialisation", and reassuring the investor that the environment head was 'on his side', and only trying to help him avoid problems later when the production permit was eventually issued. The mining investor, appearing somewhat chastened by the environment office head's speech, responded that he had some photos of the socialisation event, but had not brought them with him.

He also defended himself by noting that the company had only applied for and obtained a permit for 'general surveying' (*penyelidikan umum*), under the previous mining law, which was based on multiple phases, and then the new regulations had come into effect.[91] The environment office boss continued to admonish the investor, however, for failing to ensure that participants in any socialisation events signed an attendance list, to acknowledge they had attended and heard the information, 'because that is what is required by the legislation".

[90] Head of the Kupang District Environmental Protection Agency (Bapedalda) speaking at a meeting with the community, government officials and PT Perkasa Pedro Cendana, Nonbes, Kupang District, 5 November, 2010.

[91] Under the 1967 mining law, separate permits were required for 'general surveying' and 'exploration'. The latter covered more disruptive activities including drilling and excavating for samples. Exploration permits under the new law, however, covered all phases from surveying and exploration, and required permit-holders to obtain the prior consent of landowners in the location of exploration activities.

Further, she went on, the lists should be shared with the sub-district administrator and village head, to ensure their legality could be verified.[92]

The mining director also said it was difficult to be sure the company had always done the socialisation with the right landowners and communities, because the company was still undertaking general surveying work to establish where within its concession to drill or excavate. It could do socialisation in one area, but then need to move according to geological information it obtained. It also did not know exactly which people owned land in which areas. However, he also said that the company had only been undertaking general surveying work, and he had believed that 'what was important was that the community were informed when you were ready to start digging'.[93] The environment office head confirmed that had been the case under the old law, but the new mining law required mining companies to undertake socialisation from the beginning of exploration work.[94]

> 'The laws have been changed because there were several gaps that weakened companies. We're not trying to make things difficult for you, the investor. Conversely, we're trying to help you. Because later the community will complain, and the number of complaints about manganese mining is extraordinary. So that we're all safe, the village head and the sub-district administrator are safe, the district head is safe, and the investor is even safer.'[95]

PT Perkasa Pedro Cendana's exploration permit related to what in the context of West Timor was a relatively large concession, of 2,375 ha. According to landowner and neighbourhood head Simeon Honin, the company had provided the list of 32 household heads' names read

[92] Head of the Kupang District Environmental Protection Agency (Bapedalda) speaking at a meeting with the community, government officials and PT Perkasa Pedro Cendana, Nonbes, Kupang District, 5 November, 2010.

[93] Johnny Mesakh, Director of PT Perkasa Pedro Cendana, at a meeting with the community, government officials and PT Perkasa Pedro Cendana, Nonbes, Kupang District, 5 November, 2010.

[94] Head of the Kupang District Government Environmental Protection Agency speaking at a meeting with the community, government officials and PT Perkasa Pedro Cendana, Nonbes, Kupang District, 5 November, 2010.

[95] Head of the Kupang District Government Environmental Protection Agency, Nonbes, Kupang District, 5 November, 2010.

out at the verification meeting to the district mining office sub-district administrator and village head as an indication of the landowners' support. Honin also claimed it was the village head who informed him that she suspected the signatures next to the names had been forged. The village head had contacted Simeon Honin, and upon learning from the village head that the investor was claiming the support of 32 landowners, Honin contacted all 32 landowners on the list to verify their support. According to Honin, all 32 landowners denied having signed any statement of support for the company. He believed that all 32 signatures had been forged.[96]

As none of the landowners had been present during the verification meeting, district mining office officials arranged a follow-up meeting between the landowners and the mining company the following day to try to clarify the situation with respect to the landowners' knowledge and support for the company's plans. This second meeting, which I also observed, took place at the home of one of the landowners in Nonbes. However, far from producing a reconciliation, the meeting only revealed the depth of hostility and mistrust the landowners felt towards the company, and the naivety of the mining office officials whose approach to facilitating the dialogue suggested they were only concerned with the investor's interests.

The head of the district mining office opened the discussion by declaring that 15 landowning family heads had indicated their support of the company's plans to undertake exploration back in February (2010), even months earlier. He began reading the list of names. He got no further than the second name on the list, Simeon Honin. Nervous laughter broke out as Honin and two or three other landowners present again strenuously denied having signed such a

[96] Interview with Simeon Honin, Nonbes, Kupang District, 15 July, 2011.

document. The landowners repeated their assertion that the signatures on the list were forgeries.

The head of mining from the district mining office then reminded the landowners that the company had only an exploration permit and had not even applied for a production permit yet. He also explained that the company needed to undertake the exploration work to identify the location with the richest concentration of manganese within the concession before it could apply for a production permit. He appeared to have two aims: trying to assuage the landowners' concerns that the company was about to start excavations before any deal had been finalised, and also managing their expectations regarding compensation or revenue-sharing agreements, as these would only apply for the owners of land that ended up in the production area.[97]

> 'He's just going to take some samples. That's what exploration means. Later once he's already done the exploration work, and found where there's lots of manganese deposits, and you all give permission, then he will start to apply for permission to mine. Now Perkasa Pedro Cendana here has a plan to mine in this location, open an office, make a community health centre for the community, for the miners. But that's after the research. For now, he's not mining, just working out where to dig.'
>
> 'That's why a while back there was already a letter of support from the village head, and from the sub-district administrator. [...] So, PT Cendana here, has come in here because they've been authorised, but to get permission to extract manganese ore, later there will be more negotiations. So, our aim here now is to find out whether it's true that you have heard about PT Cendana's plans to undertake exploration, because according to the information from the sub-district administrator and village head, you have.
>
> 'Yesterday we saw the location, that PT Cendana has prepared to build its office and facilities, and we already checked the concession a year ago. [...] So for you who feel you are the landowners in that location, please open your hearts so that we can submit the application to the district head. The district

[97] Head of the Mining Section of the Kupang District Mining Office at a meeting with the community, government officials and PT Perkasa Pedro Cendana, Nonbes, Kupang District, 6 November, 2010.

> head will consider, "because the community has said this, the government policy is this, the law says this". So, an agreement between you all and the investor will influence whether the district head will approve the investor's plan, or not. So, today we continue from yesterday..." [98]

At this point, Simeon Honin, said, 'so that means from those falsified signatures'. In response, the company director, Johnny Mesakh, began, 'It's like this Sir, we already had an agreement from the beginning between the company and…', before he was interrupted as landowners repeated their assertion that there never had been an agreement. Mesakh began again, in a much more conciliatory tone, even acknowledging 'problems' with the list of signatures on the letter of support.

> 'Ok, fine. We from the company unreservedly apologise because, according to the community, the letter of support, which has been signed, is not legally valid. After crosschecking, it was confirmed that indeed it was not legally valid, although several signatures were correct. So, before you all came here, you have asked for a token of apology. So, we're already talking about creating a new agreement (with landowners). Only the date and time (for creating such an agreement) have yet to be decided. This is the only issue.' [99]

The mining office boss, however, still needed to tick off the question about landowner support on the verification checklist to be able to progress the investor's mining permit conversion and report back to the district head. He again insisted that they had agreed to support the company already.

> 'You've already supported the company, haven't you? That was back in February – after it's been discussed and agreed it has to be signed and then the permit issued by me. Because there were some who hadn't signed, everyone there in that location signed it again and they brought it to me. Meanwhile

[98] Ibid.

[99] Johnny Mesakh, Director of PT Perkasa Pedro Cendana speaking at a meeting with landowners, Nonbes, Kupang District, 6 November, 2010.

> the letters of recommendation from the sub-district administrator and village head are still valid. So, there should be no hard feelings.'[100]

The mining section head then tried to refocus the conversation on the issue of whether or not the landowners would agree to allow the company, PT Perkasa Petra Cendana, access to their land for exploration activities.

> "So, the issue here is whether the landowners can accept the apology from Perkasa Petra Cendana or not. It means that Perkasa Petra Cendana feels that the letter of support that was previously regarded as not legitimate, can now be accepted."[101]

At this point, one of the landowners spoke, referring to a 'heated' incident that had occurred with the company, and drawing a parallel with a violent incident that had occurred because of sandalwood trees during the 1940s.

> 'I want to speak a bit about what's just been said by all of you gentlemen. From a human point of view, we were all shocked, at that time when things got really heated Sir, and if that is the process, where they (the company) can just come down here like that, well, we may be "little people" but maybe we're just prepared to die (for our land). Yes, because from long ago, just stealing land is dangerous, Sir. That's why now the process has to be through negotiations, so that we can find the best solution. Because these events happen again and again. From our ancestors until now, because those are places with sandalwood trees.'[102]

Another landowner added, 'in 1942, people came in here and just cut all the trees, clear-felled them, we shot them, and we were jailed'. After the landowners had made it clear that they

[100] District Mining Office head, Kupang District, speaking at a meeting with landowners, Nonbes, Kupang District, 6 November, 2010.

[101] Mining section head, Kupang Mining Office at a meeting with landowners, Nonbes, Kupang District, 6 November, 2010.

[102] Landowner speaking at a meeting of landowners with District Government Officials and Director of PT Perkasa Pedro Cendana, Nonbes, Kupang District, 6 November, 2010.

were prepared to pay a high price to defend their sovereignty over the land, the original speaker then suggested there was still hope for an agreement.

> 'So maybe it would be better if we look for a way so that from the community side we can agree, OK, maybe. Maybe we need time so that we can consult with the community to hear their views, so that this can be handled well.'[103]

The mining section head then again attempted to assuage the landowners' concerns at not yet having an agreement with the company for compensation or revenue-sharing, by explaining that the company would not be using all of the land within its concession.

> 'From that 2,375 ha, not all of that is going to be mined. They're going to estimate first, investigate using tools, using expertise, where there might be the most manganese. He might only take it from 200 ha or 300 ha. Later, when we see where that land is, then he will negotiate with the landowner. And you can decide if you agree or not, and what kind of agreement you want as the landowners.'[104]

This uncertainty about who would benefit from the mining when it finally started was a clear source of insecurity and anxiety for the landowners. Although the landowners articulated their grievances in terms of a violation of their sovereignty over the land, they also understood the implications of what the mining office bureaucrat was saying—that only those who were fortunate enough to own land in the production area would be in a position to negotiate a compensation or revenue-sharing agreement.

The mining company had clearly failed in its obligations to keep the landowners informed and had clearly lost their trust over the issue of the list of names on the 'letter of support', whatever the truth to that disagreement was. There was, however, also an underlying tension

[103] Landowner speaking at a meeting of landowners with District Government Officials and Director of PT Perkasa Pedro Cendana, Nonbes, Kupang District, 6 November, 2010.

[104] Mining section head, Kupang Mining Office at a meeting with landowners, Nonbes, Kupang District, 6 November, 2010.

related to different perceptions about what kinds of agreements had to be obtained or negotiated at different stages. The landowners in Nonbes wanted the company to negotiate a financial agreement with them, before it even knew the precise location of its exploration, let alone production activities, and hence before it was clear who the affected landowners were.

At the meeting, the landowners requested IDR 2.5 million (US$250) each as acknowledgement of the investor's failure to recognise their rights, and to restore relations between them to a basis of respect and goodwill. If the investor refused to accommodate this request, the landowners insisted that the investor should be held legally accountable for the alleged forgeries committed in their names. The investor stood his ground, rejecting this demand, even though it was a relatively modest outlay to secure their goodwill. As a counteroffer, he indicated he was willing to negotiate agreements with the relevant landowners.

As it turned out, the investor never had the opportunity to negotiate the agreements. The meeting was abruptly cut short when the investor suffered a sudden stroke and was immediately evacuated to hospital in Kota Kupang. The head of the mining office adjourned the meeting, suggesting they revisit the matters of land agreements once the investor had recovered his health. However, 48 hours later the investor had passed away.

Land, contested authority and history in Nonbes

In May 2011, several months after the first meeting took place, I visited the neighbourhood chief Simeon Honin at his home in Nonbes and heard his full explanation of the mistakes made by the mining investor that had created the tensions with landowners. It was a similar story to those in Buraen and other places, of outsiders being unable to untangle the truth from multiple competing claims to legitimate authority over land. Once again, the ability to claim ancestors who had settled first, or earlier, was a key source of authority.

The investor was a Timorese man whose family was from Kota Kupang. However, he had no ties to the area around Nonbes and had lived in Jakarta since a young age. According to Honin, the investor did not make sufficient effort to research and understand property rights in the area. As a result, claimed Honin, someone from the Abeneno clan, who resided in Kota Kupang, had misled him by claiming the right to speak for all the landowners within the concession. According to Honin, the Abeneno clan was the second oldest in the area's settlement history but had arrived in Nonbes after the Honin clan. Honin therefore claimed the Abeneno clan's land rights were subordinate to and dependent on the Honin clan's rights.

> 'Because of history, we, the Honins, although not that well known, we are the oldest clan here. For all the other clans that later settled here, Honin was the one that allocated them land, (saying) "You live here, you live here, you live here.' [105]

The rivalry between the Honin and Abeneno clans based on their claims to traditional authority in Nonbes also stems from their interactions with the Dutch colonial power in the 19th century. At some point after 1800 a separation of local administrative and political power took place in response to demands from the Dutch colonial administration. The Dutch reportedly wanted a leader who was literate in order to facilitate easier communications with the colonial authorities. As the Honins could not provide a literate leader, the Honin ruler was forced to surrender administrative control to the Abeneno clan. However, despite the loss of administrative power, the Honins continued to claim customary authority over the land and other resources.

> 'What used to be termed the leadership baton (*tongkat kepemimpinan*) was surrendered to the Abeneno clan around 1800, during the Dutch occupation. At that time, they needed someone educated, who could speak Melayu. Now, back then, our ancestors could only speak Timorese and hadn't been to school. So Honin's (official) leadership status was revoked (by the Dutch) and given to Abeneno, but

[105] Interview with Simeon Honin, landowner, Nonbes, Kupang District, 15 July, 2011.

> real power remained with Honin. That's why they (the Abeneno) are not entitled to manage issues of land here. The leader of Abeneno now lives in Kupang. He's the one who deceived that man (the investor). They believe this is their land.'[106]

Simeon Honin explained the investor's stroke in terms of supernatural forces that protected the local landowners' sovereignty.

> 'When the land is allocated, we have an oath ceremony, so everyone knows who owns the land. At the ceremony we plant shotguns, swords, bullets, and other weapons there. So, anyone who trespasses can die. It's not us who kill them, but those objects themselves. Now, this is exactly what happened to this old man. He came in through the back route, and because he came through the back, it's clear he had bad intentions. If someone comes through the back, we assume they want to steal. If you come with good intentions, of course you come through the front.
>
> 'That's why at that time I wasn't comfortable, and that's why I went (to the meeting) to protest, because I don't want people to become suspicious that I've been paid something to let him in. That's why I spoke about history, and when I did it was as if he had been shot. If he'd come here and directly admitted his mistake, for certain everything would have been fine. But it seemed like he just wanted to justify himself. I cut him off because I didn't want to hear that again. That's why we spoke about history.'[107]

Honin's explanation for the investor's stroke as the result of supernatural forces protecting local sovereignty was clearly intended as a warning to others seeking access to resources not to take local landowners for granted.

A new start in company-community relations

The company's interest in Nonbes and relations with the community continued after Johnny Mesakh's death. His wife, Reny Mesakh, contacted Simeon Honin and inquired as to how she

[106] Interview with Simeon Honin, landowner, Nonbes, Kupang District, 15 July, 2011.

[107] Interview with Simeon Honin, landowner, Nonbes, Kupang District, 15 July, 2011.

might be able to restore trust between them and keep open the possibility of continuing with exploration plans in the area. Honin said he told the woman the first condition that needed to be fulfilled was to always come 'through the front door, never through the back'. According to Honin, Reny Mesakh also told her that the Abeneno man had deceived her husband by insisting he had authority over all the land in the concession.

> 'That's why I said, "it's most important that you don't come through other people and then come to see the location. Take your time to study the location"'. [108]

Honin also told the woman that if she wanted to make peace with the landowners she would need to come and partake in a '*siri pinang*' (betel nut) ritual, in which people sit together to chew betel nut, a mild stimulant widely used in West Timor. Where the sharing of betel nut is done in a ceremonial context it usually involves one party giving the other party a sum of money as a token of goodwill in exchange for some form of assistance or support that has been requested. In West Timor, this tradition is also sometimes referred to as *okamama*, a term which literally refers to the small wooden box in which people keep the ingredients used in the betel nut mix. As it was traditionally common for the party seeking a favour to place a small amount of money inside the *okamama* box, the term *okamama* is sometimes used as a shorthand way of describing an informal payment made in return for a favour.

As the money signals the beginning of ongoing relations of indebtedness and cooperation, the amount of money involved in such transactions is not necessarily decisive in determining whether the favour is granted or not. Rather, the money is a symbol and assuming the recipient's cooperation is required into the future it is assumed that further payments will also be necessary.

[108] Interview with Simeon Honin, landowner, Nonbes, Kupang District, 15 July, 2011.

> 'I said, "yeah, follow the *adat* (custom), have a *siri pinang* ceremony, then give an envelope, whatever amount, IDR 1000 is OK, or IDR 1 million is OK, or IDR 100 million is ok, it's up to you how much you want to give. Even one hundred rupiah. What's important is the *adat*. What's important is that we manage it well, follow the rules".
>
> 'It hasn't all been finalised yet. We've only spoken and now we have to make a new letter for her with new signatures. But she's handed over IDR 2.5 million to each of the landowners, 18 of us in total. And because she's been open with information, after that we ate and drank together.'[109]

The IDR 2.5 million payments to the 18 landowners who ultimately agreed to terms with the company was not intended as compensation for the use of the land, but rather as a goodwill gesture to establish a positive foundation for future relations, and as recognition of local sovereignty. The company's new director also agreed to fund the construction of a multipurpose hall for community meetings and training events. Although these gestures were well received and had restored a degree of trust to the relationship for the time being, the more complex negotiations about compensation had not yet even begun. Honin told me that the landowners would only start discussing the terms of compensation with the company after it had determined whether, and where, it would proceed to production activities.[110]

Several informants, mainly government officials, emphasised to me that rural people in West Timor tended to hold very different understandings about negotiations and agreements to those typically held by businesses, and that this was another common source of conflict and disagreement with mining companies. Whether or not this had contributed to the conflict in Nonbes, clearly the landowners and the mining investor expressed very different beliefs about whether they had an agreement for the investor to use the land. The head of the Kupang environmental protection agency said people had a strong tendency to change their minds

[109] Interview with Simeon Honin, landowner, Nonbes, Kupang District, 15 July, 2011.

[110] Interview with Simeon Honin, landowner, Nonbes, Kupang District, 15 July, 2011.

after they've already reached an agreement if suddenly they acquired new information.[111] The head of the mining office in South Central Timor agreed with the environment agency head in Kupang District that there was a strong tendency for people to change their minds about agreements as they acquired new information.

> 'The companies get the permit and then during the socialisation period there is always conflict. Because I study culture a lot, (I believe) the Timorese are a bit difficult, difficult because we decide something today, but then sometimes someone from outside comes in, including their kids, and they just abandon the agreement. That's what often happens, even when the company's approach to social affairs has been quite good.'[112]

While there might indeed be cultural factors at play, local communities also were often at a significant informational and knowledge disadvantage when they negotiated with mining companies. It is hardly surprising then if they seek to renegotiate terms as they come to understand more about the scale of investment, and the wealth and impacts a project was likely to generate. Approaching negotiations as an ongoing process within a developing relationship rather than a fixed, point in time agreement, can be viewed as a rational and legitimate strategy to address the asymmetry of information and power between mining companies and communities.

The head of the environment office in Kupang did not believe a perceived fickleness in the Timorese people was the main cause of tensions between mining company-landowner tensions, either in Nonbes or in West Timor generally. When I interviewed her seven months after the initial visit to Nonbes by the verification team, she told me most of the small, domestic mining companies and investors who had been dominating the procurement of mining concessions in the district simply failed to fulfil their obligations to communities,

[111] Interview with Head of the Kupang District Environmental Protection Office (Bapedalda), 30 June, 2011.

[112] Interview with head of the South Central Timor District mining office, 24 August, 2011.

specifically by keeping them informed and obtaining consent. She saw this as the main cause of conflict between mining companies and communities.

> 'The weakness of many of our entrepreneurs is in not letting the community know. Foreign companies really do concern themselves with that, community engagement and letting the people know. But our investors, maybe because of financial limitations, don't really involve the communities, even though under the regulations that's compulsory, for the community to be involved in the activities, starting from the planning process.
>
> 'When we went to Amarasi (Nonbes), the community really complained loudly to us, and the situation had become untenable there because the community had already rejected it. If we don't look after them well, then that's the consequence for us. That's why I said to the investor, "you need to make the approach first", to see whether the people want to do it. If the people don't want to do it, then don't force them.'[113]

The experience in Nonbes revealed a broader truth not just in West Timor but in encounters between mining companies and indigenous or traditional communities generally. For the community in Nonbes, the land sought by PT Cendana had sacred and cultural meanings that went far beyond the economic value of the land. Their expression of sovereignty over land and resources, and the perceived failure of a mining company to respect it, are common features of conflicts between mining companies and indigenous peoples everywhere (Conde & Le Billon 2017, pp. 686-88).

Like many other minor disputes that occurred in West Timor around manganese, the landowners in Nonbes were not opposed to manganese mining on their land. Rather, they wanted some control over the process. They also wanted reassurance that if mining went ahead, they would be adequately compensated. Their defiant, even combative stance and language directed towards the mining investor before exploration work had begun can be

[113] Interview with Head of the Kupang District Environmental Protection Office, 30 June, 2011.

interpreted as part of a negotiating strategy aimed at securing a share of the riches (Conde & Le Billon 2017, p. 682). To the extent that the investor's wife was clearly trying to take a different approach, it was at least somewhat effective.

In Nonbes and Buraen, the issues were largely around mining companies obtaining the consent of local landowners during the early stages of exploration and establishing operational facilities. Contests over who were the rightful landowners, which landowners needed to provide their consent and at what stage in the process, all contributed to community animosity towards the mining company. Although landowners were anxious to negotiate agreements with the mining companies, the disputes were really centred on the meaning, mechanisms and timing of consent processes, and contests over who was entitled to give it.

Of course, the authority to provide consent is important and contested partly because it implies the authority to negotiate and receive compensation. According to the 2009 mining law, mining companies need to 'resolve' the issue of surface rights with landowners and reach agreement on some form of compensation or revenue-sharing before they can commence production activities (Republic of Indonesia 2010b, Article 100). Compensation could mean the company buying the land outright, renting it, or, as described below in Supul, some form of revenue sharing agreement.

Contests over land tenure and compensation

In Supul, South Central Timor, it was the company's lucrative revenue-sharing agreements with landowners that created substantial rewards for a fortunate few, but left everyone else dependent on their goodwill, that created tensions. At the time the company's problems with the OBAMA smuggling network were first reported in July 2010, the local press also reported

that 26 landowners were angry that they had not yet been given an opportunity to negotiate or sign a revenue-sharing agreement with the company (*Kursor* 2010h). To that stage, the company had only concluded an agreement with one landowner. However, this was soon followed by six more in August 2010, six in September, four in October, 11 in November, and 12 in December, taking the total to 40 (PT SMR Utama 2011, p. 78). By the end of 2010, the company had concluded separate revenue-sharing agreements with 40 landowners within its concession.

The agreements contained clauses that made it clear the income they would receive was in part payment for providing 'security' for the manganese the company extracted (PT SMR Utama 2011, p. 14). Whether or not the timing was significant, within a few months of the last agreements being signed, the OBAMA network ceased operating.

The agreements also included a clause affirming that the company would not entertain any future claims that might arise over land already covered by existing agreements, and even sought to indemnify the company against any financial risk to it from additional claimants who might forward in the future:

> 'If, in the future, there are other/third parties who make rights claims or internal family disputes occur between the respective landowners, then that will be fully the responsibility of the landowners, and because of that, each of the landowners frees SMR from every and all responsibility, and are obligated to cover all fees, costs and/or losses that could be suffered by SMR as a result of such claims (PT SMR Utama 2011, p. 80).'

The inclusion of this clause in the agreements indicates that the company was aware that other actors might contest the legitimacy of the recognised landowners' claims to land in the future. If enforceable in law, the clause might create an incentive for the recognised landowners to deal with any rival claimants by sharing their wealth. The company had good reason to be

concerned about new claimants. The sudden influx of unprecedented wealth in Supul had already generated many such disputes, both within and between family groups. As discussed later in this chapter, some of these disputes had gone to court in 2009 and 2010 as rival claimants sought recognition by the company as a landowner with a revenue-sharing agreement (Higher Court of Kupang 2011; Supreme Court of Indonesia 2012).

Under PT SMR's landowner agreements, the landowner received IDR 400 for every kilogram of ore extracted on their land. From this, they were required to pass on IDR 200 to the labourer who collected it—the company's commitment to the labourers—keeping IDR 200 for themselves, and their extended families. Based on the company's production figures, this arrangement was extremely lucrative one for the recognised landowners.

According to the company's 2011 prospectus, total annual production in 2010 was 12,331 tonnes (PT SMR Utama 2011, p. 24). Assuming this entire amount came from the land of a single landowner, that landowner stood to receive IDR 2.466 billion (approximately US $246,600) in that year alone. According to the company's projected production output, this was just the beginning. In 2011, production was scheduled to triple to 36,000 tonnes, then double to 75,000 tonnes in 2012, before reaching 135,000 tonnes in 2014 (PT SMR Utama 2011, p. 20). The company's production operations were proceeding in an incremental way within its tenement, meaning that only one or two of the landowners were receiving benefits initially, and some were likely to receive nothing for several years.

The revenue-sharing deal that the landowners in Supul and other villages in the PT SMR concession were able to negotiate was, to my knowledge, unique in West Timor. It meant they were much better off than landowners in other villages who had simply surrendered their land to mining companies in exchange for meagre amounts of compensation. The Supul landowners could also easily have ended up in the same situation. Michel Betty, a local

landowner in Supul who was also by 2012 employed as PT SMR's lawyer, said the idea to use a revenue-sharing agreement between the mining company and the landowners had been brokered in 2008 by himself, the company's director and another landowner. A genuine partnership including a revenue-sharing agreement was the non-negotiable condition that Betty put to the company on behalf of the landowners. At the time, a second company was also seeking access to the same land that PT SMR wanted and had offered landowners IDR 100 million each to simply surrender their land to the company. According to Betty, some were tempted.

> 'We knew we had to work ourselves. We didn't want to surrender the land for 100 million rupiah. 100 million rupiah is meaningless. (The other investor) insisted it had to be that way, he didn't want to share the revenue, cooperate. I changed that. On this land we have to share the revenue, cooperate. (Then) if there is conflict, it won't be as bad as in other areas. […] That's why we proposed this model to Pak Dodi (Wijaya, the company's executive director), and he agreed so we signed an MoU in Jakarta.'[114]

Among the 40 landowners recognised by the company in formal agreements, the Betty clan had the most agreements, with eight (PT SMR Utama 2011, p. 79). One of these members of the Betty clan, Cornelius Betty, told me that his family had interpreted their good fortune to own so much land in the company's concession as an 'act of god'.

> 'In 2000, we went up to the top of a hill to pray according to local custom, and we received a sign from god, that it would rain gold for the Betty family. At the time we didn't know manganese rocks had a value, but then the experts came in 2008 and told us, and we realised, oh, this was the golden rain'.[115]

The revenue-sharing model might have appeared as an 'act of god' to some, but it had also created significant discontent. When I visited Supul in 2012, it was clear from speaking with

[114] Interview with Michel Betty, Supul landowner, Kupang, June, 2012.

[115] Interview with Cornelius Betty, landowner and traditional leader, Supul, TTS, June, 2012.

people that the manganese revenue sharing agreements had been causing deep tensions within extended family and kinship groups over the distribution of income. Although a concept of collective landownership by family groups continued to apply to land in Supul, the agreements were all with a single individual for each area of land, and not everyone was adhering to the social and customary obligations to share the wealth within their family or broader kin groups.

> 'Some share with their relatives if they've been working hard, but others are stingy. And this makes the families fracture and become disunited. They're getting angry at each other and fighting. They stop speaking with each other.'[116]

Michael and Cornelius Betty told me that another landowner in Supul had gained considerable notoriety throughout the district for refusing to share any of her money, reportedly in the vicinity of IDR 3 billion (US $300,000), with her siblings. The woman's six siblings claim the land was a collective inheritance and demanded the woman either share the earnings or formally transfer a portion of the land to each of them.[117] The Betty men alleged that the woman had squandered most of her wealth, partly by staging lavish parties to which she invited members of the political, bureaucratic and security elite.

> 'There's one landowner here—she's on our family tree—who can't control her spending and her income (from mining) is already all gone, from holding extravagant parties. When she held parties, the *bupati*, head of police (*kapolres*), head of the territorial military command (*danrem*) were all invited, just to show her social status. That's the wrong way and I've already told her, but she doesn't want to listen. I'm her elder and she has to listen.'[118]

[116] Interview with Cornelius Betty, traditional leader (ketua adat) and landowner, Supul, South Central Timor, June 2018.

[117] Interview with Michel Betty, Supul landowner, Kupang, June, 2012.

[118] Interview with Michel Betty, Supul landowner, Kupang, June, 2012.

In Atoni society, households are expected to share any surplus they accumulate within family and kinship networks. This ethic of mutual obligation evolved as an economic safety net in response to regular experience of food shortages in a marginal agricultural environment. People generally honour it as long as they continue to feel themselves vulnerable to depravation caused by crop failure or another calamity. However, almost everyone I spoke with in Supul, Buraen, Oebola Dalam, Naioni and other villages in West Timor agreed that the opportunities created by mining were eroding this ethic and creating or exacerbating grievances over the uneven distribution of land rights.

For the indigenous Timorese (Meto) people, the ethic of mutual obligations between members of family and kin is encapsulated in the phrase, *halkasih*, meaning 'one heart, many people'. By ignoring these obligations people are seen to be inviting misfortune upon themselves.

> '*Halkasih* means to express life through the act of giving, so that you can then have mutual respect based on a common heredity. Her misfortune (in frittering away her wealth) is because she doesn't honour *halkasih*. That inheritance is supposed to be to allow us to eat together. The fact is, this is what happens if *adat* (custom) is forgotten. It's hard to accept logically, but it's a fact. If the *adat* is resisted there will be problems. The person resisting won't be opposed directly, but they will encounter difficulties on their life journey: accidents, sickness, the death of livestock.'[119]

According to Cornelius Betty, this misfortune had already begun to manifest.

> 'Because of her greed, her un-Godly desires, the money is useless. She gets a few million rupiah and invites her friends over for parties and drinks until she's drunk. Now all her money's gone. She bought a car on credit and the dealer took it back. In only one or two years she's lost it all. Her child goes to school in Jakarta and asks her for money, but there isn't any left.'[120]

[119] Interview with Michel Betty, Supul landowner, Kupang, June, 2012.

[120] Interview with Cornelius Betty, Supul landowner. Supul, South Central Timor, June, 2012.

Underlining the difficulty that all landowners face in defending their claims to land under customary tenure, Betty arrived for a meeting with the author to discuss mining in Supul armed with a detailed visual representation of the Betty genealogy. Although willing to discuss other aspects of mining in Supul, Betty's speech was mostly concerned with convincing the author of the legitimacy of his own family's claims to land and the mining wealth that entailed.

> 'To see who has the ultimate control, you have to look at the family tree. (In Supul) there are three large clans (*kanaf*): Betty, Nubatonis and Liunima. Only Liunima doesn't yet have a family tree. I made the Betty family tree after mining began in order to protect family relations from fracturing and to avoid conflict. Conflicts occur because there is no family tree. [...] If there are different perceptions regarding the inheritance rights usually it is because there is no longer respect. It should already be clear, but people just try it on.'[121]

In reality, however, as Betty's own experience attests, family trees do not necessarily prevent disagreements about land. There remains considerable ambiguity around what happens to land rights when people move away to marry or seek opportunities elsewhere, and when and how usufruct rights can become full property rights. Betty's own family was embroiled in a dispute in which he was seeking to ensure that the claims of female members of his family, who had married 'out' of the village, as is custom and were no longer resident in Supul, were still recognised.

> 'Well, (they can) go ahead, take the legal path, but that land is an inheritance that has been divided among the female relatives in order that they can eat. Now he's taking it as though he owns it. It's just because of jealousy. They try to sue, and they might fulfil the legal criteria, but later they will experience many problems. How can they say they live by '*halkasih*' whilst their attitude, just because of mining, is like this? But he will have some problems in the future. Now people in the prosecutor's

[121] Interview with Michel Betty, Supul landowner, Kupang, June, 2012.

> office are also involving themselves. Now he's going to experience some difficulties. It's already heading in that direction.'[122]

This question of how the claims of absent customary landowners should be reconciled with the rights of present land-users and community members, presented yet another potential line of conflict, not only around compensation, but also processes of consent (Macintyre 2007, p. 57).

Concerned at the increasing incidence of land disputes between family members triggered by mining, Supul's village head told me that if they could not be brought under control 'it might be necessary to return all the land to the direct control of the *pah tuaf*'.[123] This idea reflected the widely held view that manganese had hastened the breakdown of traditional values and institutions, which had further exacerbated the erosion of social bonds and harmony. The *pah tuaf* is a traditional authority figure in West Timor who historically exerted real control over territory, land and resources (Ormeling 1957, p. 86; McWilliam 2002, p. 103-104). The *pah tuaf*'s authority extended to allocating usage rights to land and sat above that of the *kua tuaf* (hamlet head). Those who owed their access to land to the *pah tuaf* sometimes recognised this with payment of a harvest tribute. However, the practical powers of the *pah tuaf* have been progressively reduced as the political structures of the modern Indonesian state have increasingly entrenched themselves (McWilliam 1999, p. 140).

Apart from that, any attempt to revive the authority of the *pah tuaf* in ways that might threaten the incomes of those currently doing well from mining seemed unlikely to succeed. This could be seen from the unsuccessful attempts by the current *pah tuaf,* Cornelius Betty, to

[122] Interview with Michel Betty, landowner in Supul, June 2012.

[123] Interview with Supul village head, Domingus Banu, Supul, South Central Timor June 2012.

resolve family disputes in Supul over land, manganese and income, which highlighted the limitations of his influence.

> 'We as the traditional leaders have a headache trying to sort them (disputing parties) out. We only have the right to try to steer them in the right direction. We just try to resolve it peacefully, to reunite them. But it's hard, sometimes they're (saying), "yeah, yeah, yeah" but so as soon as we go home, they start it up again. I've invited lots of them here, to sit together. It's not as if we're strangers. And when they sit here, they say, "yeah, yeah, yeah" we agree, we've settled it", but as soon as they leave again, and are influenced by a third party, finally they fracture again.'[124]

When attempts by traditional leaders to resolve disputes through mediation were unsuccessful, they often ended up in court. As Michel Betty told me, the Betty family was itself embroiled in a family dispute over land and manganese revenues that had ended up in court. An official at the South Central Timor district court told me she had many case files relating to land disputes caused by manganese.[125] A leading notary in Kota Kupang, the provincial capital, said his office received visits from people seeking advice and enlisting his services to enforce land claims against rival claimants on an almost daily basis.[126]

From the online case database of the Indonesian Supreme Court I found two cases of land disputes in Supul involving landowners who had secured revenue-sharing agreements with PT SMR. In one case the landowner with the agreement with PT SMR was the litigant, seeking to evict others who were occupying his land. In the other case, the landowner with the agreement with PT SMR was the respondent, as others were seeking to establish their claims through the courts (Higher Court of Kupang 2011; Supreme Court of Indonesia 2012). In both

[124] Interview with Cornelius Betty, landowner, Supul, South Central Timor, June, 2012.

[125] Interview with official at the South Central Timor district court, June 2012.

[126] Interview with Sylvester Lieu, Kota Kupang, November 2010.

cases, lucrative revenue-sharing agreements with the company were the catalyst for the disputes and ultimately the court actions.

In both cases, the summaries of the judges' reasoning for their decisions revealed that even when disputants took their cases to the formal justice system, without land titles they had to rely on the same sources of legitimacy that support land tenure claims in the village. As those seeking to prove land claims outside formal land registration systems must, they drew on oral histories of the land, selectively drawing on a range of norms, principles and precedents that appeared to support their claims (Ballard 1997, p. 52). These narratives emphasised the longevity of their connections to the land, and those of their ancestors, as well as symbolic events that had taken place decades earlier which were interpreted as signifying transfers of ownership by powerful local figures such as the *pah tuaf* (Higher Court of Kupang 2011; Supreme Court of Indonesia 2012).

Both cases began in the South Central Timor District Court in Soe, before progressing on appeal to the Higher Court (of appeals) in Kupang. One of them continued all the way to the Supreme Court in Jakarta. Apart from the considerable financial cost of these legal proceedings, which were often financed by borrowing money from relatives, resolution through formal legal channels ensured a 'winner-take-all' outcome that worked against reconciliation between the two parties.

The creation of lucrative revenue-sharing agreements with a select few recognised landowners in Supul can be seen as a *de facto* formalisation of hitherto informal land tenure arrangements. Although not everyone ended up in court or applying to register their land claims, people's willingness to tolerate the ambiguity of overlapping rights rooted in social relations was replaced by a rush to assert and defend exclusive private property claims with clearly defined boundaries—the essence of formal property rights.

The Supul experience highlights that conflict around mining projects is often not just caused by mining companies failing to pay compensation, but also because access to it, and indeed other benefits such as jobs and mining companies'contributions to local development projects can also be highly uneven, 'with some persons included, and others not' (Bebbington 2013, p. 17). For its landowner revenue-sharing agreements not to cause tensions and conflict, PT SMR was relying on the goodwill and generosity of a small number of beneficiaries to redistribute the windfall more widely among their family and clan group networks. The fact that not all did, and that some of those who missed out still resided close enough to the site of extraction to notice the effects of mining, compounded the inequality.

PT SMR did not entirely neglect to compensate the wider community for their loss of amenity, however. In addition to the landowner agreements and providing labour opportunities, the company also contributed to a Corporate Social Responsibility (CSR) fund. Since the passing of a new Law on Limited Companies in 2007, this has been a requirement of all firms operating in the natural resources sector (Republic of Indonesia 2007b).

In addition to their obligations under the 2007 corporations law, the 2009 mining law (Article 108) also required mining permit-holders to develop programs for 'the empowerment and development of local communities, in consultation with the central, provincial and local governments, and the community'. Applicants for both exploration and production licenses need to include proposals for these programs in their applications. According to the government regulations, communities directly impacted by mining can propose activities under these programs to the district head, to be passed on to the permit-holder. Mining companies also must provide details of their planned community empowerment and development activities with budget allocations to the minister, governor or district head for their approval, and report every six months on their implementation (Republic of Indonesia 2010b, Articles 106-108).

PT SMR's community development manager told me that to meet its CSR obligations, the company had committed to contributing IDR 30,000 per tonne of ore extracted to a village 'empowerment' fund. A village-owned enterprise body (*Badan Usaha Milik Desa* or BUMDES), called 'Nifu Supul' (meaning 'Lake Supul') managed the fund. Based on a monthly production output of 800 tonnes, which the development manager said had been the lowest output in the past few months, Nifu Supul stood to receive at least IDR 24 million per month. The company's community development manager told me in July 2012 that to April that year the company had disbursed a total of IDR 1 billion to the fund.[127]

All of the funds transferred to Nifu Supul were to be used on village development initiatives, with specific projects selected by the village council (*Dewan Desa*), a formal state institution, in consultation with the community. The bulk of the funds were for the construction of a church, with some financial support also given to the clergy. A member of the district legislature, who was originally from the village of Supul, was appointed to monitor the use of the funds by the village enterprise body. The legislator who filled this role was a member of the Betty clan, the powerful clan of local landowners that had benefited significantly from the mining company's presence. The head of the Betty clan, Cornelius Betty, proudly volunteered to me that he also served as an advisor to the village enterprise body, and regarded the legislator appointed to oversee it as his 'son'.[128]

PT SMR's prospectus for its Initial Public Offering in 2011, which ran to 239 pages, dedicated three paragraphs to CSR activities undertaken since 2008. Apart from environmental restoration, it mentioned it had 'created work opportunities for residents around its mine site, lent its operational vehicles to be used for construction of a village road

[127] Interview with PT SMR's Community Development Manager, Supul, South Central Timor, May, 2012.

[128] Interview with Cornelius Betty, Supul landowner, Supul, South Central Timor, 23 July 2012.

(2008-09), built sporting facilities and facilities to improve access to and management of clean water, and in 2010, installed electricity for 900 families (PT SMR Utama 2011, p. 139).

Aside from fulfilling regulatory requirements, mining companies also undertake CSR out of self-interest, as an investment in building positive relationships with communities, or what the mining industry refers to as a 'social license to operate', and to present themselves as good corporate citizens (Welker 2006; 2009; Kemp 2009). PT SMR appeared to be genuinely attempting to achieve these aims through its investment in the CSR fund and other community development activities. Some of the practical support the company had provided to the community, before it had set up its CSR fund, was very early in the process of establishing itself in Supul. However, while the community no doubt welcomed the new road, clean water, electricity and other facilities, these were clearly not enough to neutralise the social jealousies created by the highly concentrated distribution of revenue, among 40 landowners.

Notwithstanding the many disputes that arose around PT SMR's approach to compensating landowners, the agreements were extraordinarily generous for the fortunate few beneficiaries and seemed to be exceptional in this regard in NTT. Meanwhile, most people in West Timor felt marginalised by processes of land acquisition by mining companies, because of both their inability to assert claims to landownership, or because of the way mining companies failed to engage with them in a way that respected their legal rights or conceptions of local sovereignty.

District governments were instrumental in enabling these processes of land acquisition and were responsible for protecting local communities' rights and environments and resolving conflicts between communities and mining companies. It is important, therefore, to examine the interests of district governments in mining, and their incentives, constraints and

limitations that contributed to some of the outcomes described above. This is the focus of the next chapter.

Chapter 4 – Short-changing the poor: mining revenue and official corruption

Until decentralisation in 2001 the role of provincial and district governments was limited to implementing the central government's plans, policies and decisions. Regional leaders at both levels were accountable not to the people they served, but to the central government. Provincial governors and district heads were appointed by the central government.

Law 22/1999 on Regional Autonomy, which took effect from January 2001, gave district governments residual responsibilities for all sectors not explicitly mentioned as exclusive central government powers (Article 7).[129] The law also defined the scope of district government authority in Article 11, to include 'public works, health, education and culture, agriculture, transportation, industry and trade, investment, the natural environment, land, cooperatives and labour' (Republic of Indonesia 1999b). If there could be any doubt that these areas of responsibility included mining, Article 119 stated that district government authority extended to all areas located within a district's territory, 'including areas previously zoned for plantation, mining and forestry activities' (Republic of Indonesia 1999b). A government regulation that spelled out the powers of the central and provincial governments under decentralisation confirmed that district government authority over mining incuded the issuance of mining permits (Republic of Indonesia 2000).

The national Ministry of Energy and Mineral Resources attempted to delay the decentralisation of mining authority by five years, claiming local governments lacked the human resources, infrastructure, and regulatory framework to administer the sector

[129] Article 7 (1) lists these exceptions as 'international politics, defence, justice, monetary and fiscal policy, religion, and other sectors'. 'Other sectors' are defined by Article 7 (2) as 'national macro planning, fiscal equalisation, the system of state administration and national economic bodies, nurturing and empowerment of human resources, the use of natural resources with strategic advanced technology, conservation, and national standards (Republic of Indonesia 1999b).

effectively. The Ministry also feared these weaknesses would have further negative impacts on foreign investor confidence, already at an all-time low due to political instability and the collapse of the state's ability to guarantee security around mining projects (United States Embassy 2001). However, the Ministry of Home Affairs, overseeing implementation of decentralisation, rebuffed the mining ministry's attempt to delay the transfer of its many of its powers to the districts. For better or worse, the districts were now in full control of decisions about the exploitation of the nation's mineral resources.

The decentralisation law made both provincial and district governments autonomous units and abolished the administrative hierarchy that had previously existed between them. Provincial government authority was limited to the issuance of permits and oversight of mining operations that traversed district boundaries. (Republic of Indonesia 2000, Article 3). District governments had full control of mining operations within their jurisdictions. This rule significantly limited the ability of provincial governors to influence the policies, practices and decisions of district-level leaders, or to impose any kind of coordination between districts.

For many proponents of democratic decentralisation, particularly in relation to natural resources, this was as it should be. According to supporters of decentralised control of natural resources, the closer decision-makers were to local communities, the more natural resource management would reflect local preferences and interests, and particularly those of rural and indigenous groups (Fox et al. 2005, p. 92-93; Rosser et al. 2005, p. 72; Duncan 2007).

Six years after the decentralisation law took effect, the government passed another regulation, Government Regulation 38/2007 on the Division of Government Responsibilities, that detailed the full range of district government powers over mining. In addition to issuing permits, GR 38/2007 affirmed that district governments were also responsible for 'oversight of mining activity, occupational health and safety, the mining environment, and reclamation

and conservation, and increasing the value-add from mining activities. As part of their oversight function, district governments were required to appoint and train a mining inspector, as well as train their own functional staff in these areas (Republic of Indonesia 2007a).

The decentralisation of mining licensing powers took effect around six years before the manganese boom began in NTT. The highly varied responses of district governments to these powers in the context of this boom revealed a range of interests and government priorities exerting an influence on mining policy and decision-making. Contrary to many observers' expectations, those interests and priorities did not always align with those of the rural poor who were most directly affected by decisions about mining.

Mining rents and district development

As mentioned in the introduction, district governments across Indonesia responded to their new power to issue mining permits with great enthusiasm. In West Timor, district governments issued more than 200 exploration permits for manganese in just two years between 2007, when the manganese boom began, and 2009 (North Central Timor District Government 2009; Kupang District Government 2010; Faot 2010; Purwanto 2012), when provisions in the new mining law brought mineral licensing activity to a halt across the country. Many observers have explained the enthusiasm of district governments for issuing mining permits as a direct result of pressure and incentives to generate local sources of revenue created by Indonesia's model of fiscal decentralisation (Fox et al. 2005, p. 72; Duncan 2007, p. 712; OCallaghan 2010, p. 222; McWilliam 2011; Suardi 2017). This is borne out by the experience of decentralised mining governance in NTT. District government

officials in NTT ubiquitously referred to the revenues, from both royalties and a range of local mining taxes, which would flow to district budgets when justifying their support for mining (*Timor Express* 2009a; *Pos Kupang* 2010a; r; Yabiku NTT 2010; Naif 2010; 2011; ARANG TTS 2011).

The decentralisation of responsibility for delivering basic government services, such as health, education and infrastructure, placed significant pressure on district leaders to generate local sources of revenue to supplement their allocations from the central government to deliver those services and develop their regions. Districts that were able to generate higher levels of income from local or shared revenue streams had greater budgetary resources to spend, and more autonomy over how they spent it. However, as observers and critics of the local governance of mining in Indonesia, including in NTT, have pointed out, pressures and incentives to raise revenues from natural resources also acted as an inducement to governments to overlook competing considerations related to the environment and the wellbeing of indigenous and local communities (Duncan 2007; JPIC-OFM Indonesia 2008; Naif 2010; 2011). District leaders tasked with making decisions about access to mineral resources who were preoccupied with increasing local revenue streams, were also more likely to favour industrial modes of production over artisanal mining, which would be more likely to receive support under a livelihood paradigm.

Chapters 2 and 3 illustrated some of the effects of governments subordinating community livelihood and environmental concerns to the pursuit of revenues, and the case studies that follow in Chapters 5 and 6 elaborate further on the consequences of local government behaviour for rural livelihoods in NTT. However, by espousing the benefits of mining for district revenues, district government leaders also created a problem for themselves: regional revenues from mining provide a quantifiable indicator, which could be used to measure mining's net contribution to regional coffers. This was a problem for district leaders in NTT

because, due to a combination of the relatively small scale of semi-mechanised manganese projects, and the relatively small share of total state income from mining received by mineral-producing districts, the returns to district budgets were modest.

In 2011, the Indonesian Mining Association (IMA) estimated mineral-producing districts received only seven per cent of all state revenues generated by mining within their territories. This meant that in many cases the populations of districts that bore the environmental brunt of mineral extraction for the nation stood to receive relatively little in return. The IMA characterised the division of mining rents as politically unsustainable given the expectations of district populations and local communities in mining regions, and argued it was an underlying cause of disputes between mining companies and district governments, as well as between mining companies and communities (Indonesian Mining Association 2011).

Given that perceived injustice about around the distribution of natural resource wealth had been one of the major drivers of decentralisation a decade earlier, this situation was a source of considerable lingering resentment in many mineral-producing regions, including in NTT.[130] It encouraged some district governments to behave in predatory, even 'punitive' ways towards mining investments, which are highly vulnerable due to their immobility (OCallaghan 2010, p. 222). In 2011, the Indonesian Mining Association wrote to the central government to complain that:

> 'the injustice of the distribution of state income from mining has pushed many district governments to take their own initiatives and were imposing unsanctioned local taxes and charges on mining companies to increase local-source income from the mining sector' (Indonesian Mining Association 2011).

[130] Interview with deputy district head of Manggarai, Ruteng, Manggarai, 10 December 2012.

As many of these local taxes went beyond those permitted under the new 2009 law on regional taxes, the IMA claimed this was 'destroying Indonesia's reputation in the eyes of investors'. However, revealing that the IMA's members agreed the division of mining rents from mineral-producing districts was unjust, the IMA called for the government to

> 'review the distribution of all state revenues to find a fairer formula for mineral-producing districts, and renegotiate with mining investors the form of mining companies' voluntary contributions towards the development of producing regions (Indonesian Mining Association 2011).

Although I did not hear of formal taxes being imposed on mining companies while I was in NTT, it was common knowledge that district governments required mining companies to pay 'voluntary' contributions towards district development, known as 'third party contributions' ('*sumbangan pihak keitga*'), on top of their tax and royalty obligations to the central government. Even with such payments, however, they were not sufficient to convince either district officials or district populations that they were receiving a fair share of total mining rents, especially since district governments were responsible for all aspects of mining governance, including health and safety, and environmental rectification. I heard many complaints from government officials, NGOs monitoring mining and ordinary people about the small returns to the district from mining rents, and the lack of visible evidence these returns were having any impact on district development. Such complaints were ubiquitous features of debates about mining.

By far the largest component of state revenue received from mining companies is corporate tax, which the central government collects and retains as part of consolidated revenues. Royalties and land rents from natural resource industries are part of shared revenues (*Dana Bagi Hasil,* DBH). These funds are collected by the central government and shared between the central, provincial and district governments according to a formula established by the 1999 fiscal decentralisation law that allocated the district of production 32 per cent of

production royalties and 64 per cent of land-rents. This division was retained in the updated 2004 fiscal balance law (Republic of Indonesia 1999c; 2004d). Since 2009, the Ministry of Finance has stipulated the local taxes and user fees that district governments can lawfully levy on mining companies (and other businesses).[131] These taxes and charges, together with 'third party contributions', form part of regions' local-source, or PAD (*Pendapatan Asli Daerah*), income.

As the figures below indicate, even in districts hosting the most productive semi-mechanised manganese mining projects in NTT, the contribution to district budgets from manganese mining (from shared revenues and local-source income combined) represented only around one per cent of total district revenues. These meagre returns meant district governments had very little to redistribute across district populations to demonstrate that mining was delivering tangible benefits for regional development, as they suggested it would. The paltry returns to district budgets represented yet another way that the extractive process and distribution of the surpluses it created marginalised the rural poor.

Taking shared revenues first, the Ministry of Finance's published estimates of district allocations for royalties and land tax for 2011 and 2013 illustrate the order of magnitude. In 2011, Belu was NTT's highest earning district for both production royalties and land rents was, receiving just IDR 1,325,982,200, or around USD $151,000 for both revenue streams

[131] From 2001 to 2009, district governments were able to create new taxes and user charges so long as they were consistent with several criteria supporting central government economic policy objectives. However, many districts created local taxes that the central government deemed not to meet these criteria, and which it viewed as 'nuisance' taxes at odds with national economic policy. A joint taskforce of the Ministry of Finance and the Ministry of Home Affairs identified 2,907 'nuisance' local tax regulations and had them annulled by the Supreme Court. Of these, 288 (10 per cent) applied to the energy and mining sector, and 55 (all sectors) were created by districts in NTT (Mahi 2010).

To address the issue, in 2009 the central government passed a new law (Law No. 28/2009 on Regional Taxes and User-charges, instituting a 'closed' list of permissible local taxes and user charges. This list limited district government taxes on mining to user charges for street lighting and groundwater usage, and taxes on land and buildings and their acquisition (Republic of Indonesia 2009b).

combined. All other districts in NTT were far below this mark (Ministry of Finance 2011b). In 2013, Belu's shared revenues income from mining declined by 41 per cent from 2011 to only IDR 774,116,000 (IDR 524,858,600 from royalties) or USD $88,154, second in NTT, just behind North Central Timor (IDR 792,247,200) (Ministry of Finance 2013).[132] To put these modest sums in perspective, in 2011 the district of Belu reported total government revenues from all sources of IDR 563.035 billion (USD $64.127 million) (Ministry of Finance 2011a). In other words, mining royalties and land rents comprised just 0.2 per cent of Belu's total income in 2011. Such an amount would be unlikely to have any noticeable effect on government spending for the district's population and was not enough to support district leaders' assertions that supporting industrial mining represented a rational approach to local development. However, in justifying their support for mining, district leaders also liked to talk about 'PAD', regional revenues derived from the local taxes (*pajak daerah*), user fees (*retribusi*) and the 'third-party contributions' that district governments can levy directly on mining companies.

In NTT, third-party contributions have been by far the largest component of PAD derived from mining (Ministry of Finance 2011a). Although ostensibly voluntary, payments made by businesses to the district or provincial government to support local development initiatives, they are for all practical purposes obligatory, and therefore essentially just another form of local tax. The fact that notionally voluntary payments constituted the single greatest district revenue stream from mining in NTT points to district government officials' dissatisfaction with other revenue streams.

[132] Belu's dramatic decline likely reflected a drop in production and sales in all districts caused by the imposition of an export ban on raw minerals imposed by the central government, discussed later in the chapter.

In Belu District, NGO Article 33 found that mining companies operating in the district were paying third party contributions on a per kilogram rate of either IDR 100 or IDR 155 per kilogram, with the prices set through negotiations between the district government and an association of local manganese producers. A district mining official in the district of Belu informed Article 33 that in 2010 the Belu government received IDR 4.339 billion (USD $471,887) in third-party contributions from mining companies operating within the district (Purwanto 2012). This was more than three times what the district received in royalties and land rents the following year.

To put this figure in perspective, Belu's total budget from all revenue sources in 2010 was IDR 512.018 billion (USD $55.684 million) (Ministry of Finance 2010). Third-party contributions from mining in Belu in 2010 therefore contributed just 0.8 per cent of the district's total revenue from all sources. This figure becomes somewhat larger if funds for civil servant salaries are excluded. As in most districts, in Belu in 2010, most of the budget, IDR 312.425 billion, was allocated to civil servant salaries, which meant IDR 199.593 billion was left for spending on infrastructure and district development programs (Ministry of Finance 2010). As a proportion of the budget excluding funds pre-committed to paying salaries, Belu's income from third-party contributions represented 2.17 per cent of its budgetary resources.

The income becomes much more significant when viewed as a proportion of all regional income (PAD). Belu's total PAD income in 2010 was IDR 31.668 billion (Ministry of Finance 2010). Third party contributions from mining therefore amounted to around 14 per cent of Belu's local source revenue for 2010.[133] Although this makes it appear more

[133] Belu's local tax and user-charge receipts from mining were not available. Figures published in the annual district statistical compilations do not break down income from regional taxes or user charges by sector.

significant, it also highlights the relatively small local source revenue base for the predominantly rural and poor districts of West Timor. A more meaningful measure of the value of the third-party contributions from mining to Belu would be what a district government could do with it, minus any costs to public expenditure incurred to obtain the revenue.

The poverty of NTT's districts and the meagre budgets available to them for spending on road infrastructure, among many other equally important priorities, means that a large proportion of roads are in a constant state of disrepair. Not built to withstand large volumes of heavy vehicle traffic, increasing numbers of trucks carrying shipping containers filled with manganese has put even more pressure on them. I observed many roads used to transport manganese to ports in severe states of disrepair. While it is difficult to quantify the extent of damage attributable to trucks carrying manganese, this traffic was clearly an extra burden on district roads. Impacts of mining on public roads represent a cost that is borne entirely by regional populations, but as district governments do not control road user taxes, they are unable to recoup these costs directly from mining companies.

A study by the World Bank on the economic costs of poorly maintained road infrastructure in the district of Manggarai, Flores, revealed the enormous economic costs that poor and damaged roads impose on the rural poor (Nachuk et al. 2006). This was both due to much higher prices paid for incoming goods, and lower profit margins for goods sold to markets elsewhere. Already facing significant barriers in accessing markets, for the rural poor the small returns to district budgets and impacts on roads need to be factored into any assessment of the costs and benefits from manganese mining.

Further damage to already poor roads from mining was also a source of tensions between local communities and mining companies, with the potential to develop into open conflict. In

the village of T'eba in North Central Timor, the community was outraged that a marble mining company operating locally had severely damaged local roads with its heavy trucks and not fulfilled a 10 year old promise to pave them (Amsikan 2012b). Nor had the district government used its own budget to repair the roads. If district populations as a whole could justifiably feel they were missing out on state rents from manganese mining, communities living in close proximity to mining projects had even stronger reason to feel marginalised. The politics of mining revenues in NTT was not only about how much districts received, but also how district governments distributed this income.

Despite the fact that individual mining companies pay third party contributions to the district government, ostensibly to fund local/ regional development, district governments in West Timor, and throughout NTT, were generally not in the practice of allocating even a portion of these funds for projects in the communities where the mining company was operating. There was no recognition in the use of these funds that the communities living near the site of extraction were incurring most of the costs associated with the district hosting a mining sector. Rather, the funds were absorbed into consolidated revenue, ensuring any impact, both in terms of infrastructure or services and on attitudes towards mining, would be dispersed too thinly to notice.

In South Central Timor, a community relations manager at PT SMR, the company operating West Timor's most productive manganese mining project, told me the company paid the district government third-party contributions at a rate of IDR 100,000 per tonne of ore.[134] Based on the company's reported annual production in 2010 of 12,000 tonnes (PT SMR Utama 2011, p. 20), the district government would have collected IDR 1.2 billion (USD

[134] Interview with PT SMR's community development manager, PT SMR office, Supul, South Central Timor, 10 May 2012.

$130,500) from this mining project, the only one in full production in the district at the time. While such an amount would have almost no discernible impact on the district as a whole once absorbed into the budget and dispersed in district-wide spending programs, as happened in practice. The impact of this money would have been significantly more noticeable if spent on the communities in the villages of Supul and Noebesa, and increasingly so as production increased in the future.

The failure to redistribute mining revenues below the district level was not unique to NTT, but conformed to the national pattern (Fox et al. 2005, p. 103). Laws governing the redistribution of royalties and land rents neither require nor facilitate redistribution below the district level. District governments in NTT therefore had complete autonomy over how they spent these discretionary funds. This discord between the highly localised environmental costs of mining and the generalised redistribution of revenues negated any potential for those revenues to mitigate or neutralise opposition to mining in the most affected communities.

District government politicians and bureaucrats alike in NTT said pursuing mining and other natural resource investment was important as a means of making up the shortfall from their existing income streams to deliver local services and infrastructure. Although the strategy has met limited success to date, that does not mean revenues were not a genuine motivation. Nevertheless, the fact remains that for the rural poor in NTT mining has not yet had a significant impact on the capacity of the producing districts to invest in the social and economic development of their regions and populations. Dreams of mining-led development remain an unfulfilled promise.

Investment of income from royalties and taxation in public infrastructure or services has the potential to be the most significant channel by which mining can promote inclusive development—that is, development that offers broad benefits to populations, including

economically marginalised groups (Bebbington 2013, p. 27). That redistribution of state income from mining has had little impact on economic and social development in NTT to date in part reflects the relatively small-scale of production, which itself is an outcome of the labour-intensive mode of extraction. However, to a significant extent it is also due to national laws and regulations regarding the collection and redistribution of tax and non-tax income from mining. For communities directly affected by mining, the failure of mining receipts to promote inclusive development has also been in part the result of choices made by district governments about how, and where, they use the limited income that mining has provided.

This has made it harder for district leaders to defend their pro-mining policies against charges that districts are giving up their resources too cheaply. For local critics of district governments' support for manganese mining, the relatively modest public returns from NTT's manganese mining boom, at least in its first few years, were not sufficient to justify the environmental and social impacts of industrialised mining (JPIC-OFM Indonesia 2008; Naif 2011).[135] Although there was obviously potential for government mining receipts to increase as the scale of investment in mine development and production increased, environmental impacts would also be expected to increase. For local critics of mining in NTT, it was therefore not just the absolute amounts returned to regional revenues from mining, but the overall *share* of mining income governments received that they argued inadequate to justify the risks of industrial production.

The small returns also left elected leaders who had given strong support to mining open to criticisms of their mining policies. It led some local NGOs and the Catholic Church in particular to question the veracity of politicians' claims that their support for mining was really about increasing district government revenues at all (JPIC-OFM Indonesia 2008; Naif

[135] Many local informants expressed this view to me in interviews and informal conversations.

2010; 2011). This has left district governments wide open to broader critiques of mining and district government mining policy that suggested politicians and bureaucrats were not genuinely concerned with the public interest. It has helped fuel perceptions that more political or personal interests were behind their support for industrialised mining as a regional development strategy (Erb 2011), as discussed in the next part of this chapter, making mining-led development even more difficult to achieve in the province.

District government–mining company relations

Although district politicians always emphasised the public benefits underpinning their support for mining in NTT, significant private and political interests of elected leaders and bureaucrats also heavily shaped relations between mining companies and district officials. These interests revolved around both legal and corrupt practices, which together had a range of negative consequences for the rural poor. They influenced local elections and in doing so undermined local democracy. Political donations and bribes corroded the neutrality, integrity and quality of government decision-making, explaining why district governments often prioritised the interests of mining companies over local communities, landowners, artisanal miners and environments. They also deprived the district government budget of income from royalties and local mining rents that could have been invested in local economic and social development. Finally, corrupt behaviour, as I highlight below, deterred some more technically capable and socially responsible mining companies from investing in the region, leaving the opportunities to less technically qualified and less socially responsible firms.

Local elections and mining

A key feature of Indonesia's democratic decentralisation reforms was the move to elected, rather than centrally appointed, district and provincial executive leaders. From 2001, district and provincial legislatures (known as the DPRD – *Dewan Perwakilan Rakyat Daerah*) elected executive leaders for their regions. However, this system created deep public dissatisfaction due to widespread practices of candidates buying legislators' votes, known colloquially and disparagingly as '*money-politic*' (Aspinall 2005, pp. 147-148). In response, in 2004, the government passed a regional autonomy reform bill that replaced this indirect democratic model with direct elections for district heads and provincial governors (Republic of Indonesia 2004c).

It was hoped that direct elections would make it impossible for candidates to simply buy their way into office, due to the vastly increased costs of buying votes from the public. However, direct elections also necessitated increasingly expensive campaigns, putting pressure on candidates to find sources of campaign funding. As political parties in Indonesia are usually lacking funds to support their activities, they often resort to 'selling' party nomination to candidates in regional executive and legislative elections (Hillman 2017; 2018). As many candidates need to go heavily into debt to pay the price for the party's nomination, they must then find ways to repay their debts once in office, virtually ensuring that 'corruption becomes a 'built-in element of political activity' (Mietzner 2007, p. 256).

Overwhelmingly, candidates in these elections turned to the private sector, and particularly companies that are heavily reliant on obtaining government contracts (Clark & Palmer 2008). Private companies making donations to political campaign funds in Indonesia can be an entirely legitimate part of the political process, provided donors comply with the rules for making such donations. However, when the companies making the donations expect and

receive some kind of political favour in return, it is corruption. As it happens, companies that do contribute tend to have a strong expectation that the candidates they support will repay them once in office (Mietzner 2011, p. 131).

Mining companies do not compete for government contracts but do compete for access to resources and rely on government to issue a plethora of permits, authorisations, security that only the state can provide, and goodwill to operate. The immobility of mining investments makes them highly vulnerable to various forms of predation by local officials (OCallaghan 2010). As in other mineral-rich regions of Indonesia, from the onset of the manganese boom in 2007, mining companies became significant sources of campaign donations in NTT. As the outcome of any electoral contest was unknown, often companies contributed to the campaigns of multiple candidates.[136]

One former deputy district head in West Timor told me that while he was still in office in 2008, the incumbent district head at the time had amassed a large fund for his re-election campaign by leveraging access to the district's minerals to obtain political donations. The incumbent district head was re-elected. According to the former deputy, who also ran against the incumbent as a rival candidate for the leadership, campaign funds from mining significantly influenced the election outcome.[137]

Requests to mining company directors for political donations tended to occur in the lead-up to elections. An owner of a hotel in West Timor told me that when elections were approaching, many of the mining investors he knew who already held mining rights typically tried to 'disappear', to avoid the inevitable requests for campaign donations from both incumbent

[136] Interview with a former deputy district head, Kota Kupang, 8 March 2011.

[137] Ibid.

leaders and other candidates.[138] In several districts, the number of mining permit approvals issued also tended to spike in the weeks preceding and following an election. A senior bureaucrat within a district mining office told me that when mining permit applications that had been stuck in the system for some time were suddenly approved close to elections, this was never merely a coincidence.[139] The pattern of a flurry of mining permit approvals in the lead-up to and shortly after regional elections was also one that Indonesia's anti-corruption body, the KPK, has observed across the country (KPK 2018, p. 22).

In North Central Timor, local NGO workers told me mining interests were supporting several candidates in the 2010 district executive elections. One of these was the incumbent, who was regularly seen accompanied by mining investors whilst campaigning in the district. The NGO workers claimed the investors even made an offer of higher prices for manganese to artisanal miners if the community would boycott the campaign of a rival candidate who was regarded as 'anti-mining'. Another candidate was promising to 'ban mining' or at least conduct a review but was believed to be receiving support from a mining company. The election in North Central Timor was extremely close, with only 700 votes separating the winner, who had been the incumbent deputy, from the incumbent district head, in second place. According to both local NGO workers and a member of the district legislature, when the defeated incumbent protested the result in the Constitutional Court in Jakarta, several mining investors accompanied him and provided witness statements in support of his claims.[140]

The election in North Central Timor had also coincided with a flurry of permit approvals. The district government had not issued any production permits in North Central Timor prior to the election in 2010, even though there were around 80 active exploration permits. District

[138] Interview with hotel owner in Kefamenanu, North Central Timor, 3 December 2010.

[139] Interview with district government mining office official, Kupang District, November 2010.

[140] Interviews in Soe, South Central Timor, December 2010.

mining office records showed that in the six weeks before the election on 11 October 2010, the incumbent approved 13 applications for upgrade of exploration permits to production, with four more following in the four weeks after polling day, before the formal handover of power (North Central Timor District Legislature 2010).

It is of course possible that the timing of these decisions was unrelated to the elections. However, local informants I spoke with suggested this was unlikely. Sudden spikes in the issuance of natural resources industry permits around regional elections were a national phenomenon (*Kompas* 2012). Seeking campaign financing from mining companies was not exclusively a practice of candidates in executive elections. Many candidates running for seats in district legislatures, whose role includes overseeing the conduct of district executives and the bureaucracies they lead, also were not above using their positions to seek support from mining companies. In return, mining companies expected them to advocate for mining interests. One district legislator, on the island of Flores, who refused to seek or accept support from mining, claimed his fellow legislators had ridiculed him for refusing the payments that mining companies had offered in return for providing political support for mining.

> 'They said to me, "yes, you will reach heaven before us, but who will compensate us for our lost income if mining companies eventually withdraw from the district?"' [141]

Given that one of the main roles of the district legislatures is to exercise oversight of the executive, this is clearly another major risk for the integrity of mining administration and oversight at the local level. If elections and the need to raise campaign funds had influenced the timing of permit approvals and caused district legislators to defend mining interests over those of the communities they represented, it is not surprising that district politicians

[141] Interview with district legislator, Labuan Bajo, West Manggarai, 14 December, 2010.

preferred to award mineral rights to investors than to local communities to pursue mining as a livelihood activity.

Mineral licensing and official corruption

While political donations by mining companies were not in and of themselves necessarily corruption, donations that are directly linked to decisions that favour a donor are. However, opportunities for corruption around mining in NTT were not limited to politicians, and not always linked to elections. Local bureaucrats also controlled many decisions and regulatory powers that could be leveraged to extort bribes at any time. Mining and mineral licensing processes are widely recognised as posing a high level of risk for official corruption in all countries (Wolfe & Williams 2015). In Indonesia, the Indonesian Corruption Eradication Commission, the KPK (*Komisi Pemberantasan Korupsi*), has identified 35 such opportunities, 20 of them 'very high risk', just within the process of issuing mining permits alone. Under decentralisation, most of these were tied to processes and documents administered by district governments (KPK 2018, p. 22). Additional opportunities for extracting bribes and other forms of material benefit existed around the collection and use of state mining revenues, and the enforcement of environmental regulations.

Corruption is a constant of Indonesian bureaucracy and politics. Transparency International's annual corruption index that ranks countries according to domestic perceptions of corruption ranked Indonesia 100 out of 183 countries, but its score (32) placed it far closer to the lowest score (10), than the highest (95) (Transparency International 2011)[142]. Indonesia's Corruption Eradication Commission (KPK) regards the mining sector as one of the most afflicted by

[142] By 2017 it had improved marginally, to 96th, with a score of 37.

official corruption, affecting all aspects of interactions between mining companies and government (KPK 2018, pp. 18-24). In 2005, the World Bank assessed that decentralisation had significantly increased the potential for corruption in Indonesia's mining sector (World Bank 2005). As the title of a report by Germany's donor agency suggests, 'corruption costs everyone, but it costs the poor more' (GTZ 2008). This was certainly the case in NTT. In the context of mining, the impacts of corruption on the rural poor are as many and varied as the forms that corruption can take.

A well-connected mining investor in West Timor told me that bribes and other informal payments to local bureaucrats were 'essential', both to obtain mining rights and to ensure the smooth and timely processing of all ongoing administration related to a mining concession. The casualness with which he told me this during our informal conversation suggested he believed it was so obvious as to not need saying.

> 'Usually mining investors and local officials would meet in Jakarta to socialise and develop friendly relations. That makes it easier to talk about business. They might go to a bar. Fortunately, NTT men like drinking, so that makes it easier to settle everything.'[143]

Mining licensing processes, because they occur at the beginning of the value chain in mineral production, also provide the foundation that determines whether mining succeeds or fails to deliver development benefits. Because potentially enormous financial rewards are at stake for commercial entities in licensing processes, and processes can be complex, they are also highly vulnerable to corruption. The less transparent such processes, the more vulnerable they are to corruption. (Wolfe & Williams 2015, p. 45).

[143] Interview with a mining investor in West Timor, December 2010.

When officials use their powers over licensing decisions to extract bribes, the most obvious and immediate implication for the poor is that those who are unable to pay are priced out of access to the good, service or resource (GTZ 2008, p. 3). In the context of mining in NTT, a high rate of corruption around mining permits and licensing would at least partly explain why local communities seeking to exploit manganese as a livelihood activity in West Timor were unable to gain legal rights to the resource. It would also explain the lack of discernment shown by district governments in issuing vast numbers of mining permits to entities with little to no mining experience or technical capability, and in many instances, little capital to invest, despite claiming that their decisions were aimed at increasing district government revenues.

Governments can select from a range of methods for awarding exploration rights to minerals. Up until 2009-10, Indonesia's approach was one of 'first-come, first-served'. As the name implies, this means exploration rights were awarded to the first entity that lodged a complete application for rights to a given area. The main risk for corruption of mining permit processes under such a system is that applicants will offer bribes or other inducements to subvert the order of applications and obtain rights ahead of earlier applicants.

Between 2007 and 2010, the province of NTT went from having only a handful of active manganese mining concessions to more than 250. More than 200 of these were issued up to the end of 2009 in just three districts in West Timor—Kupang (53) (Kupang District Government 2010), North Central Timor (88) (North Central Timor District Government 2009), and Belu (81) (Purwanto 2012). Only eight licenses were issued in South Central Timor (Faot 2010). A further 31 manganese permits were issued between 2008 and 2010 in the three districts of Manggarai (17), East Manggarai (10) and West Manggarai (4) on the island of Flores (Manggarai District Government Office of Mining and Energy 2010; East Manggarai District Government Mining and Energy Office 2010; West Manggarai District Government Mining and Energy Office 2010).

The process by which these permits were issued was characterised by an almost total lack of transparency. An audit of mining permits issued by district and provincial governments undertaken by MEMR in 2012/2013 found only 32 of North Central Timor's 88, only 33 of Belu's 81, and only one of Kupang's 53 mining licenses were compliant with all of the regulatory and reporting requirements ('clean and clear'). Five of the eight licenses issued in South Central Timor were compliant (Hasiman 2013, pp. 79-83).

Local observers of the mineral licensing processes in NTT, including NGOs and journalists, told me that during the rapid land grab that occurred between 2007 and 2010, district governments had often awarded manganese exploration permits through a covert or 'dark' auction (*lelang gelap*).[144] The enormous demand for rights to manganese, or land thought to contain it, enabled officials handling licensing processes to play investors off against each other.[145] One district legislator in West Timor told me mining investors regularly visited him at his home to complain of ever-increasing demands from district government officials for informal payments to have their permit applications processed.

> 'I was visited by several investors who said their mining permits had been signed but they were still being held by the legal section because the amount (of money) which had been requested was beyond their means to pay. They said, "our permits should already have been issued, we came to collect them,

[144] Interview, local NGO, 7 January 2011.

[145] In part to address corruption in mineral licensing processes, the 2009 mining law replaced the 'first-come, first served' system for granting mineral exploration rights with one based on a transparent auction, in which the rights would be awarded to the highest bidder in an open and transparent bidding process. This promised two benefits: reducing the risk of corruption, and generating revenues for the state before mining had commenced. To phase in the new law, the mining ministry instructed all governments to cease issuing exploration permits from April 2010.

Only applications that had been lodged before the new law came into effect in January 2009 could be issued after January 2009 and then only until the April 2010 deadline. However, as the auctioning of mineral rights can only be conducted on the basis of solid geological information about mineral resources in a given area, the new system would not be implementable until the government had commissioned and completed the necessary surveying work to create a comprehensive geological map. Given the financial costs and logistical and administrative complexity of completing this work, this was likely to take several years to complete. Risk to investors in the absence of geological data is a major limitation of the auction approach to mineral licensing, and why few mining jurisdictions use it exclusively (Wolfe & Williams 2015, p. 46).

> but they asked for some money we couldn't afford to pay. So, we haggled but couldn't agree (on a price)." There are formal payments they have to make, but the "below the table ones" are always much more than the "above the table" ones.' [146]

An NGO in West Timor said informal payments in the hundreds of millions of rupiah was standard for obtaining mining licenses and permits.[147] In Flores, a district legislator who was also an environmental advocate who was critical of the district government's mining policies told me he had helped a Chinese company to obtain an exploration permit because he wanted to know how the process worked.

> 'It took 2 days for the permit to be issued. There's no district regulation imposing any fees that need to be paid to obtain the permit, so the district government didn't receive anything for that. But it turns out the company had paid without my knowledge, IDR 150 million. It didn't go into the district budget.' [148]

A clear sign that district governments in NTT had sometimes violated the 'first-come, first-served' principle of Indonesia's pre-2009 mining licensing process was the large number of instances of two permits being issued for the same area. A district head in West Timor, who I believed was not corrupt, told me he was forced to redeploy the head of his district's mining office after discovering that he had been seeking bribes in exchange for processing license applications. The official's focus on profiting personally had, according to the district head, led him to process and issue overlapping permits, leading to conflict between local groups who aligned themselves with different permit-holders on the ground.[149]

Another consequence of the way the licensing process in NTT was often conducted as a covert 'auction' of bribes, was that it made it easier for opportunistic speculators and rent-

[146] Interview with district legislator in North Central Timor in West Timor, NTT, 7 Kefamanenu, North Central Timor, January 2011.

[147] Interview with local NGO staff, West Timor, 7 January, 2011.

[148] Interview with Manggarai district legislator, Ruteng, Manggarai, 9 December 2010.

[149] Interview with a district head, West Timor, NTT, 23 July 2012.

seekers with minimal technical capacity or experience and lacking in any commitment to social responsibility, to acquire the rights to mineral resources. This was because district governments were willing to ignore administrative requirements of licensing processes designed to ensure a minimum standard of transparency and accountability around license applications and applicants. Several examples of such practices are detailed in the case study of mineral licensing in North Central Timor below.

Mineral licensing in North Central Timor

The most detailed publicly available picture of problems within mineral licensing processes in NTT emerged from a report on manganese mining governance in the district of North Central Timor. The report was produced by a special committee (*panitia khusus* – '*pansus*') of the district legislature formed to investigate every aspect of local governance of the sector in the district. It provided ample evidence of administrative failings and irregularities to support its conclusion that the licensing process had been subverted to serve the private interests of mining investors and corrupt officials. The report also drew links between this subversion of the public interest function of mineral licensing and impacts on local communities.

In North Central Timor, the district government issued more than 80 exploration licenses between late 2008 and mid-2010 (North Central Timor District Government 2009), amounting to a total area equivalent to 40 per cent of the district's landmass. In response to a range of concerns spanning the impacts on communities and the environment, irregularities in licensing processes and concerns about the integrity of revenue collection processes, in December 2009 the district legislature formed a special committee *pansus* (*panitia khusus* – special committee) into the administration of mining permits in the district. The committee was formally established on 26 March, 2010 and gathered information from government and mining company documents, and interviews and meetings with bureaucrats, mining permit-

holders and communities over a five-month period, before tabling its report in September 2010.

The committee visited mining sites, stockpiles, and the district's port at Wini that handled shipments of manganese from TTU. Statements were obtained from the heads of the district mining, forestry, and environment offices, the head of the district development planning agency as well as the heads of the legal and personnel offices. The committee also met with various officials at the provincial and national level. The report's preamble refers to the district government's reluctance to cooperate with the committee, and accuses the district head of belittling the legislature's standing and disrupting its work schedule by failing to appear at scheduled hearings (North Central Timor District Legislature 2010).

A special sitting of the district legislature was scheduled three times before the report was finally tabled and made public. This evasion strategy might have ultimately backfired as the report was finally presented in September 2010, just five weeks before the incumbent leader contested and narrowly lost an election for another term in office. Local media in attendance described the atmosphere inside the legislature before and during the session as 'tense' (*NTT Online* 2010).

The report was highly critical of the district government's management of all aspects of the mining sector but paid particular attention to the licensing process and the control exerted over it by the district mining office. It referred to an 'extraordinarily powerful' individual in the district mining office who had refused to accept the involvement or authority of the district legal office in mineral licensing matters. Deep tensions between North Central Timor's mining and legal offices over mineral licensing had been public knowledge in West Timor at least since an incident in June 2010.

The district head's decision to move certain functions related to the approval of mining permits from the mining office to the legal section of the executive secretariat resulted in a public and physical confrontation. Several local media outlets reported that officials from the two offices traded accusations of corruption and physical blows in front of a group of bemused mining investors and TV crews who by coincidence happened to be in the legal office at the time (*Pos Kupang* 2010d). According to a member of the district legislature, tensions between the two offices stemmed directly from competition over control of the permit approvals process. The legislator believed that when the district head gave the legal office a greater role in the permit process this reduced the ability of the mining office to extract bribes from the licensing process, reducing the income of officials.[150]

The report highlighted what the committee interpreted as signs of possible collusion between government officials and mining permit-holders to subvert national mineral licensing processes, and the change that occurred with the introduction of the new mining law in January 2009. The committee's review of the register of executive decrees in the district legal office revealed that some exploration permits had been issued to companies that, according to company registration documents, did not even legally exist at the time the permits were issued (North Central Timor District Legislature 2010).

In many cases, the dates of mining permit applications, and often the permits themselves, had also been 'back-dated' in order to appear that they had been submitted before the deadline of 11 January 2009 (when the new national mining law took effect). The benefit of having applications stamped as received before this date was that they could be processed under the old 'first-come, first-served' licensing system (up until April 2010). After 11 January 2009,

[150] Interview, deputy leader of the North Central Timor district legislature, 7 January 2011, Kefamanenu, North Central Timor.

mining companies seeking rights to resources would need to participate in the new transparent bidding system for exploration rights adopted in the new law. Not only would this system not be operational until governments had completed the necessary geographic surveying work, under this system there could be no guarantee that a company's bid would be successful.[151]

One consequence of the way the district government in North Central Timor, and other districts in West Timor, managed the mineral licensing process was that most of the companies that secured mining rights were quickly created on paper in order to take advantage of land speculation and rent-seeking opportunities. In part, this might be attributable to a weakness of the 'first-come, first-served' approach to mineral licensing—companies that lodge applications first are not necessarily the best qualified to explore or exploit a resource. However, the committee's report suggests it was also a result of 'collusion' in the licensing process.

The legislative committee's report consisted of seven pages of text outlining irregularities found in the administration of permits, followed by appendices summarising mining licenses, company details, and shipments of manganese from the district. It detailed a litany of failures and misdeeds by the district government that were more or less typical of mining governance across the province. In addition to issuing licenses to companies that did not formally exist as legal entities, the report catalogued a litany of other irregularities:

> (1) Permits issued for areas in excess of the 2000ha limit stipulated by the district's own mining regulations.
>
> (2) Forged signatures, dates and whole documents.

[151] Existing exploration permits could still be upgraded to production, or extended, after 11 January, 2009. The deadline applied only to new exploration permits. In late January, 2009, the Minister for Energy and Mineral Resources issued a circular advising that applications lodged prior to 11 January, 2009 could still be processed and approved up until 30 April, 2010. From 1 May, 2010, no new exploration permits could be issued under the old system, but extensions and upgrades could continue to be approved.

(3) Permits granted to companies that either had not submitted applications at all or submitted incomplete documentation.

(4) Failing to inform other institutions of permit approvals, including the district and provincial legislatures, the provincial governor, and the head of the provincial mining office (North Central Timor District Legislature 2010).

If indeed officials in the district government had used their powers over the mineral licensing process in North Central Timor to extract bribes from investors, this would go some way to explaining these 'irregularities' detailed by the committee. It would also help explain why in several ways the district government chose the interests of mining investors over those of local communities when they diverged, as they often did.

The report noted that mining investors had been intimidating landowners, and that the district government had done nothing to stop this. It concluded that the rejection of mining by some landowners was partly a consequence of inadequate 'socialisation' by mining investors, but also of the reality that 'landowners were being forced to accept becoming slaves on their own land'. Part of this was their inability to access permits to mine manganese themselves (North Central Timor District Legislature 2010). To the extent that artisanal miners were denied access to resources primarily because of their inability to offer bribes or other inducements to government officials, this perhaps the clearest example of how corruption of licensing processes marginalises the rural poor and erodes the representativeness of democratic government (GTZ 2008, p. 9).

Another example was the district government's attempt to suppress prices permit-holders paid to artisanal miners for manganese through its standard price policy, which the legislative committee's report described as 'unfair'. Corruption would explain why the district government failed to act against companies engaging in production activity under exploration

permits (another allegation made by the committee), while at the same time denying local people direct access to minerals.

Corruption of mineral licensing processes may also help to explain the responses of district governments when disputes emerged between local communities and mining companies during negotiations over land acquisition and compensation. If officials were effectively 'selling' mining licenses, it should not surprise if rather than advocate forcefully for the rights of communities, district officials tended to urge communities to accept whatever mining companies offered them, no matter how tokenistic or inadequate as compensation for their loss of land, control and amenity. As described in Chapter 3, I observed this in several locations in West Timor.

The committee's report made a number of recommendations. It called on the district government to abolish the minimum price policy enacted by the district head for manganese ore villagers sold to concession-holders, describing it as unfairly low, allowing market prices instead to determine how much artisanal miners earned. Legislators also urged the government to issue many more 'People's Mining Permits' (IPR), rather than granting monopoly control over resources to 'outside investors' who failed to behave as responsible employers towards artisanal miners (North Central Timor District Legislature 2010). Neither the incumbent district nor his successor, at least to 2012, acted on this recommendation, even though there was nothing to prevent them from doing so.

The report also recommended police investigate evidence of criminal 'collusion' in the issuing of mining licenses, and that the district head dismiss the head of the mining office and revoke any licenses found to have been issued on the basis of such collusion (North Central Timor District Legislature 2010). In 2012, local press reported that the prosecutor was looking at exploration permits issued by the district government in 2008 to companies that

had not yet obtained general surveying permits, as required under the 1967 mining law (Amsikan 2012a). The committee also recommended that the district head use his power to delegate authority for issuing mining licenses to move this function to the head of the 'integrated one-stop office for permit services', known as the KP2TSP (*Kantor Pelayanan Perizinan Terpadu Satu Pintu*) (North Central Timor District Legislature 2010).

Discouraging investment

In addition to enabling unqualified rent-seekers to access rights to mineral resources, I also observed that corruption was deterring investment by more technically capable, experienced and socially responsible mining companies. In one district in Flores, I spent significant time visiting villages with a foreign mining investor who wanted to undertake surveying work using aerial magnetic resonance technology to generate a detailed geological picture of the area. The investor would have been required to share the information with the district and central governments, even if he did not go ahead with his plans. A local employee working for the investor told me a government official had demanded a USD $30,000 'fee' in exchange for permission to undertake this work, which already was going to cost USD $500,000.[152]

The survey information would have provided officials with a far more detailed picture of manganese and other mineral deposits than they already possessed. Information of this nature is exactly what district governments will need in order to be able to undertake the auctioning of mineral rights that is the foundation of the new licensing system introduced by the 2009 Mining Law. The investor had already invested significant time and resources building trust with local communities, including by showing slides of meaningful community development

[152] Interview with mining company employee, Ruteng, Manggarai district, 21 April 2012.

projects his mining projects had funded in villages near his projects in Africa. I attended several meetings between the company and the communities, and their response was overwhelmingly receptive to the investor's plans. However, this investor ultimately decided not to proceed with the surveying work and the project, citing concerns over the business environment and frustration at the unavailability of the district head to discuss his concerns.[153] I believe in this case, the withdrawal of the investor was a loss for the community, particularly if it meant the district government awarded a less responsible, and capable, operator the rights to the area.

Corruption and the environment

Local communities continue to reside in mining areas during the mining process and long after mining has ceased. They rely on local resources—land, water and forests—for their livelihoods and subsistence, and are the group that is most exposed to the environmental impacts of mining. Indonesian laws and regulations have several mechanisms to limit the impact of mining on environments and communities. As with licensing processes more broadly, however, these regulations also provide opportunities for official corruption, and are poorly implemented and enforced.

Environmental impacts

Soon after manganese mining began in West Timor, local people noticed that the areas in which manganese occurred tended to have poor soil fertility and supported little vegetation. This is likely to be due to what Metzner (1977) described as 'Bobonaro scaly clay', which is widely regarded by Timorese in many localities on Timor to be too infertile and unstable to

[153] Interview with mining company employee, Jakarta, December 2013.

be suitable for agriculture. This meant there was usually little opportunity cost from the small-scale manual extraction of manganese ore in terms of any loss of viable agricultural land.

Figure 14. Arid land with high concentrations of manganese (grey patches) from above. Source: Google Earth/ Yabiku.

Overall, the environmental and health risks of artisanal mining were negligible compared to the effects on air and water quality from industrialised extraction, and manageable by local communities when they controlled the extractive process. As mining becomes semi-mechanised, excavation reaches much greater depths and exposes not only manganese but also lead and other dangerous heavy metals that can leach into waterways, land used for cultivation and coastal waters. Semi-industrial mining can also disturb underground springs and, because it exposes much greater tracts of earth, much greater potential to cause erosion.

In Buraen in Kupang district, local farmers were fearful about the effects that PT Karya Serasi Jaya's mine and washing facility would have on their rice paddies, located downhill from the proposed site of the facilities. When the company conducted a trial of a washing facility in 2010 it confirmed their fears were justified as they observed the manganese-contaminated runoff flowing back into the creek and find into their rice paddies. The volume of water

pumped from the creek almost left the creek dry, before it returned to the creek, polluted to such an extent that it was no longer useable as a source of clean water. Farmers were also worried about runoff from the mine itself, also located above their rice paddies, and the long-term impacts on soil fertility on the most suitable land for growing rice.[154] The farmers sought the intervention of officials at all levels of government to protect the environment that provided their livelihoods.

> 'About 75 household heads signed a letter rejecting the company's plans and sent it to the district head, the provincial government and the central government. We've got our rice fields down below – if they're using heavy equipment up top and down below there's rice fields, then in the rainy season the water erodes the land and the sediments from the manganese will go into the rice fields, and the land won't be fertile anymore.' [155]

In 2012, local newspaper *Victory News* ran a series of articles about communities in two villages in North Central Timor—Oekopa and Oerinbesi—facing exactly the same kind of threat. The district government had granted exploration rights over 2300 ha of land in 2010, a decision overwhelmingly opposed by communities at the time. Their efforts to oppose the company's plans escalated in 2012 when the district government upgraded the company's permit to production. As in Buraen, the communities were particularly concerned that runoff from a manganese processing facility the company planned to build on high ground would destroy their rich agricultural land below (Amsikan 2012d; e; c; *Victory News* 2012j; k; Jengamal 2012).

Environmental impact assessment processes provide governments with a mechanism for identifying risks such as these during the decision-making process for issuing production licenses. The information such assessments provide should enable governments to make an

[154] Interviews with villagers in Buraen, Kupang district, 2010 and 2011.

[155] Interview with member of the local farmers water-users' association, Buraen, Kupang district, 30 July 2011.

informed judgment about whether the impacts of the project can be mitigated to an acceptable level, and, importantly, within the constraints imposed by the project's need to be commercially viable (Hamilton 2005). However, in NTT a combination of factors, including laws surrounding impact assessments, corruption, collusion, nepotism and a lack of technical expertise often meant impact assessments were either not carried out at all, or were rendered largely meaningless as an instrument to protect the environment and local communities.

The environmental impact assessment process in Indonesia is known as AMDAL, a contraction of words meaning 'analysis regarding environmental impacts' ('*Analisis Mengenai Dampak Lingkungan*'). Projects deemed likely to have a 'significant environmental impact' are required to undergo a full AMDAL process. In 2007, when the manganese mining boom in NTT began, the test for classifying a project's impact as 'significant' consisted of three criteria. Projects that had any of (i) a concession area of 200 hectares or more; (ii) excavations of 50 hectares or more in a single year; or (iii) production of 200,000 tonnes of ore or more in a single year automatically had to undergo an impact assessment (Ministerial Decree 17/2001). Had district governments wanted to take a cautious approach and force smaller projects to undergo impact assessments, they could do so. In 2006, the environment minister added a qualitative test that gave officials authority to insist on assessments for projects of any size (MR 11/2006).

Given that many of the production permits issued in West Timor between 2007 and 2009 were for concessions greater than 200 hectares, it is unclear why many of these did not undergo AMDAL approvals. In Kupang district, more than 20 production permits were issued between 2007 and March 2009, yet when the new district head took office that month, he

discovered that none of these projects had undergone an impact assessment before the production permits were issued.[156]

The permit issued to PT Karya Serasi Jaya in Buraen was one such production permit. In 2011, one of the local farmers who was opposing the construction of the washing facility in its proposed location showed me a copy of the company's draft terms of reference for its impact assessment study. Approval of the terms of reference is the first step in the impact assessment process. The document, a revised version, was dated April 2011. The original version had been produced in August 2010. According to a list of dates in the document itself, this was a full two years after the district government had already issued the company permits for production, processing, and transportation and sales of manganese, in 2008 (PT Karya Serasi Jaya 2011). The government had issued the production permit only two months after the exploration permit, not long enough to even finalise the terms of reference for an impact assessment study, let alone undertake the study and have it evaluated by the district environment office. This means the district government made its decision to issue the production permit without any information upon which to understand the possible environmental impacts of the project or insist on mitigation measures.

The farmer also told me he had had six meetings with the company to revise the terms of reference, but the revised version still contained many inaccuracies and omissions that concerned them. He was planning to seek further meetings to address these concerns. Given that the production permit had already been granted, the opportunity to use the licensing process to ensure adequate environmental protections were built into the project's design, or to reject the proposed project altogether, had long passed.

[156] Interview with the Kupang District Head, Kota Kupang, 6 July 2011.

> ‘PT Serasi Jaya gave me this copy (of the terms of reference) and I’ve studied it – now we’re going to discuss it again. But this is still not right, so we’ll need to meet again. We already have an agreement with the company director, but it’s not included in this. They can extract ore but not wash it at the base camp. Because if it’s washed at the basecamp, the waste-water will flow down into the creek.’ [157]

In the villages of Oekopa and Oerinbesi in North Central Timor I was not able to confirm whether or not the project had undergone an environmental impact assessment as part of the decision-making process to issue the production permit. However, one local resident, also a member of the district legislature, claimed in July 2012, after the production permit had been issued, he was ‘certain’ that there had been no impact assessment (Bere 2012). If an impact assessment was undertaken, it clearly did not provide any reassurance to local communities in Oekopa and Oerinbesi that the risks to their farming activities would be addressed.

It is perhaps worth noting, however, that in 2010 the district government held no documentation on file whatsoever related to the company’s exploration permit (North Central Timor District Legislature 2010). In 2012, the North Central Timor district head told a local newspaper he would not consider revoking the company’s permits to mine and process manganese in Oekopa and Oerinbesi despite community concerns about the project’s potential impact on agricultural livelihoods. He did, however, try to shift responsibility for the project onto his predecessor.

> ‘It wasn’t me who issued the permit. The permit was issued by the former district head, who is also a local boy from that area. Of course, he would better understand about his own village, wouldn’t he?’ (Amsikan 2012c).

In 2011, NTT’s provincial environment office revoked the environmental impact permits of six companies operating in North Central Timor because, partly, the concessions were located

[157] Interview with rice farmer, Buraen, Kupang district, 30 July, 2011.

in protected state forest, and the companies had not obtained borrow-and-use permits from the forestry ministry, as required by provisions of the 1999 forestry law. The provincial government also said there were other unspecified problems with their environmental impact assessments (*Media Indonesia* 2011). These cases were in no way unique. That these companies had received an environmental impact assessment approval for mining concessions that encroached on state forests, without obtaining a borrow-and-use permit from the forestry ministry, obviously raises questions about the integrity and rigour of the environmental impact assessment process.

It is important to recognise that although communities are consulted as part of environmental impact assessment processes in Indonesia, and their scope includes social and physical impacts on people, they are intended as a tool to aid governments in making decisions about mining projects and regulating them. They are not intended as, and are not used as, a mechanism for allowing local communities to exercise a right to free, prior and informed consent, which has become a widely cited and endorsed principle for mining company-community interactions (Oxfam on FPIC and MMC). In Indonesia, to the extent that the mining law provides landowners a right to refuse mining companies access to land, this only relates to exploration. Once mining companies have identified where they want to extract minerals, they need to provide landowners with compensation, but do not need to seek their permission (Republic of Indonesia 2009a). The fate of local communities in NTT confronted by mining projects that posed risks to them and their environment was therefore in the hands of district government officials administering the impact assessment processes. However, there was little reason for communities to have confidence that these processes would offer them any real protection against the impacts of mining. As with all other aspects of the licensing process, official corruption of environmental impact assessment processes means

they are deeply compromised at best, and often have no effect whatsoever on the design or management of projects.

The basis of the full impact assessments is an environmental impact study that project proponents must commission from accredited consultants. This study is assessed by a technical committee led by the District Office of Environmental Impact Control (*Bapedalda*), with input from non-government technical experts and a range of local actors, including NGOs, and representatives of various government agencies. A cross-agency non-technical commission then evaluates the work of the technical committee.[158] According to a geologist who I spoke with in South Central Timor, most impact studies were produced in a 'copy-paste' fashion, and completely lacking in the necessary site-specific scientific analysis of geology, hydrology and other natural and social dimensions to provide a reliable picture of environmental risk that could be meaningfully assessed.[159] The Belu district (West Timor) legislature, which was concerned enough about the integrity of the process to set up a special committee to investigate, also found most impact studies had been produced in a 'copy-paste' manner. There were many signs that this was the case, but the most glaring was the fact that some of the places mentioned in the documents were located in other districts in West Timor (Feka 2012).

Corruption of the environmental impact process went beyond the payment of bribes to obtain favourable outcomes. According to a geologist working for a mining company in West Timor, mining companies sometimes engaged officials from district environmental protection offices

[158] Interview with the head of the Kupang district Environmental Protection Office (Bapedalda), Kota Kupang, 30 June 2011.

[159] Interview with geologist, Soe, South Central Timor, 15 June, 2012.

as consultants to prepare their impact studies. As the same offices are also responsible for assessing the studies, this was a clear conflict of interest.[160]

A consultant in the provincial capital who had put together many impact studies for companies seeking production licenses in NTT, claimed the outcome of impact assessment processes was always approval for the project to go ahead as proposed, without any substantive changes to the project design that might enhance protection of the environment or mitigate impacts on communities.[161] Whether in the form of bribes or patronage, the corruption of the environmental impact assessment process rendered completely ineffectual one of the few safeguards for communities directly exposed to the physical, ecological and social impacts of mining.

Post-mining reclamation

For local communities, another source of vulnerability to environmental risks from mining stems from weak regulation and enforcement relating to reclamation and post-mining restoration of open-cut mining excavations. Mining pits that are not filled in after mining activity ceases can be a deadly physical hazard for local communities. In one province alone, East Kalimantan, disused mining pits claimed the lives of 27 children between 2011 and 2017 (KPK 2017, p. 58). Apart from leaving enormous, barren craters in the landscape, failure to reclaim excavated land also exacerbates soil erosion, already a severe environmental problem in West Timor and Flores due to the mountainous terrain, thin soils and heavy tropical rains. As mentioned already, the excavation of manganese from significant depths also exposes

[160] For this very reason, national revisions to impact assessment procedures in 2012 explicitly prohibited government officials from producing the impact studies (Republic of Indonesia 2012b, Article 12).

[161] Interview with impact assessment specialist, Kupang, 1 July 2011.

other, more toxic, heavy metals such as lead that can then leach into surrounding waterways, farmland and coastal waters.

The semi-mechanised mining project operated by PT Sumber Jaya Asia in Manggarai, Flores that is the subject of the case study in Chapter 6 reveals the importance of reclamation. The mine, a large scar within a small protected forest that protects underground freshwater resources, has not been filled in since the company ceased mining in 2012. Local people claim the mine has affected these underground springs, that it leaches silt containing manganese and other heavy metals into the sea which has led to a loss of marine life, and that the loss of forest cover has adversely affected the area's micro-climate. For all of these reasons, reclamation is essential for local communities. District government officials I observed speaking with communities in Kupang acknowledged this, always stressing in their 'pitch' to persuade communities to support mining projects that, after mining had finished, the company would restore the land to its previous state, including by replanting.[162]

However, the mining industry in Indonesia has an extremely poor record in this area. The worst offenders are the smaller domestic companies, of the type that dominated the mining sector in NTT, as they tend to have smaller capital reserves, narrower profit margins and no significant corporate reputation that can suffer. Provincial and district governments in NTT, and across Indonesia, have proved consistently unable or unwilling to enforce, and report on, this aspect of mining regulation.

To insure the state and the public against the costs of mining companies defaulting on their reclamation and post-mining restoration obligations, companies are required, as a condition of

[162] Officials from the Kupang District Government Mining and Energy Office at a meeting with local people in Camplong, Fatuleu Sub-district as part of the environmental impact assessment (AMDAL) approval process, 6 September, 2010. Also, mining officials at meetings with community members and officials from the Kupang Environmental Protection Office in Oenoni and Nonbes, Amarasi sub-district, 5 and 6 November 2010.

production licenses, to deposit reclamation security bonds in a joint account with the government that issues the permit. This is standard practice in most mining jurisdictions. Should the company fail to meet its obligations to reclaim and restore the mine site, the money is intended to be sufficient to allow the government to employ a third-party contractor to undertake the reclamation work.

However, as of 2014, a regulatory audit of all mining permits nationwide conducted by the mining ministry found at least 1,325 mining concessions (out of a total of around 10,000) for which no reclamation bond had been deposited. The real figure was likely to be much higher, as this number represented only those permits for which the ministry was able to confirm a deposit had not been paid. In many cases, however, provincial and district governments simply had not supplied the relevant data. In NTT, for example, in 2014, district and provincial governments were only able to confirm payment of reclamation bonds for 13 out of 306 registered mining concessions. All 13 of these bonds were reported by the same district government (KPK 2018, p. 83).

In 2008, the mining ministry issued Ministerial Regulation 18/2008 on Reclamation and Mine Closure, which required companies to provide far more detailed reclamation plans as part of their environmental management plans. This included detailed costing analysis for reclamation as part of project economic feasibility studies to demonstrate a company's financial capacity to implement the reclamation plan. In 2010, the central government issued Government Regulation 78/2010 on Reclamation and Post-Mining, which added a requirement for companies to undertake reclamation within 30 days of ceasing extraction activities on any site. This provision was designed to allow governments to continually monitor a company's commitment to reclamation and avoid all the work being left until the end of the project. This is also a far more cost-effective method. Companies also had to provide quarterly reports on implementation of their reclamation plans. District and provincial

heads were then required to inspect project sites within 30 days of receiving these reports (Republic of Indonesia 2010c).

However, in 2011 and 2012 it became clear that many mining companies holding concessions in NTT had neither submitted reclamation and post-mining plans, nor deposited security bonds. This suggested local communities were likely to have to live with unfilled excavations, and the associated ongoing human and environmental risks they posed, long after mining stopped. In 2011, local media reported that the district prosecutor in North Central Timor was investigating four officials from the district mining office suspected of corruption and collusion with 15 mining company representatives, who were also under investigation. Among the charges, the prosecutor was alleging that the mining companies had not paid reclamation deposits to the district government (NTT Online 2011).

In August 2012, *Victory News* reported that mining inspectors from the Ministry of Minerals and Energy Resource had discovered that three companies operating in South Central Timor had not submitted reclamation and post-mining plans to the provincial and district governments. According to inspectors, not only had the companies not submitted reclamation plans to the provincial or district governments, plans had not even been developed, despite one of them, PT SMR, operating a project in full production mode since 2010 (Lau 2012c).

Several months later, it emerged that at least one of these companies had also failed to post a reclamation bond. This was not surprising, given that the bond is supposed to be calculated according to the reclamation plan. Without a plan, there would have been no basis for calculating the size of the bond for any of the three companies. For companies operating in South Central Timor, the licensing authority was the provincial government because the land transportation route from mine to port crossed district boundaries. The state's failure to

enforce its own laws in this case therefore appeared to belong to the provincial government. The head of the South Central Timor district mining office blamed the mining company.

> 'They (PT SMR) don't yet understand the conditions for manganese mining, even though they're already exploiting the resource and even though that's the first condition before they can operate (*Victory News* 2012i)'.

The company's community relations manager openly acknowledged that the bond money had not been paid. He claimed that although the company had prepared the funds it did not know whether they should be deposited with the provincial or district government. The manager also claimed not to know how much money needed to be deposited as the company was unsure of how this was calculated by the governments (*Victory News* 2012i).

As an editorial in *Victory News* pointed out, it was an odd explanation. Questions about bond deposits should have been easily resolved during the process of acquiring the company's production license, or soon after. The editorial suggested that formal payments by mining companies to the state were often effectively in competition with an endless stream of demands for informal payments companies had to make to public officials just to be able to operate (*Victory News* 2012b).

If mining companies were not being compelled to deposit reclamation bonds, it is difficult to imagine that district governments had much interest in trying to compel them to undertake reclamation. Given their budgetary constraints and many competing priorities, there was also little chance that regional governments would use their own funds to undertake reclamation. Even if governments did find the funds from their own budgets to undertake reclamation, this transfers the costs of mining to the public.

Mining revenues, corruption and development

As with mining permits, mining taxes and rents in Indonesia have long been associated with corruption and cronyism (Devi & Prayogo 2013). As corruption around the collection of mining taxes and rents is partly enabled by a lack of transparency—around production levels, mining company profits and payments to government—it is only possible to estimate the value of revenues lost to the state. Civil society group, Publish What You Pay (PWYP) Indonesia, which advocates for mining companies to publish their tax, royalty and other formal payments to the state, and Indonesia's national Corruption Eradication Commission (KPK) have an ongoing program that attempts to do just that. The 'National Movement in Rescuing National Resources' (GN-PSDA) monitors corruption risk, transparency and related developments in the mining sector. A 2017 KPK report from this work revealed between 2003 and 2011, the Indonesian state had lost a total of IDR 6.7 trillion (USD $670 million) in unpaid tax and non-tax obligations from mining companies.

Extrapolating from surveyors' reports for just the five main minerals, the KPK also reported that in 2011, the state lost USD $24.7 million just in unpaid mining royalties alone (KPK 2017, p. 33). Given that mineral producing districts are entitled to a 32 per cent share of production royalties, this is a significant loss for local budgets and development spending for a single year. In addition, district governments were also losing mining revenue through the failure by many companies to pay their obligations in land-rent, a non-tax fee charged for the use of land held within mining concessions. In 2015, companies holding 248 mining concessions in NTT owed the state IDR 56.2 billion (USD $5.62 million) in unpaid land-rents for the years 2013-2015 (KPK 2017, p. 77).

This was despite a central government policy to encourage mining investment in eastern Indonesia that offered a 50 per cent discount on land rent for mining companies operating in NTT and four other eastern provinces (Republic of Indonesia 2003). Lost royalty and land rent payments are particularly significant for regional populations in mineral producing

regions, as the district of production receives 32 of royalties and 64 per cent of land rents. The loss of these revenues to district budgets further reduces the potential for mining to spur economic and social development in poor rural communities.

The state incurred further massive losses in non-tax revenues and timber resources from the unauthorised use of state forests for mining. Under the 1999 Forestry Law, mining companies seeking to operate open-cut mines in protected and conservation forests must obtain a 'borrow and use' permit from the forestry ministry. As the head of the Kupang District environment office explained to me on a field visit, the process of obtaining the necessary 'borrow and use' permits from the forestry ministry to mine in a protected or conservation forest is a costly and lengthy one.

> 'If it's in a forest area then the regional environmental protection office should oppose the mining permit application. The investor first has to get a 'borrow and use' permit (*izin pinjam pakai*) from the forestry minister. That costs a lot of money, and it's not just a one or two year process – it can take several years, assuming it is approved at all, which is far from certain.' [163]

To avoid these costs and delays, many mining companies did not bother to apply for the 'borrow and use' permit from the forestry ministry (KPK 2018, p. 19). The KPK's annual report in 2018 estimated that the unauthorised use of state forests by mining companies operating without these permits had the potential to deprive the state of hundreds of millions of dollars every year (KPK 2018, p. 19). The five mining permits that the provincial government revoked in North Central Timor in 2011 were all found to be located within a protected forest and without permits from the forestry ministry (*Media Indonesia* 2011). Chapter 6 of this dissertation focuses on a protracted dispute involving a mining project in a

[163] Interview with Head of the Kupang Environmental Protection Office, Kupang, 30 June 2011.

protected forest in the district of Manggarai on the island of Flores, where no borrow and use permit had been issued.

Although mining companies pay their company profits tax to the central government, and regional governments in mineral producing districts are not allocated any share of this revenue, this was yet another source of losses to the state from mining. According to the KPK and PWYP Indonesia, of the 8,410 entities holding almost 11,000 mining permits in 2014, the mining ministry's audit could not identify tax identification numbers for 38 per cent (KPK 2017, p. 81).

Many of the losses from all of these revenue streams can be traced to corruption. When corrupt state officials use their powers to extract bribes, companies have a strong incentive to stay in the shadow economy (Dreher & Herzfeld 2005, p. 7). Corruption therefore undermines the ability of the state to collect taxes and other revenues from private sector activities (GTZ 2008, p. 9).

Corruption around the collection of state revenues affects districts populations and local communities by limiting the resources available for investment in local development. The integrity of revenue collection depends on having in place reliable, verifiable and transparent methods of calculating, recording and reporting volumes. As discussed in Chapter 2, there was clear evidence that undocumented shipments of large volumes of manganese were leaving West Timor, suggesting that those who owned the shipments were not paying royalties or other payments to the state. The report of the special committee on manganese mining in North Central Timor also observed three failings of the district government in relation to non-tax payments by mining companies to the central government.

1. Failing to ensure payment of land-rent to the central government.

2. Failing to implement a mechanism to ensure that companies' declarations on the volume of ore shipments were accurate.
3. Failing to ensure royalty payments were made to the central government (North Central Timor District Legislature 2010)

Royalty payments are calculated according to the volume of ore. One challenge for the accurate collection of royalties in NTT was that there were no weigh bridges at ports in NTT to verify the volumes being exported (Lau 2012a).

However, corruption in relation to state revenues was not limited to revenues collected by the central government. Local taxes, user-fees and third-party contributions are all highly vulnerable to capture, either by being redirected before they make it to government accounts, or by being used as leverage to extract informal payments. The lack of transparency around the levying, collection and management of government revenues undermines public trust in district governments and makes it even harder for them to argue that their support for mining is based in public interest concerns. Although locally collected revenues from mining and other natural resource industries might be barely significant relative to district budgets, they can be very important for local bureaucrats and politicians seeking to use their positions to profit personally from mining.

Transparency around the calculation, collection and use of third-party contributions and royalties in NTT was far too weak to allow effective monitoring by non-government actors, members of local parliament, or even actors within the district government not directly involved (Article 33 2012). Even within district governments, information regarding revenues was often not shared between different agencies. The study of district mining revenues by Article 33 (2012) in Belu district found that only the district mining office possessed documents showing how much each mining company had paid in royalties and third-party contributions. This effectively meant it was impossible for any other party to compare the

volumes of ore being mined to the royalties and third party contributions paid to determine whether payments were proportionate to the volumes being extracted. The district finance office received a total figure on the amounts collected, but no information about the volumes on which they were based (p. 22).

A series of articles that appeared in a local newspaper in June 2012 revealed this was also the case in the district of South Central Timor. The head of the district finance office expressed surprise when asked by journalists about manganese royalty payments that the district government should have received. He claimed not to have received any information about royalty payments due from the district mining office (*Victory News* 2012f; c; h).

Corruption not only reduces the ability of governments to collect state revenues from mining, it also reduces the impact of revenues when they are spent. One way that this occurs is through corruption of government tendering processes. A district government official in Kota Kupang described to me how this process worked for construction and procurement contracts. District government officials would gather for regular informal meetings, usually at night at local hotels, to decide which companies would be awarded government construction and procurement contracts. Decisions, he said, were based on contributions the tenderers had made to election campaigns or other kickbacks to officials, rather than the relative merits of the tenders. There was also an attempt to share opportunities around to cultivate political support.[164] Whenever there is corruption in government tendering processes, there is less money available for delivering the good or service procured. This suggests that whatever modest development benefits mining rents in NTT might have produced through spending on roads, schools or health services at the district level, these benefits were even more

[164] Interview with district government official in Kota Kupang, September 2010.

diminished by corruption. As the poor are disproportionately dependent on the provision of public services, they are also more adversely affected by corruption.

The impact of corruption on economic growth is difficult to quantify, but as the World Bank has noted, strong mining investment is not always positive correlated with national economic growth. Indeed, in developing countries, mining and extractive industries more broadly have often had a negative impact on growth, a phenomenon sometimes referred to as 'the resource curse'. Where mining has been found to have impeded economic growth, one frequently cited explanation is that this is at least partly due to the effects of corruption (Otto et al. 2006, p. 230). Although the effects of corruption in NTT's mining sector on provincial and district economies cannot be confidently quantified, almost everyone agreed the lure of mining incomes had corroded the integrity of government decision-making, undermined the implementation of environmental protection laws and regulations, and likely led to losses in district government revenues.

Chapter 5 – Mining, community and landownership in Serise, East Manggarai

The village of Satar Punda sits on the north coast of the island of Flores in the district of East Manggarai. In late 2010, the village became the focus of sustained attention from local media, civil society and the district government following the escalation of a long-running dispute over land and manganese mining. The dispute involved conflicting claims to land asserted by two communities and a mining company's refusal to recognise the claims of one community. The dispute highlights the complex problems that arise when industrialised mining comes into contact with customary land tenure.

Satar Punda's population numbered around 2,100 people (BPS Kabupaten Manggarai Timur 2013, p. 19). As is the case with many villages in Indonesia's more sparsely populated outer islands, Satar Punda was not a compact village, but a collection of hamlets spread over a predominantly hilly area of around 22 km^2 (BPS Kabupaten Manggarai Timur 2013, p. 4-7). The village's hamlets are located in the valleys, near streams. Like most of the Manggarian population, the residents of Satar Punda rely on farming for their livelihoods, exploiting the fertile river corridors to cultivate rice. Despite favourable conditions for agriculture, the population is poor. Farmers routinely borrow money from local lenders to plant rice crops, repaying the loans with interest after harvest.[165] Few farming households in Satar Punda keep livestock, which are a source of additional income for communities in other parts of NTT. The district statistics agency recorded only 93 head of cattle, 43 pigs and 26 goats in the entire village in 2012 (BPS Kabupaten Manggarai Timur 2013, p. 71-72). Only 23 motorbikes were registered in Satar Punda in 2012, and no cars (BPS Kabupaten Manggarai Timur 2013, p. 75).

[165] Interview with local farmers and Catholic Church officials, Satar Punda, East Manggarai, 18 April 2012.

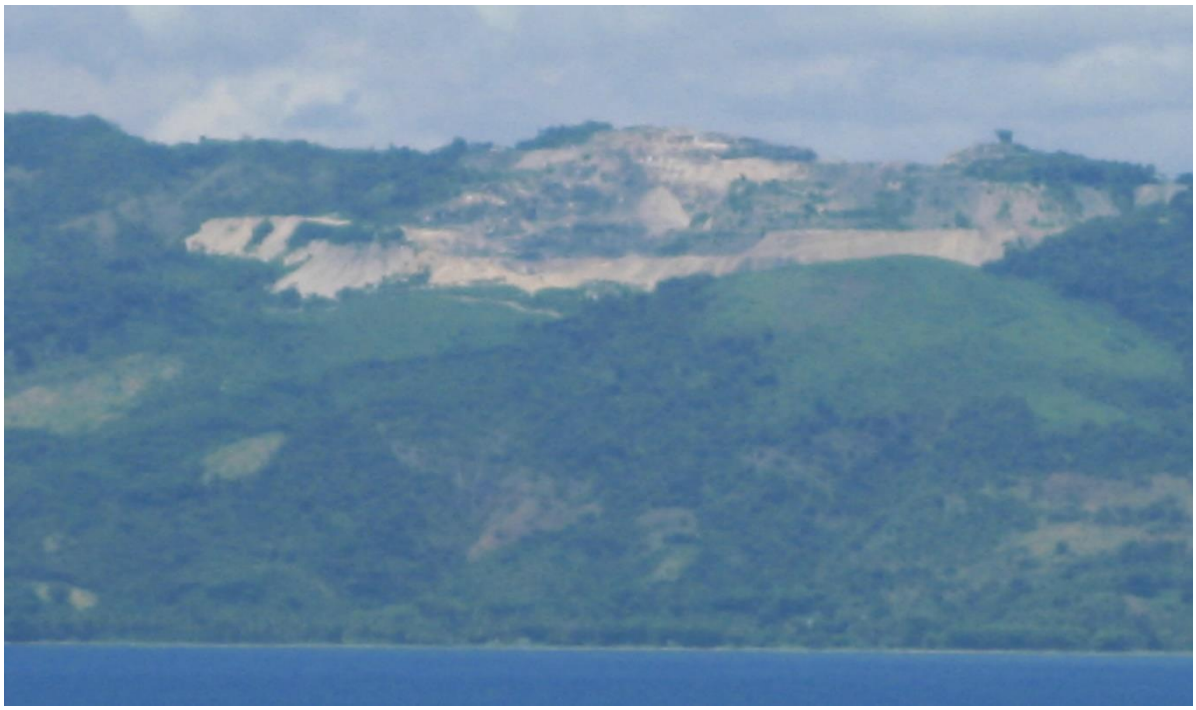

Figure 15. The PT Arumbai manganese mine in the village of Satar Punda, East Manggarai, seen from across the bay. The hamlet of Serise, not visible, is situated at the bottom of the hill. Photo by author.

When manganese mining took off in 2008, many Satar Punda residents embraced the opportunity to supplement their agricultural livelihoods with cash incomes from labouring on the mine, despite the meagre wages on offer. According to former workers at the mine, labourers on the mine received just IDR 30,000 (just under USD $3) per day.[166] Workers on another semi-mechanised mine (discussed in Chapter 6) in the neighbouring district of Manggarai, reported receiving a similar daily rate (Colbran 2010).

The community at the center of the dispute, Serise, also known by its geographical name of Golokoe, is a hamlet within the village of Satar Punda. In physical terms, the Serise hamlet consists of around 60 small, basic and mostly wooden houses, stretched out along a two-kilometre long dirt road that runs next to the shoreline at the bottom of a hill. The community is atypical within Satar Punda, as well as the sub-district of Lamba Leda and the district of East Manggarai, in that fishing, rather than farming, is their most important livelihood

[166] Interview with mine labourer in Serise, Satar Punda, East Manggarai, 19 April 2012.

activity. The hamlet's location, clinging to the land's edge and a significant distance from land suitable for rice cultivation, reflected the relatively recent arrival of the community's population. Many traced their cultural ancestries to groups from other islands with strong traditions of sea-based livelihoods. Maritime activities are not a feature of traditional Manggarai culture, which is rooted in rice cultivation. Although the Serise community and its forebears retained their maritime and fishing prowess, they also firmly embraced Manggarai cultural practices and symbols. When, during their dispute with the mining company and another community they were forced to defend their claims of authority over land, they did so by referring to ancestral lineages linking them to traditional sources of authority in Manggarai culture.

Satar Punda's manganese mine was operated by a domestic firm called PT Arumbai. The company's concession, active until 2017, covered 736 ha (7.36 km^2), equivalent to around one third of the village of Satar Punda (Tote 2009; BPS Kabupaten Manggarai Timur 2013). PT Arumbai's main pit was situated at the top of the hill on the coastal fringe of Serise. The company built a dirt road linking Serise to PT Arumbai's manganese processing facility, and a rudimentary port, where manganese was loaded onto barges and then onto ships. When I visited the area in April 2012, a thick layer of black manganese sediment covered the ground around the processing facility and port.

Figure 16. The manganese washing facility and stockpile for the PT Arumbai mine, partly visible in the upper right of the picture, 2012. Photo by author.

The proximate trigger for the Serise community's dispute with PT Arumbai was an expansion of the company's pit at the top of the hill above the hamlet from 2009. This expansion can be seen clearly in the satellite image below, which shows the mine's footprint in 2011, and from 2005 until 2009 (shown by the red line). The Serise community leaders believed this expansion encroached on land subject to their rights under customary land tenure, and that the company had not recognised these rights or provided compensation. The land in question was the upper part of the north-facing slope below the mine, an area known as Rengge Komba. The map attached to the mining company's production permit issued in 2009 shows the centre

of the hamlet of Serise, near the small peninsula to the north of the mine and to the west of the port, fully contained within the mining concession boundaries (Tote 2009).

Figure 17. The PT Arumbai mine and, to the northwest, the hamlet of Serise along the coastline. The company's processing facility and port are directly to the north of the pit. The red line shows the pit's footprint before the expansion in 2010 that triggered the dispute. Source: Google Earth.

PT Arumbai claimed to have negotiated access to all of the land within its concession with all of the rightful traditional owners, asserting that another hamlet, Satarteu, exercised customary authority over the Rengge Komba area (PT Istindo Mitraperdana 2010). The Serise leaders, however, did not acknowledge the authority of the Satarteu hamlet in Rengge Komba.

Early days of mining and land relations in Satar Punda

Exploration for manganese in Satar Punda had first begun in 1981, when state-owned enterprise PT Aneka Tambang acquired rights to explore for manganese in the area. PT Aneka Tambang left the area without finding viable deposits. In 1995, a private domestic company called PT Istindo Mitraperdana acquired the exploration rights to Satar Punda and undertook exploration until it obtained a production license and commenced production activity in 1999. Although PT Istindo Mitraperdana partnered with PT Arumbai to develop the resource, the license continued to be owned by PT Istindo Mitraperdana. Local people refer to the project's owner as PT Arumbai.

The production permit issued to PT Istindo Mitraperdana in 1999 covered an area of 1,307 ha, roughly two thirds of the land in the village of Satar Punda. As part of the process for obtaining the production permit, PT Istindo Mitraperdana undertook an environmental impact assessment study (ANDAL – *Analisis Dampak Lingkungan*), and received an environmental impact assessment (AMDAL – *Analisis Mengenai Dampak Lingkungan*) approval (PT Istindo Mitraperdana 2010). At that time, the scope of environmental impact assessments was supposed to include likely impacts on local communities.

In a company 'chronology' of its mining activities in Satar Punda compiled in 2010, PT Istindo Mitraperdana states that before it began production activity it undertook 'socialisation' and consultation activities in accordance with Manggarai custom 'to ask for permission and support from the community around the mine's location, and received a positive response'. The document states that the company recognised four traditional (*adat*) communities holding rights to land within its concession area: Lengkololok, Luwuk, Satarteu and Serise. However, the document also notes that before it commenced production work it visited the traditional leaders of the Satarteu house to explain its plans to mine within the Satarteu domain, and that

the Satarteu leaders had welcomed the company as an '*anak moso*' (child with heritable land rights). It explains that this is a term denoting a child with a share of land (PT Istindo Mitraperdana 2010). The document does not mention any such process with the other three communities named.

In 2004, the Manggarai district government (the district of East Manggarai only came into existence in 2007) extended the original permit by five years and reduced the area of its production rights to 763 ha. When this extension expired in 2009, the government of the newly established East Manggarai district granted a second extension, until 2017, and further reduced the concession slightly, to 736.3 ha. At the same time, the district government converted the production permit to the new form of Mining Enterprise Permit (IUP) established under the 2009 mining law (Tote 2009).

The company claimed the project did not experience any problems with communities before 2009 (PT Istindo Mitraperdana 2010). However, according to a Catholic Church leader in Ruteng, the district capital of Manggarai (to which Satar Punda previously belonged), tensions between the community and the mining company had emerged as early as 2002. The trigger for this dispute was the construction of a road by the company from the Satarnani pit at the top of the hill, to its processing facility at Gorobongko at the bottom of the hill. This road, visible in the photo above, was much more direct than the alternative route.

> 'Because they built the road, the community blocked it off. They made demands based on custom and imposed a 'fine' on the company. The fine was in the form of pigs, cigarettes, bottles of alcohol, and the company paid it.' [167]

[167] Interview with Father Aloysius Gonsaga, JPIC-OFM, Catholic Church, Ruteng, NTT, 17 April 2012.

The road cut through an area of communally owned land known to the Serise community as Rengge Komba, over which the Serise community asserted collective land tenure rights. Although the company claimed to have negotiated access to all of the land within its concession, including with the Serise community, in 1999, the Serise community regarded the road as an unauthorised intrusion and use of their land.

The terms of the dispute settlement were agreed to in a traditional dispute resolution ceremony, but also set out in a written agreement signed by both the company and the Serise community leaders. The agreement, signed at the ceremony on 23 April 2002, recorded that the company agreed to provide the community with 64 fishing nets and other fishing equipment as compensation, to be shared among four groups comprising 36 households in total. This request reflected the fact that most of the Serise community made their livelihoods from fishing. The agreement also required the company to provide the following to the community on every occasion that the community held a customary (*adat*) ceremony: IDR 500,000, 50 kg of rice, 25 bottles of locally made alcohol, and 12 cartons of cigarettes (Ahmadi et al. 2002).

In return for promises of these items, the community leaders also signed a 'position statement' at the handover ceremony, which read in part:

> 'We, who represent the whole community of Serise promise:
>
> i. Not to do anything that has the effect of causing losses for PT Arumbai as long as the company is working here;
> ii. We as the face of the Serise community are obliged to handle and overcome all problems of an individual nature that arise in the future;
> iii. In the following year, we will not ask for fishing nets again, except for adat ceremonies' (Ahmadi et al. 2002).

The company fulfilled its commitment to provide the fishing equipment, which included nets, sinkers and lines, to the community in July 2002 (Ahmadi & Amon 2002). The Serise community leaders, the company and independent observers agreed that there were no more problems between the community and the company until 2008-2009. This time they proved much more difficult to resolve. The Serise-PT Arumbai dispute is an example of what often happens when mining companies fail to obtain, or maintain, what the mining industry has commonly referred to since at least the early 2000s as a 'social license to operate' (IIED 2002, p. xiv).

Mining, communities and the social license to operate

The global mining industry began embracing the concept of a 'social license to operate' in the early 2000s, following recognition that the sector had 'failed to convince some of its constituents and stakeholders' that it was meeting expectations about its potential to contribute in many places where mining companies operated. For communities and local NGOs, this included an expectation that mining provide jobs, infrastructure, and 'other benefits that counter the risks and impacts they experience and will leave them better off than when the project started', a respect for human rights, high environmental standards in choosing locations and operations (IIED 2002, p. xiv).

This focus on a social license to operate, and efforts to define how it is obtained and maintained, began to draw from the language, principles and practices of Corporate Social Responsibility (CSR) in the mining industry. Major mining companies began building CSR strategies and departments, employing CSR specialists, into their projects as a way of securing and maintaining their social license to operate (Whellams 2007, p. 30). One major mining company defines the social license to operate as 'the acceptance and belief by society, and specifically, our local communities, in the value creation of our activities, such that we

are allowed to access and extract mineral resources'. By investing in CSR programs, mining companies talk about accumulating reputational or social capital, which can then be drawn on to preserve the license to operate even in the face of events or impacts that challenge community acceptance (Welker 2006, p. 149-150).

Scholars have highlighted the way the corporate mining industry turns what are initially a set of ethical concerns into strategic ones, by justifying investment in CSR in terms of a 'business case' for the 'social license to operate' (Welker 2006, p. 148). This strategic imperative leads inevitably to mining companies obscuring or ignoring the significant power imbalance between mining companies and communities in negotiations over the meaning and implementation of CSR and community development (Kemp 2009, p. 209).

Likely, a more fundamental problem, however, is that a concern with the social license to operate, and therefore commitment to socially responsible practices, is not universally good for business. If it were, mining companies would always be expected to conduct their activities in a socially responsible manner in order to maximise their profits. In reality, however, investment in obtaining and maintaining the social license to operate is only likely to be a rational strategy for mining companies to adopt from a strictly business perspective to the extent that communities and other stakeholders can effectively impose costs on firms that do not satisfy their expectations (Kapelus 2002, p. 281).

One factor working against a strong commitment by mining companies to maintaining a social license to operate, a feature of the current cases, is that thousands of domestic mining companies in Indonesia are small, privately-owned and largely unknown beyond the localities where they operate. Without shareholders, or a broader corporate profile, they are much less subject to the kinds of pressures from communities, shareholders and NGOs that can persuade larger mining companies to invest in social operating licenses. Another factor relevant to the

cases presented in the current and following chapters is the lack of support that communities in Indonesia receive from governments, at all levels, in negotiating and engaging on a range of issues with mining companies. This lack of government support severely limits the ability of communities to impose costs on mining companies that could encourage a company to invest in its social license to operate as part of its business strategy.

This lack of government support for communities persists despite increasingly assertive expressions of resource nationalism helping to shape Indonesian mining policy from the early 2000s. The nationalist sentiments underpinning support for these policies draw heavily on populist narratives that criticise governments for allowing foreign mining companies to exploit, even plunder, Indonesia's natural endowment without securing proportionate and equitable benefits for the nation (Sembiring 2009). Widespread public support for the central government to take a bolder approach in securing a greater share from Indonesia's natural resource wealth also helped to manifest provisions in a new corporations law, passed in 2007, which made Indonesia the first country in the world to impose compulsory obligations on companies operating in the natural resources sectors to fund and implement corporate social responsibility programs (Rosser & Edwin 2010, p. 6).[168]

This was reinforced by provisions in the 2009 mining law that required mining permit-holders to plan, fund and implement community development programs to raise communities' ability to improve their living standards (Republic of Indonesia 2009a). The mining industry at first resisted and then lamented the formalisation of its community development obligations in

[168] Resource nationalsim also resulted in provisions in the 2009 ming law requiring mining companies to process minerals in Indonesia within five years of the law being passed (by 2014). The Indonesian Government attempted to enforce this obligation through a ban on the export of raw minerals in 2012. The Supreme Court overturned the ban before a 'compromise' was reached that would phase out the export of raw minerals by 2019 using an export tax (Sullivan 2014). Paradoxically, these policies were projected to cost the nation export earnings overall (Nathan Associates Inc. 2013), and hurt many smaller domestic mining companies, forcing some to suspend or even abandon their operations, resulting in the loss of many mining livelihoods in the regions (Apemindo 2013; Soda 2014).

law, arguing that companies would need to make agreements with affected communities before mining commenced, which they were reluctant to do (Bhasin & Venkataramany 2007). Notwithstanding these ostensibly pro-community changes to legislation, as the current and following chapters reveal, district governments in NTT, charged with approving and overseeing implementation of mining companies' community development programs, showed little interest in leveraging these powers to help communities extract greater benefits from mining projects.

Tensions re-emerge as mining expands

As noted earlier, the trigger for conflict between the Serise community and PT Arumbai in 2009 was the company's expansion of its pit at the top of the hill. According to the Serise community leaders, until then the company had only intruded on Rengge Komba when it built its road connect the pit to its processing facility and port in 2002. The Serise community had imposed its customary 'fine' and the company had honoured it. Now, however, the community claimed the company was excavating land to extract manganese from in Rengge Komba, on land that was subject to collective (*ulayat*) rights.

In an interview in 2012, Serise's most senior adat leader, known as the '*tua teno*', told me that on 27 April 2009, Serise community members invited the company managers to come to Golokoe to sit with the Serise community and resolve the issue. The company managers accepted the invitation, and together they hiked from Golokoe up the hill to the new northern edge of the company's pit. The Serise leaders explained that the community's ancestral, communally owned land lay both within and surrounding the excavation perimeter. They asked the company to pull back their mining activities to outside the boundary of Serise land.

The community leaders also imposed another 'fine', this time consisting of two pigs, 20 bottles of a locally made alcoholic drink, and 100 packets of cigarettes, for entering their land without their consent.[169]

However, the company refused to withdraw from the disputed land or heed any of the community's subsequent demands for compensation. In a letter to the district head of East Manggarai on 29 May, the company set out its reasons. First, the company did not accept the community's claim that it had encroached on the Rengge Komba '*lingko*' (a communally owned piece of agricultural land), and also asserted that in any case, Rengge Komba was under the customary authority of a different group, the Satarteu community. According to PT Arumbai, the pit in question was spread over three other *lingko*, which the company referred to as Satarnani 1, Satarnani 2 and Macing Wol. Furthermore, the company claimed the Satarteu community had consented to the company's use of the land (PT Arumbai 2009).

The Serise community leaders countered that those place names were 'company language' (*bahasa perusahaan*), and that Satarnani simply referred to the boundary between the Satarteu and Serise domains, not to any *lingko* (Amon 2010). The real issue, however, as the company implicitly acknowledged by continually stating that Rengge Kombe was under the authority of the Satarteu house (*rumah gendang*), was not the name of the land, but which group it belonged to. Since it first commenced operations in the area in the 1990s, the company had accepted the assertions of Satarteu traditional leaders that Serise was an 'offshoot', or 'child' (*anak*) of Satarteu, and that the Serise community did not therefore have ultimate authority over any land in the company's concession. The company claimed that on that basis, the consent of the Satarteu leaders, was sufficient (PT Istindo Mitraperdana 2010).

[169] Interview with Siprinanos Amon, Serise, Satar Punda, East Manggarai, 18 April 2012.

Large, multinational and even smaller but well-resourced mining firms often employ anthropologists to help them engage with communities to understand the intricacies of customary land tenure in the places they work. However, smaller domestic companies in Indonesia rarely engage anthropologists, usually preferring to rely on local guides to act as translators and intermediaries in their dealings with communities.

The Serise community leaders reported the alleged transgression to the sub-district police chief. The police chief advised the leaders to return to their community and discuss the matter with the village secretary in Satar Punda.

> 'That same afternoon I went to the village secretary, rather than letting the problem fester, because it wasn't just anyone who was destroying our land – it was the mining company. So, from there we demanded one billion rupiah to give the company access to all the land in Rengge Komba.' [170]

> 'According to *adat*, if you disturb our land without our permission, you have to pay a fine. That's why the Serise leaders offered to surrender their land completely to the company if they paid one billion rupiah. Because it was already too late (to ask permission), they had just forced their way in. So (they said) if you want to dig there because there is manganese there, this is what you have to pay. After the leaders made that offer, the company ran here, looking for support, for protection, from the Satarteu *gendang*.' [171]

On 20 May 2009, community leaders put this proposal to surrender their land in return for IDR 1 billion (USD $100,000) in compensation in a letter to the company. The letter, signed by 62 household heads, nearly the entire Serise adult male population, accused the company of destroying their collective land rights (*hak ulayat*). Apart from demanding financial compensation, the letter also demanded the company repair the access road linking Serise with the paved road that linked the community with other communities in Satar Punda and the

[170] Interview with Siprinanos Amon, Serise adat leader, Serise, Satar Punda, 18 April 2012.

[171] Interview with Herman Lau, Satarteu resident, Satar Punda, East Manggarai, 18 April 2012.

closest township, Reo. They also wanted the company to undertake restoration work to erosion caused by the mining activity in the rainy season. Finally, the letter asked the company for a guarantee of employment for any Serise community member who wanted to work as a labourer. The letter also warned that if the company did not acknowledge and agree to these demands within two weeks, the community would force the company to permanently shut down its pit at Rengge Komba (Amon & Raba 2009).

Clearly, the community understood that they were at a severe disadvantage in terms of power and resources relative to the company and would not be able to unilaterally 'shut down' mining, or at least for very long, without support of government and law enforcement officials. They also understood this was unlikely to be forthcoming. But the letter accurately conveyed their real determination to disrupt the company's activities, at least briefly, to pressure the company to recognise their land claims with compensation. The fact that the letter also included a demand for work opportunities indicated most of the community did not want the company to simply close its mining operation entirely.

It was not clear how the community had arrived at the figure of IDR 1 billion. Shared evenly among 60 households, this figure would have left each household with only around IDR 16.7 million (USD $1,670). This might sound like a fairly meagre sum in exchange for agreeing to allow the company access to a large proportion of the community's land, particularly given the mine's location, uphill from the community's houses, crops and water sources. However, the value of an amount such as this needs to be seen in the context of the level of poverty that exists in places like Serise. Given people were willing to work on the mine for only IDR 30,000 (USD $3) per day, a one-off payment of IDR 16.7 million would be almost two years of income. As the land itself was fairly poor for agriculture, and hence little of it had been cultivated, and most of the inhabitants were fishermen rather than farmers anyway, the landowners might have reasoned that materially they would not be giving up too much.

Ultimately, however, the amount of compensation requested mattered little, as the company soon made it clear it was not willing to discuss any level of monetary compensation with the Serise landowners. In taking this position, the company had the strong support of the Satarteu community leaders.

A 'false peace'

On 28 May 2009, one week after the Serise community delivered their ultimatum to the company for compensation, eight Serise traditional leaders signed another letter addressed to PT Arumbai. This second letter stated that the community of Golokoe/Serise in Satar Punda wished to withdraw their previous letter of 20 May, 'because the issues had been resolved by mutual agreement'. Perhaps anticipating that some might wonder about the reason for their quick change of heart, the letter also stated that the signatories had signed this letter with 'full awareness and without being forced to do so by any party' (Amon et al. 2009). For its part, the mining company believed that the dispute had been resolved (PT Istindo Mitraperdana 2010).

The letter also mentioned that the meeting that had produced this resolution and the letter announcing it had taken place at the Satarteu *gendang* (traditional house). The words '*Gendang Induk*' ('Primary Gendang') were inserted in brackets next to '*Gendang* Satarteu'(Amon et al. 2009), emphasising the Satarteu community's assertion of precedence and hence authority over the Serise *gendang* and therefore over the Serise territorial domain, including Rengge Komba. The company's insistence that customary authority over the land claimed by Serise actually resided with Satarteu rested on this assertion of a hierarchical patronage relationship between the two communities, with the Serise traditional house

subordinate. The Serise community utterly rejected the assertion that a patronage relationship existed. In a statement they released in 2010, Serise community leaders said the customary organisations of Golokoe/Serise and Satarteu were 'two separate entities that stood on their own'. In support of this claim they pointed out that the Serise community had chosen its own 'Tua Teno' (traditional leader) since the hamlet was established, had never paid tribute to the Tua Teno of Satarteu, and Serise leaders had never joined in the customary rituals or ceremonies conducted at the Satarteu house (Amon 2010). The Serise Tua Teno, Siprinanos Amon, also offered the following in defence of his authority when I met him in 2012.

> I said, "Who is behind me? If you say I am from the edge of the beach that's not true. My father was from Weleng, not Satar Teu. Our original kampung was Weleng. It was my father who came down here. Where you place your sword, that is where you have your land – we are also like that. After we planted our gardens for the first time there was no protest from anyone, not from Satarteu.' [172]

Amon, who was also the first signatory from the Serise community's side on the letter withdrawing the original letter, told me in 2012 that he and the other signatories had been intimidated into signing the statement withdrawing their letter of demands. This, he alleged, had occurred at a meeting attended by company representatives, Satarteu leaders, and local officials at the Satarteu traditional house.

> 'When we got there, the Satarteu people said we had no rights to make demands, unless we wanted to request something, but then it should be after them. So, it became very heated, and we were forced to sign. The Satarteu leaders, the police and the company, they all forced us to sign (a statement) that the area of Komba or Serise, is within the boundary of Satarteu. But we absolutely didn't agree (with the statement).' [173]

[172] Interview with Siprinanos Amon, Serise traditional leader (*Tua Teno*), Satar Punda, East Manggarai, 18 April 2012.

[173] Interview Siprinanos Amon, Satar Punda, East Manggarai, 18 April 2012.

Intimidation of communities seen to be opposing and obstructing mining companies, especially by making demands regarding the terms of land acquisition is common in Indonesia. The contracting of state security forces by mining companies to provide security around their projects is commonplace, even though the arrangement suggests a clear conflict of interest with their obligation to provide impartial law enforcement. Intimidation can take the form of threats of prosecution if communities physically or otherwise obstruct mining companies holding valid permits. Both the 1967 and 2009 mining laws contained provisions that make such obstruction a crime with penalties of prison time and/or fines that poor villagers in NTT usually had no means to pay.

However, intimidation can also involve implied or simply inferred threats of violence. The intimidating effect of such threats is all the more effective because those who perceive them are well aware that from time to time they are acted upon. Despite democratic reforms since 1998, including the removal of the military from politics, the excessive use of force by security forces in the context of natural resource disputes has persisted. An extreme example of this occurred on the eastern tip of the island of Sumbawa, directly to the west of Flores. On 24 December 2011, three local landowners were killed and 30 others received gunshot wounds after a force of 300 regular police and a local unit of the national riot control group (*Brimob*) moved in to put down demonstrations and blockades protesting exploration for gold on their land by an Australian mining company (Liu 2011; Brown 2011; 2012; Reuters 2012).[174]

A similarly bloody case of state violence against farmers asserting their land rights occurred in the Manggarai capital of Ruteng in 2004. Between 2002 and 2004, the Manggarai district

[174] Police acknowledged their response had been excessive as the Indonesian Human Rights Commission launched an investigation. The company's mining license was immediately suspended for 12 months and the Minister for Energy and Mineral Resources announced that it would be revoked (Reuters 2012).

government used a New Order-style ‘taskforce’ to forcibly evict farmers growing coffee and other tree crops in forests in the hills above Ruteng. The new district head at the time had created the Ruteng Recreational Park in the forests, claiming it was necessary to address a full-scale ecological crisis due to unsustainable land use practices, and social conflict stemming from declining groundwater sources. However, many suspected access to minerals was another, possibly more significant, motive (Prior 2004). National environmental NGO WALHI suggested the government had signed six contracts with forestry companies for industrial teak and mahogany plantations (Embu & Mirsel 2004; Erb 2005).

The taskforce created to carry out the evictions and cut down the farmers’ trees included 80 soldiers and 50 police, backing up three officials from the Public Prosecutor’s Office, and more than 300 district government officials (Prior 2004). There was no negotiation as decades-old coffee and other tree crops that had provided livelihoods for generations were cut down. Those who dared to resist were arrested or intimidated. The conflict escalated in March 2004 when several women and an elderly man were arrested for illegally cutting wood in the forest. When family members demonstrated at the police station the following day, police opened fire, killing six people and seriously wounding 40 others. The Human Rights Commission several NGOs such as WALHI, and the Fransiscan Justice and Peace Commission investigated and described the incident as a clear and serious case of police brutality (Erb 2005, p. 329). With such incidents of state violence still very much alive in the collective memories of communities, it is easy to see how a community pitted against a powerful coalition of government and business interests can perceive threats and intimidation in efforts to persuade them into submission.

On the day following the meeting at which the Serise leaders signed their agreement with the company to withdraw their claims for compensation, PT Arumbai wrote to East Manggarai’s district head, emphatically reiterating its view that the traditional community of Serise was a

'child', or offshoot, of the 'primary' Satarteu community, defined by its traditional house (*gendang*). According to the company, this meant the area known as Rengge Komba was under the authority of the Satarteu leaders, who had already consented to PT Arumbai using it. It also noted that until this time there had never been any problems between the company and the communities living around the mine. The company highlighted the things it claimed to have done for the Serise community, including providing it with fishing equipment in 2002 (PT Arumbai Mangabekti 2009). The letter also highlighted that the company employed 43 members of the Serise community, had built a road linking the hamlets of Gongger, Serise and Luwuk, built wells, provided free healthcare, and provided the community with stone and earth to help them build houses. It stated the company would also consider additional requests for help with community development in the form of public facilities, but that any such requests should first be discussed with leaders from Satarteu. Finally, the letter also cited the commitment given by the Serise leaders at the meeting to withdraw their original list of demands against the company (PT Arumbai Mangabekti 2009).

Eighteen months later, in November 2010, the community published its rebuttal of the company's claims in a typed document titled 'Position Statement: Evicted from our own land'. In the document, produced with support from members of the Catholic Church, Serise community leaders pointed out that the company had provided the fishing equipment (in 2002) as part of its obligation to compensate the community for use of their land in Rengge Komba to build the road to the processing facility. As far as the community was concerned, the written agreement to provide this equipment was not an agreement for the surrender of the Rengge Komba land. As for the road along the coastal fringe, which the company suggested it had built for the community, the Serise leaders said this was not part of any agreement between the company and the community, and that the company had built it 'more for its own interests' (Amon 2010).

Similarly, the Serise leaders argued that the stone and earth the company claimed to have provided for Serise residents was a matter between some individual residents and the company, as were the wells the company had drilled (which contained water too salty to be used in any case). None of these things, the community argued, were part of any proper agreement between the Serise community and the company over the use of land in Rengge Komba. Regarding the company's claim that it had provided free healthcare, the Serise leaders countered that this had only been for a small number of households who lived closest to the company's processing facility, and then only in 2005, and not again since (Amon 2010). Although the community did not dispute the company's claim that the company had employed 43 of its members as labourers, employment was a separate matter, between individual workers and the company. PT Arumbai's management appeared to be implying that employing local people somehow absolved it of some or all of its obligations to pay compensation for the use of land to generate company profits.

The company's highlighting of these items in its letter to the district head in its letter appeared to be designed to demonstrate its commitment to social responsibility, show that the community was already benefiting from the mine's presence, and, above all, obtain the government's support for its refusal to pay compensation for land to the Serise community. The community clearly believed the company was greatly exaggerating the size and impact of its investment in their social and economic wellbeing. However, regardless of the real value of the company's contribution, the community also justifiably refused to accept the premise behind the company's position: that providing these things somehow rendered the community's claims for land compensation void, illegitimate, or excessive. For the community, the provision of jobs, roads or any other local development project did not negate the company's obligation to compensate it for the use of communal land in Rengge Komba.

On this point, the community's position was strongly supported by Indonesian law. Indonesia's current corporations' law introduced in 2007 makes it compulsory for companies operating in natural resources sectors to undertake social and environmental responsibility. In case there was any doubt about what this means, paragraph (2) of Article 74 spells it out: 'it is a company obligation that must be budgeted for and accounted for as a company expense' (Republic of Indonesia 2007b). Indonesia's mining law that came into force in January 2009, just months before the dispute in Satar Punda renewed, also outlines mining companies' obligations to 'undertake the development and empowerment of local communities'. This is defined as 'efforts to build the capacity of the community, both individually and collectively, to increase their standard of living' (Article 95, Republic of Indonesia 2009a). Indeed, the mining law even makes utilisation of local labour an obligation (Article 106). This means that in making all of the contributions that PT Arumbai claimed to have made to the Serise community, arguably the company was doing no more than fulfilling its formal obligations to the community under Indonesian law.

The obligation on mining companies to conclude a compensation agreement with the owners of surface rights before commencing production activities is articulated by Article 136 of the mining law. There is nothing in either the mining or company law to suggest that provision of community development activities or employment opportunities can absolve companies of their obligations to landowners. Notably, the mining law does allow mining companies to conclude surface rights compensation in 'phases', as the location of their extraction activity expands, or moves. However, when the footprint of PT Arumbai's excavations spilled over into Rengge Komba in 2009, the company refused to acknowledge that it had incurred any new obligations to landowners, by arguing the land was still covered by its original agreement with the Satar Teu community leaders. However, aside from the dispute between Serise and Satarteu over who had customary authority in Rengge Komba, the location of the mine meant

it was only an existential threat to the former, while leaders of the latter had given the company permission and likely received something in return. This being the case, it was not surprising that only a few months later, the Serise leaders decided to up the ante.

Overt resistance

While the agreement signed between the Serise leaders and PT Arumbai on 28 May 2009 might have encouraged the company to believe it had resolved the issue, the pressure and coercion community leaders felt to sign the document meant in reality little had changed. The Serise community still believed they had a right to compensation for the use of land in Rengge Komba. Undeterred by the company's rebuffing of their written demands, the Serise leaders decided to assert their claims over the land in Rengge Komba in a more direct, physical way.

Their next move was to slash and burn the band of forest running around the top of the hill in Rengge Komba that separated the edge of the Satarnani pit from their gardens below. According to the company, they did this without consulting the Satarteu community (PT Istindo Mitraperdana 2010). The company reported the community's actions to the Satarteu leaders. In its chronology of the conflict, the company pointed out that the forest's removal made the land more vulnerable to erosion and landslides. It also removed a degree of protection from silt-laden runoff, dust and noise emanating from the mine, impacts which the community had been arguing were part of the reason they were entitled to compensation for the mine's expansion. Although from this point of view deliberately burning the forest appeared to be harming their own interests, it made sense in terms of their ultimate objective of having their land claims recognised in the form of compensation.

The two communities were unable to resolve their dispute over the forest, and the Satarteu leaders referred the matter to the Lambaleda sub-district police office in Dampek. At this point, religious leaders from the Franciscans' Office for Justice, Peace and Integrity of Creation (JPIC-OFM) became involved, to support the Serise community in their struggle with the company (PT Istindo Mitraperdana 2010).

In August 2009**,** the Serise community erected a fence around Rengge Komba to indicate the limits of its land claims. However, as the area the fence the blocked off was within the company's concession, the company reported the unauthorised fence to police. According to one of the Franciscan leaders who followed the case closely, local witnesses saw police organise local men to demolish the fence. The company then resumed its excavation activities beyond where the fence had previously stood. The Serise residents protested to the company, the district government and district legislature eight hours drive away in Borong and sought support from NGOs and religious leaders.[175]

On 19 October 2009, Serise leaders invited company representatives to a customary feast at the home of the Serise *tua teno* (traditional leader). The company accepted the invitation, and sent a single representative to attend. The company also contributed two pigs, 50 kg of rice, two cartons of cigarettes, five kilograms of sugar and some homemade palm wine (*tuak*). Church leaders were also present at the event. In its version of events, the company claimed that while the event was in progress, church leaders and members of the community climbed the hill and re-erected the fence. The company immediately notified police in the sub-district capital of Dampek, who soon had the fence dismantled again (PT Istindo Mitraperdana 2010).

[175] Interview with Father Aloysius Gonsaga, JPIC-OFM, Ruteng, Manggarai, 17 April 2012.

Discouraged but not yet defeated, the Serise leaders focused their efforts on cultivating support for their position among adat leaders from other communities, including even some sympathetic members of the Satarteu community. In June 2010, the Serise community hosted a meeting with members of the Satarteu, Weleng and Luwuk communities to discuss the issue of domain boundaries and the conflicting claims of Satarteu and Serise. According to the attendance list, there were 58 people present, with 45 of those from Serise. Four traditional leaders from Satarteu signed a written statement, along with seven from Serise, two from Luwuk and one from Weleng. This act indicated at least some figures in the Satarteu community recognised Serise's autonomy as a traditional community in its own right, and hence also its claims to outright authority over land within its domain. However, the *tua teno*, the most senior traditional figure, was not one of the Satarteu signatories. The statement contained the following five points:

i. We acknowledge that the ancestors of Serise came from Weleng directly to Serise, while the ancestors of Satarteu came from Weleng to Nderu and then to Satarteu.

ii. We acknowledge the existence of the citizens of Serise as the owners of ulayat rights that don't depend on any other kampung, including Satarteu.

iii. Serise and Satarteu constitute two separate adat communities.

iv. Serise is not the 'anak gendang' of the 'Satarteu gendang'.

v. In exercising its ulayat rights, Serise has absolute rights over its communal land within the borders that have been determined by our ancestors (Community leaders 2010).

A hand-drawn map was attached to the statement, indicating the boundaries of Serise's domain with those of Gongger, Satarteu, Luwuk, and Lengko Lolok. On 4 November 2010, the Serise *tua teno* signed and circulated a document titled 'Statement of Position: Evicted from our own land'. Typed on a computer, the text was placed beneath a large letterhead that

read: ‘ADAT COMMUNITY OF SERISE’, followed by the name of the hamlet, village, sub-district, district and province. The format and content of the document showed that with outside support, mainly from the church, the community leaders were developing a more sophisticated approach to articulating their position. The document was sent to the managers of PT Arumbai in Jakarta, the district head of East Manggarai, the leadership of the district legislature, and various church officials and NGOs (Amon 2010).

On the same day, the community, accompanied by members of the JPIC-OFM and other supporters from outside the community, the Serise traditional leaders staged a demonstration at the office of PT Arumbai in the nearby town of Reo as they delivered the document. The company later said in its chronology that after church leaders became involved, the community’s demands for compensation evolved into a movement to close down the mining operation. The company also accused one of the church leaders of entering the mine site without authorisation. It continued to characterise the Serise community’s grievances with the company as a dispute between Serise and Satarteu over competing customary claims to land.

> ‘As a matter of principle, the company does not get involved in matters related to determining the territorial boundaries between the main *adat* community of Satarteu and the ‘child’ *adat* community of Serise. The company wants the problem to be resolved in a familial way, peacefully, and with mutual agreement between the two groups. Because the company doesn’t have any authority over this issue, and we really respect the Manggarai traditions, we leave it all up to the main *adat* community of Satarteu which gave the location in question to the company’ (PT Istindo Mitraperdana 2010).

Although the company claimed to have no position on the matter of the territorial boundaries and land relations between Satarteu and Serise, its statement above clearly implies support for the idea of hierarchical relationship between the two communities, with Serise subordinate. Given that this view clearly supported the company’s ability to say that it had already

negotiated access to Rengge Komba with the relevant local landowners, it was somewhat disingenuous to claim it had no position on the territorial dispute between the two groups.

As already mentioned, the Serise statement claimed that community leaders who had withdrawn their original letter of protest had only done so because they had been pressured and subjected to intimidation. In addition to responding to the company's claims about the benefits it had provided the Serise community, the new statement strongly refuted the notion that the traditional community of Serise was a 'child' of the 'original' or 'mother' *gendang* (traditional house) of Satarteu. It claimed that Rengge Komba was not under the authority of Satarteu, because the citizens of Serise had established the first garden in Rengge Komba, in 1955 (Amon 2010).

In response to the company's claim that it had already obtained permission from Satarteu, the community said this amounted to a 'conspiracy' between the company and 'an elite group within the Satarteu adat community', which had trampled on the collective land rights of the Serise landowners. The statement also explained that the only reason the community had not objected to the company's presence before April 2009 was because it was only then that it began exploiting land in Rengge Komba. Community leaders said that the fact they had not raised any objections until April 2009 should not be interpreted as acceptance of the company's right to exploit Rengge Komba without negotiating an agreement with them (Amon 2010) .

Amon, the Serise *tua teno,* demanded the company stop mining immediately in Rengge Komba, undertake reclamation of land already excavated to restore it to its original state, and stop processing manganese in Golokoe (Serise). It also demanded the company show proof that it had obtained consent from the adat leaders of Satarteu to use the land at Rengge Komba, noting that many traditional leaders from other neighbouring communities, including

Satarteu, agreed Rengge Komba belonged to Serise based on the principle of precedence and being the first to plant a garden. The letter gave the company a deadline of one month to meet these demands (Amon 2010).

However, before the one-month deadline had elapsed, the Serise leader made his next move against the company. On 22 November 2010, the Serise community yet again erected a fence to mark the boundary of Rengge Komba near the top of the hill. This time a number of men camped themselves at the boundary line. After the men had spent almost two weeks guarding the fence, the police moved in again, removing the protestors and dismantling the fence.[176]

Within weeks of this incident, the Serise community adopted yet another new tactic in its struggle to force the company to acknowledge its claims. The community reported the company to police, accusing it of illegally exploiting land at Rengge Komba without first obtaining permission from the landowners. As mentioned already, Article 136 of the 2009 mining law requires the holders of a production permit (*IUP Operasi/ Produksi*) to 'resolve the matter of surface rights' with landowners before undertaking production activity on their land (Republic of Indonesia 2009a). As the community alleged the company began exploiting their land in April 2009, and the mining law had already come into effect in January 2009, this obligation was in effect when the company encroached on land in Rengge Komba. In response to the Serise community's formal complaint against the company, police investigated before declaring that there were no grounds for charges to be laid against the company for exploiting the land in Rengge Komba (Lawudin 2011c).

The Serise community leaders found the state's non-recognition of their land rights difficult to understand or accept. In his interview with me, the Serise community leader referred to the

[176] Interview with Siprinanos Amon, Serise, East Manggarai, 18 April 2012.

Basic Agrarian Law's recognition of collective land rights but appeared unaware that this recognition was so conditional and weak. He interpreted the decision by police not to lay charges against the company as evidence that the state apparatus was politically inclined towards upholding commercial interests and rights over those of communities.

> 'What I'm really disappointed about is that we've reported the company's theft. I've reported it to the district chief of police, but the government doesn't take any notice. But if the company reports (us), they're very quick to act. From my cynicism I ask what is behind this? Behind this is money. I have said laws are about money. The law is (like a kind of) mafia. I don't just say this because of this case, but other cases too.'[177]

Tensions continued into 2011, as the Serise leaders refused to accept defeat. On 28 February, members of the Serise community again raised the level of their resistance, detaining a driver of one of the company's heavy vehicles. This forced the company to suspend its operations for two weeks, but also increased the risk of consequences for the community leaders. Finally, losing all patience with the Serise protestors, the company reported this incident to police and this time asked them to charge the perpetrators. On 4 June 2011, police arrested the Serise *tua teno* and four other men, and charged them under the provisions of Article 162 of the 2009 mining law, which prohibit anyone from obstructing mining activities by a mining permit-holder that has fulfilled all the conditions of the mining permit (IUP) (Republic of Indonesia 2009a). Although ultimately not convicted, the men were remanded in custody for five months, unable to afford bail. They appeared in court seven times before they were found not guilty on 8 November and released. In March 2012, the company appealed this decision to the Appeals Court in Kupang.[178]

[177] Interview with Siprianos Amon, Serise, East Manggarai, 18 April 2012.

[178] Interview with Siprianos Amon, Serise, East Manggarai, 18 April 2012.

Land laws and recognition of customary tenure

Members of the Serise community faced multiple barriers to having their land claims recognised and obtaining compensation for their loss of amenity in Rengge Komba. The first was that, as already described, another customary community, Satarteu, was claiming ultimate customary rights and authority over the same land. The rival claim from Satarteu undoubtedly weakened the position of the Serise community in its efforts to achieve recognition and compensation from PT Arumbai. The issues raised by competing customary rights claims are examined in later in the chapter. However, it is also important to show how both communities were significantly disadvantaged in their efforts to obtain meaningful compensation by the way Indonesian land law treats customary tenure.

This is especially so for communal land tenure, which is common in Manggarai, and throughout much of NTT. The reason police gave to the Serise leaders for not pressing charges against the company for failure to resolve surface rights issues before commencing production, as required under the mining law, was that the Serise complainants did not have land registration certificates to prove their property claims. This explanation highlights the weak protection given to customary land rights under Indonesia's land law regime. The Serise community's claim to Rengge Komba was based on collective ownership of the area, which is never expressed in terms of formal land tenure. By dismissing property claims that are not supported by land registration certificates, the state was also effectively saying that communal rights (*hak ulayat*) did not exist. To the Serise landowners this explanation effectively denied the lived reality of customary land tenure practices, expressed through long-standing control and use of the land within known boundaries.

> 'The layout of our communal land is already there, from our parents and ancestors, because the dry creek, the mountain, that's all been there since forever, so what makes me laugh is that from the

> government they insist we must have certificates. Certificates have only just come into being right, to suppress us. But the markers of our communal land have always been just the mountain and the dry creek-bed.'
>
> 'We're defending the land of our ancestors, because this land was not just given to us by anyone, our own ancestors were here, same with our hamlet. The key point is, we've never given written approval for the company to come in here. That's our right to refuse.' [179]

Even in the absence of rival claims by another group, the nature of the Serise community's relationship to the land in Rengge Komba left it vulnerable to dispossession by mining company without just compensation for the loss of amenity and environmental impacts caused by the company's encroachment. The meagre compensation amounts paid to the Satarteu landowners who the company did recognise are confirmation of this. The deputy district head of East Manggarai told me that the company had 'resolved' the surface rights issues by paying each affected household IDR 15 million, around USD $1,500.[180] For poor farmers with little cash income, such a lump sum payment might have been tempting. However, whether it amounted to fair compensation given the temporary loss of amenity to the land and likely permanent impacts to it and the surrounding environment is another matter. There is almost no transparency around the negotiations between mining companies and landowners regarding compensation. However, mining companies can often agree to surprisingly small amounts and still receive government endorsement. Part of the explanation for this likely lies in district governments wanting to attract mining investment to their regions to raise regional government revenues, provide jobs, and stimulate economic activity. Supporting mining companies in their initial negotiations with local landowners for compensation is one way of reassuring potential investors who might be nervous about

[179] Interview with Siprinanos Amon, Supul, East Manggarai, 18 April 2012.

[180] Interview with Deputy District Head of East Manggarai, Agas Hendras, 23 April 2012, Borong.

political risk to their projects. This pattern of government officials supporting mining companies to minimise the amounts of any compensation to landowners has a long history dating back to the earliest days of Indonesia's modern mining era from the late 1960s (Robinson 1983; Leith 2002).

The power imbalance between mining companies and communities in compensation negotiations is also rooted in Indonesian land laws and their interpretation and implementation by governments at all levels. The 2009 mining law's main implementing regulation is unambiguous about the obligation for mining companies to 'resolve' surface rights within their concessions before undertaking production on that land, and to pay compensation to the surface rights-holder (Article 100, Republic of Indonesia 2010b). The problem for many landowners, however, is achieving recognition of their surface rights when, as is often the case, these rights are informal and collective, and the land is not in permanent use.

The weak recognition given to collectivist land rights in Indonesia can be traced back to a dual land classification system imposed by the Dutch colonial state, and which was retained in Indonesian land laws after independence. The system was borne of the colonial state's need to classify land that was not held under formal legal title, but which was nonetheless claimed by local residents, both individuals and groups or communities. The two categories—'free' state land and 'not free' state land—both presumed state control of all land that was not held under formal private title. Free state land described untitled land *not* in permanent use for dwellings or agriculture, while not-free state land was untitled land that *was* in permanent use for such purposes (Fitzpatrick 2007, p. 133-34).

There were two important implications that flowed from this classificatory system that continue to matter a great deal for poor rural communities in Indonesia, especially in the outer

islands where formal land title is more the exception than the norm in how people express their land claims. The first was that all untitled land, regardless of whether or not it was occupied by homes or permanent gardens and crops, was regarded as state land. This gave both colonial and Indonesian governments the authority to make decisions about its use, including for resource extraction. The second implication of the dual classifications for untitled land was that it provided the basis for differential payments to landowners who lost amenity to their land for state-backed development activities. 'Not-free' state land was subject to 'compensation' payments when the state allocated land to a third party, such as a plantation owner or resource company, whereas 'free' state land is subject only to much smaller 'recognition' (*rekognisi*) payments (Fitzpatrick 2007, p. 133-34).

This distinction persists. In NTT, it is common for villagers to remark on the material difference between compensation (*ganti rugi*) and much smaller 'recognition' (*rekognisi*) payments when discussing the relative benefits and costs of mining for themselves and others in their communities. Compensation can be payable in the absence of formal land certificates but requires the claimant/s to be able to demonstrate private property rights, through continuous use, either for dwellings or permanent cultivation. The state provides *de facto* recognition of such untitled private land claims through the routine collection of land taxes even in the absence of land certificates.[181] None of the members of the Serise or Satarteu communities had land titles for any of the land in Rengge Komba, and neither did they use the land into which the mining company's excavations were expanding for houses or permanent gardens. Under the colonial-era definition it therefore would have been regarded as 'free' state land, and subject only to recognition payments, not compensation.

[181] Interview with villager in Buraen, Kupang district, June 2011.

Following independence, Indonesia established its legal framework for dealing with the interaction of state authority over land with customary land tenure systems in the Basic Agrarian Law (BAL) of 1960. The BAL, which remains the legal framework for land governance, continues the colonial state's basis for recognition of untitled private property rights tied to permanent occupation for dwellings or cultivation. In principle, the BAL also recognises collective land rights, or *hak ulayat*, 'where they still exist'. In isolation, this provision would grant communities such as Serise the right to claim full collective property rights over land that they were not using either for housing or permanent agriculture. However, this recognition of collective rights is famously contradicted by the BAL's declaration that 'all land that is not under private property rights to be the property of the state'.

Lest there be any doubt about which of these provisions is to take precedence, the BAL further elaborates that recognition of collective rights is to be conditional on such recognition not obstructing land use decisions or activities that the government deems to be in 'the national interest'. In practice, the national government has used this national interest provision as the basis for denying recognition of land claims and compensation to groups that are dispossessed of land they use for shifting agriculture and harvesting forest products (Fitzpatrick 1997, p. 186; Welker 2006, p. 91; van der Eng 2016, p. 17).

To implement the BAL, provincial governments assumed authority for defining areas where collective land rights systems were still operative in local land tenure practices. Conveniently for natural resource companies and developers in NTT, the provincial government formally decreed in 1974 that there was no longer any land held under communal tenure in the province (Moeliono 2000, p. 14). However, formal land title was still the exception across most of the country (van der Eng 2016), including in West Timor (McWilliam 2002, p. 141-42) and the Manggarai region of western Flores (Moeliono 2000, p. 9) in NTT until much

later. This strongly suggests the NTT provincial government's declaration of the extinction of communal tenure was more a statement of policy intent towards recognition of such rights than an accurate description of actual land tenure practices on the ground. Ultimately, however, it is the state's recognition of such rights that matters when communities are confronted with other, more powerful actors claiming rights to land. In the 1980s, the national government found a permanent way to ensure any informal land rights claims were subordinate to the state's authority to make land use decisions in the national interest. The pro-development New Order government declared around 75 per cent of the nation's landmass to be state forest, which provided it with the national interest justification to trump all collective land tenure claims (Duncan 2007, p. 715). The 1999 Forest Law maintained this approach (Fitzpatrick 2007, p. 137).

The democratic and decentralisation reforms that took place in Indonesia in 2001 were interpreted by many as opening up new opportunities for a revival of *adat* institutions, customs and law. Achieving greater recognition of the rights of *adat* communities to exercise autonomous control over land and resources was a key focus of this optimism (Centre for International Environment Law et al. 2002). Out of this optimism the group AMAN, which stands for the Archipelagic Alliance of Customary Communities (*Aliansi Masyarakat Adat Nusantara*) emerged to champion the indigenous rights of customary communities, especially in relation to land and resources (Bakker 2009, p. 121-22; Henley & Davidson 2007, p. 4).

There were some concrete changes to law in this direction, including an amendment to the Constitution in 1999 that recognised the existence of '*adat* law communities' (Article 18B), replicated in the 1999 Human Rights Law. The 1999 Forestry Law also states that communal land rights (*hak ulayat*) are part of the cultural identity of *adat* communities and deserve protection. In 2004, lawmakers drafted a new Agrarian Resources Act to replace the BAL. The draft bill would have both recognised communal land rights and made customary law

(*hukum adat*) the basis for natural resource regulation (Articles 5 and 8) (van der Eng 2016, p.18). However, as of 2019, the Agrarian Resources Bill still had not become law, and the BAL remained the legal framework governing rural communities' rights to land.

Even as these tentative moves towards strengthening recognition of customary land rights occurred, an ambitious mass rural land titling program was working to protect rural communities' land rights, among other aims, through a different approach. The program, implemented between 1994 and 2009 by the National Land Agency (BPN) (and supported by the World Bank, the United States and Australia), sought to address problems of land disputes, communities' vulnerability to exploitation, and barriers to the efficient transfer and use of land in rural land markets. By 2013, the National Land Agency reported that around 27.5 million land certificates had been issued nationally under the program (van der Eng 2016, p. 16). However, the process of issuing land certificates actually increases disputes, largely due to difficulties associated with proving claims under customary land tenure (Fitzpatrick 2007). Although coverage was patchy, inevitably, the formalisation of land tenure also encouraged the privatisation of land, one of the programs aims, and a strengthening belief in the benefits of private landownership within government. This put further strain on customary land tenure systems and institutions, which in turn further undermined efforts to achieve proper recognition of customary rights by governments.

In 2012, the deputy district head of East Manggarai told me that the district government regarded communal land rights (*hak ulayat*) as 'extinct' and that he had explained this to the communities in Serise and Satarteu. However, rather than attributing this development to deliberate acts of state laws and policies, he explained it as a result of changing attitudes towards land and its value.

> ‘I already explained when I went down there, *hak ulayat* in Manggarai is already extinct. Why is it becoming extinct? Because individual rights are getting stronger and stronger. *Hak ulayat* in its true form means this year I have this land, you have that land, but for two years if I don’t use that land (cultivate it) then it goes back to the collective, I have to give it up , and someone else gets to take it.
>
> ‘Why is *hak uluyat* in Manggarai disappearing? Because now when the land is divided up it’s given for long periods and becomes individual property, bought and sold. Now they all see land as something they can sell, not just for raising crops. In the old times you couldn’t continuously cultivate the land you were given for a long period.
>
> ‘If the mining company didn’t come, they wouldn’t be claiming this land as their own. But it’s got an economic value now. The land itself is worth nothing, it’s just the side of a hill. It’s not good land. It can’t really be planted. It’s just that the value has gone up, so the conflict emerges.’ [182]

The deputy district head also told me that the Satarteu landowners that PT Arumbai had recognised each only received IDR 15 million (around USD $150). If accurate, the meagre size of these payments is reflective of the weak basis to the landowners’ land claims under Indonesian land law, and the weakness of their negotiating position. The Satarteu landowners lacked certificates to prove their land claims in Rengge Komba, and their claims relied on recognition of collective ownership under customary tenure. Their homes were also around two kilometres from the Satarnani pit at the top of the hill, and they were not using any of the land in Rengge Komba for housing or growing crops, or any other purpose. The company’s activities did not require them to relocate, and they were more protected from environmental impacts from the mine than the Serise community. This likely explains why, despite the small compensation payments the Satarteu landowners received, according to the deputy district head, ‘only seven or eight out of 117 households’ were asking for more. By contrast, the Serise landowners, to whom the mine was a much greater existential threat, and received

[182] Interview with Deputy District Head of East Manggarai, Agas Hendras, Borong, East Manggarai, 23 April 2012.

nothing, were united in their demands for recognition and meaningful compensation. That it was members of the Satarteu group, and not Serise, who received anything at all, raises an entirely different set of questions about the adequacy of customary land tenure systems to provide resource justice and land tenure certainty.

Defining traditional communities and landowners

In this case the inability of a traditional community to achieve recognition of its land rights by a mining company was not only because of the weak protections in land laws, or local government priorities of promoting mining investment. Rather, it was also due to another community asserting a rival set of claims over the same land. As the mining company claimed to have already resolved the matter of surface rights with the Satarteu community for its entire concession and fulfilled its obligations under its mining permit, the contest between the rival claims of Serise and Satarteu over Rengge Komba was effectively a zero-sum game. Satarteu's claims had trumped those of Serise's.

> 'My question is, when will there be an agreement with the citizens of Serise? They say that the law says, "people cannot obstruct companies because based on the permits from the government, they've fulfilled the conditions". I say, those who have fulfilled the conditions from the government, I ask, if they enter into an area, don't they still have to have an agreement with the people of Serise? They might have entered the correct way from the government's point of view, but what about our communal land rights? When will an agreement be negotiated?' [183]

Given the deeply held belief of the Serise community that they, and not Satarteu, were the rightful landowners in Rengge Komba, however, this highlights the problems for all

[183] Interview with Siprianos Amon, Supul, East Manggarai, 18 April 2012.

stakeholders when competing claims to land are asserted under customary tenure. This is particularly important in the context of mining, where the stakes become significantly higher and unrecognised claims of entitlement to compensation create conditions for ongoing conflict. The conflict that emerged between the Serise community and PT Arumbai was an extension of the conflict between the Serise and Satarteu communities. At its core, this inter-communal conflict was about the principles and conventions by which customary, or *adat*, communities define themselves as autonomous entities, and their relations with other groups.

These issues exist alongside and separate to the issues around the way the state recognises customary land tenure. The optimism that emerged about a revival or empowerment of *adat* institutions, including state recognition of customary land tenure during and for a few years after Indonesia's reform process often had the effect of romanticising the idea of '*adat* communities' as a means to achieving many complex and sometimes-contradictory land management objectives. These included empowering local communities in their interactions with the state and extractive industries, overall community wellbeing, environmental and resource conservation, and reducing land conflict (Centre for International Environment Law et al. 2002). However, as the current case study highlights, and as should have been clear already, the notion of uncontested, self-governing *adat* communities living in balance with the resource constraints of their natural environments, and in broad agreement with themselves and others, on the allocation and use of those resources, is a dubious one. As Fitzpatrick (2007) observed in Indonesia,

> 'to describe the legal dimension of land relations solely or primarily in terms of the 'state' and '*adat*' obscures the fact that many tens of millions of Indonesians live without the certainties provided either by *adat* or established state law.
>
> 'Similarly, to talk of '*adat* law communities' as though they were essentially self-regulating social entities – obscures the fact that many 'traditional communities' are not particularly self-contained, or

> easily defined, or able to manage their land and resource needs in a relatively conflict-free and environmentally-sustainable manner (Fitzpatrick 2007, p. 131).'

Others have critiqued overly simplistic conceptualisations of communities in the context of conservation efforts. In their influential article, Agrawal & Gibson (1999) highlighted how the criteria commonly used to define communities—'small-scale, fixed territorial habitation, homogeneity of social structure, commonality of interest, and shared allegiances to norms'—often conceal divisions and conflicts along 'ethnic, religious, linguistic and other lines' that can have a major bearing on differential outcomes and priorities for natural resource use (cited in Acciaioli 2009, p. 89). One of these 'other lines' that deserves greater attention is the way power and authority is distributed and exercised within communities, to produce highly uneven outcomes from decisions about natural resource use for different members of the group.

In the current case, the question of authority and power is bound up in the question of what constitutes a 'community'. One group, Satarteu, essentially asserts authority over another, the Serise group, within a wider single 'traditional community'. The Serise group, rejecting this subordinate position, has defined itself as a separate community, with its own basis for claiming authority over land. The benefits from whatever compensation the mining company paid predominantly flowed to the more powerful group, while the less powerful group stands to bear most of the costs. It was a perfect example, therefore, of the way that traditional political institutions can marginalise less powerful actors, particularly when they interact with state institutions and regulations.

Although the case involves a cleavage along ethnic lines, due to the immigrant ancestral lineages of some members of the Serise community, more fundamentally, it was about the contested nature of traditional power structures and institutions, and the scope for

disagreement about how 'autonomous' traditional communities form and obtain legitimacy. What needs to be understood is that such contestability is not a result of somehow 'diluted' or weakened *adat* systems in need of restoration, but rather an inherent feature of the way power is preserved and contested within *adat* systems themselves. Because the ability to claim the status of a traditional community also confers collective rights over territory, the uncertainty around the source of traditional political authority also produces disputes over land. Where rights to land present an opportunity to negotiate compensation with resource companies, and the beneficiaries of compensation are not those most affected, but rather those holding power, the conditions for conflict have been established.

In opting to negotiate terms of access exclusively with the Satarteu leaders, the company recognised the legitimacy of Satarteu's claims, and effectively rejected those of any rival groups. By portraying the Serise community as an offshoot of the Satarteu community rather than an autonomous and equal political entity, the Satarteu leaders ascribed a weaker form of land right to the Serise community, one dependent on Serise's subordinate position in a hierarchical relationship. This claim, the merits of which the company and the Satarteu leaders managed to persuade district government officials, suited the interests of the company, the Satarteu leaders, and, by extension, the district government.

Both groups—Serise and Satarteu—invoked their own competing versions of the settlement history of the area, and differing interpretations of the principles and conventions underpinning traditional authority, to support their respective claims to Rengge Komba. Both communities trace their ancestral origins to the hamlet of Weleng. They differ, however, on the migratory pathway that the original settlers of Serise took. The leaders of Satarteu accept that the first settlers of Serise came from the source hamlet of Weleng, but claim they arrived in their current location via the hamlet of Satarteu. This claim forms the basis of their argument that any rights to land enjoyed by the current-day Serise inhabitants are subordinate

to Satarteu's prior authority over the entire area in Rengge Komba, down to the northern shoreline. According to this view, any rights the Serise community enjoys over land in Rengge Komba must be granted by the Satarteu leaders. The head of the district mining office for East Manggarai offered this interpretation of the misunderstanding:

> 'Now in Manggarai culture, if Satarteu is going to give some land to Serise, they have to use *adat* custom. In Manggarai language, the *tua teno* is the *adat* leader who controls land (the '*lingko*') and distributes it. Now the *tua teno* has to allocate land to Serise. But what happened is Serise doesn't acknowledge that.' [184]

The Serise leaders, however, claimed their ancestors came directly from Weleng to Serise, and therefore did not need permission from Satarteu to exercise authority over land in Rengge Kombe.

> 'The people from Satarteu claim they have rights from Satarteu to the shoreline. But we reject that, we reject it because our ancestors came from Weleng, not from Satarteu, so the company is embarrassed before the citizens of Serise.' [185]

Although the current-day Serise leaders trace their origins to Weleng, all sides agree that the first people to settle on the land at Serise were not Manggarai natives, but immigrants from the island of Rote, some 400 kilometres to the southeast. Local people in Serise told me this Rotenese influence in the area explains the plantations of coconut trees next to the shoreline, and the fact that many present-day members of the Serise population continue to earn their livelihoods from fishing.[186] While fishing is mostly alien to the Manggarai way of life, the Rotenese are renowned for both their seafaring and fishing capabilities, and the Serise

[184] Interview with district mining office head, East Manggarai, Thomas Ngalong, Borong, East Manggarai, 17 December 2010.

[185] Interview with Siprinanos Amon, Satar Punda, East Manggarai, 18 April 2012.

[186] Interview with Herman Lau, Satar Punda, East Manggarai, 18 April 2012.

community continues to rely on fishing heavily as their main livelihood. The fact that the land next to the water in Serise was unoccupied and therefore available to the Rotenese immigrants reflects its poor suitability for the farming of rice and other crops. Apart from the limited area of flat land between the hill and the shoreline, the area is devoid of streams, and lacks enough fresh water supply to support irrigated cultivation.

It was only in the 1950s that some Manggarai natives, from Weleng, joined the Rotenese immigrants in Serise. These people introduced Manggarai customs and norms to the division of land and other aspects of social and economic life in the hamlet. Despite these 'localising' influences, the marginal status of the Serise community, in both cultural and economic terms, has persisted. When I visited, the houses of Serise were of significantly lesser quality than those in Satarteu, and the people generally appeared to be materially poorer.

Satarteu's refusal to acknowledge Serise as a traditional community in its own right drew upon and reinforced these 'indigenous' and 'immigrant' categories that informed the local social hierarchy and established their own privileged place within it. Government officials and the mining company representatives also referenced these categories.

> 'In Manggarai culture the social structure is hierarchical. But in Serise they don't acknowledge that, partly because there are people from various different cultural groups (*suku*) there – from Rote, Maumere, from Bima, from all over. They're not Manggarai people. And this leads to these issues around the *lingko* (communal land).' [187]

> 'According to the company, the Satarteu leaders said, "these people are immigrants, they don't have any rights". And the Satarteu leaders told the company it doesn't need to meet with them (the Serise

[187] Interview with district mining office head, East Manggarai, Thomas Ngalong, Borong, East Manggarai, 17 December 2010.

> leaders), because they don't have any rights, from the top (of the hill) to the sea. But there are clans in Satarteu who can verify that Serise is an *adat* community in its own right, and not part of Satarteu.' [188]

However, Father Aloysius Gonsaga, a Catholic priest who advocated on behalf of the Serise community, told me that the district government and PT Arumbai deliberately emphasised the inter-communal dimension of the conflict in order to undermine the Serise community's claims, and protect the mining company from their demands for compensation. Father Consaga accepted the Serise leaders' version of their settlement history, and hence their claims to Rengge Komba, and right to negotiate terms of access with the mining company.

> 'The government says Serise is not an *adat* community in its own right, but rather a child of the traditional house of Satarteu. If it is a 'child', it would mean the property rights still reside in Satarteu. But this is not the case. They both indeed originate from the same primary hamlet, the hamlet of Weleng. (But) Serise came directly from Weleng to Serise. Satarteu went from Weleng to Nderu, and then settled in Satarteu. (So) the government's claim that Serise is the child of Satarteu's *gendang* is not correct. Serise is a different *adat* community. This is just a 'scenario' invented by the government with the company. [189]

The village head of Desa Satar Punda, Bernabus Raba believed the contest between Satarteu and Serise was at a stalemate.

> 'So, it appears now what's happening is a war between brothers, because of the arrival of a third party, the mining company. The only way out is if the Satarteu people want to say "yeah, that's your territory", then I think it will be resolved. The never-ending problem now is that the traditional house of Satarteu says it's their territory, while the Serise people say it's theirs.' [190]

[188] Interview with Herman Lau, resident of Satarteu, Satar Punda, East Manggarai, 19 April 2012.

[189] Interview with Father Aloysius Gonsaga, Ruteng, Manggarai, 17 April 2012.

[190] Interview with Bernabus Raba, village head, Satar Punda, East Manggarai, 18 April 2012.

Although district government and village officials chose to emphasise the inter-communal dimension of the conflict, they were only able to do so because this axis of the conflict already existed. Nevertheless, government actors who characterised the dispute as primarily a dispute between the two communities also tended to express clear support for the Satarteu community's claims to Rengge Komba. By backing the status quo—the company's recognition of Satarteu as the legitimate landowners of Rengge Komba—the government's approach protected the mining company from having to make compensation payments to Serise.

Competing versions of the area's settlement history and the ancestral origins of the two groups were not the only issues about which the two groups, and their supporters, disagreed. Highlighting the contested nature of *adat* principles governing political authority and land tenure, protagonists and observers also interpreted these principles according to their own conclusions and interests. For example, both the village head and deputy district head endorsed the widely-held view that a hamlet could only be recognised as an autonomous 'traditional' (*adat*) community, and enjoy the full rights to land that that implied, if it had a traditional house or in the Manggarai language, *gendang* (Ind. *rumah adat*), of its own. Such houses are used to keep sacred artefacts that connect current-day members of the group to their ancestors, and as a place for holding customary ceremonies.

> 'In Manggarai culture, *hak ulayat* (communal land rights) is translated as *tanah lingko*. In Manggarai *adat*, where there is a traditional house (*gendang*), there is a *lingko*. The traditional house for those two communities there is in Weleng. If Serise wants to claim the land as their own, they must have their own *gendang* (*rumah adat*), but there isn't one there.
>
> 'I've already said to them, if you want to declare yourselves as an *adat* community, where is your *adat* house? You don't have one. Their *rumah adat* is in Satarteu, still there. The center is still in Weleng.

> Weleng gave it to Satarteu. So the land is still under the communal rights of Satarteuk. The approach from PT Arumbai was to Satarteu, because they have the rights there.
>
> 'But now the leaders in Serise have asked for compensation of IDR 1.5 billion, so the people in Satarteu are mad. (They're asking) "Why did you ask for that?" That's the issue, right there.' [191]

Serise's traditional leader completely rejected the notion that such physical symbols were essential to define an *adat* community, arguing that it was common for communities to occupy land for decades while claim land rights as a traditional (*adat*) community *before* building a traditional house.

> 'Cultural artefacts are not created just because someone orders it. It depends on our financial capacity. For example, the Luwuk hamlet, they've been there for more than 30 years but have only had a *gendang* for two years. But that's not because of any influence from anyone else, but according to the (financial) capacity of that hamlet. But they brought their cultural artefacts from Ngendang Riu, because that's where their ancestors came from. Same for us. When we have the means to build a *gendang*, we'll go to Weleng to seek permission, and come back down here [...]. You can't just build it whenever or however you want; we'd be berated by our parents because it wouldn't be in accordance with *adat*'.[192]

Moreover, the idea that a traditional community could not define itself and achieve recognition and the associated rights to land without a traditional house appeared not to have been applied to Satarteu. One of the things PT Arumbai did for the Satarteu community under its land agreement was to build its traditional house, soon after the company obtained its production permit (PT Istindo Mitraperdana 2010). In other words, before the company arrived and provided this assistance, Satarteu had also lacked its own traditional house and,

[191] Interview with Deputy District Head of East Manggarai, Agas Hendras, Borong, East Manggarai, 23 April 2012.

[192] Interview with Siprianos Amon, Satar Punda, East Manggarai, 18 April 2012.

according to the logic promoted by the deputy district head, a legitimate basis to be viewed as an autonomous traditional community with ultimate authority over any communal land.

The deputy leader of the East Manggarai district legislature, Leonardus Santosa, was much more supportive of Serise's rights than the district government. However, rather than taking a position on the matters of settlement histories and the basis of traditional communities, he framed the issues in terms of environmental justice. He also believed the district government had not done enough to try to resolve the dispute, and that it was inadequate to dismiss the matter as one for the communities and the mining company to resolve.

> 'This problem (between the two communities) only emerged in 2009, because there was some preparation work done for new production areas in Serise. The government immediately just focused on the issue of land (ownership). But I see that as only part of the problem.
>
> 'If we're talking about the issue of land, we can't just ignore this problem of disputed claims between these two communities. This is like forcing two communities together. If (we're) talking about problems of land, these have to be handled by the government. Because the mining permit was issued by the government. It can't just surrender this problem to the community – that's like inciting them into conflict with each other, without their knowing it.
>
> 'If I was the government in this case, I would ask, why was the mining permit issued? It means, I have to know the status of this land, who owns it? This is a question of responsibility. The land's ownership status has to be resolved before the permit can be issued.' [193]

These comments by a district political figure imply that the fundamental underlying cause of the conflict was a failure by an earlier district government to adequately investigate the issue of landownership in Rengge Komba and identify the 'rightful' owners. Such an interpretation of events is no doubt tempting in that it appears to offer the possibility of a relatively simple

[193] Interview with Leonardus Santosa, Deputy leader of the East Manggarai district legislature, Borong, East Manggarai, 23 April 2012.

technocratic solution, assuming officials possess the requisite willingness and patience to inquire more deeply into the issues. However, this view overlooks the inherently contestable and often fluid nature of landownership under informal systems of land tenure and how this interacts with intrusions by outside actors such as mining companies seeking access to resources.

It also downplays the importance of power relations within and between different groups, which are not necessarily based on democratic or social justice principles. What proponents of greater recognition of *adat* systems of authority and collective land rights might be reluctant to acknowledge is that such systems often serve to concentrate power and control over resources and recognising them can therefore serve to further reinforce inequality and marginalise vulnerable groups. Rather than being read as an example of customary institutions and authority being ignored, suppressed or misinterpreted, the unequal ability of the two groups to have their claims recognised could also be interpreted as an example of the marginalisation that can occur when governments and resource companies *do* recognise even legitimate customary claims to authority.

Traditionally, resources, whether in the form of harvests, labour or other in-kind tribute, flow from subordinate groups and individuals, to groups and individuals who are able to have their claims to authority recognised, including by more powerful outsiders. The Serise community leaders rejected the subordinate position to which the Satarteu community, the government and the mining company assigned them, refusing to concede that Satarteu had any authority over them. However, in the end the weaker group, which also was most exposed to the impacts of mining activity, was denied the opportunity to negotiate terms of access to land. The case highlights the often undemocratic, unrepresentative nature of *adat* principles and institutions, which tend to empower some groups and individuals at the expense of others.

This is particularly so where local communities comprise both indigenous and immigrant groups or their descendants.

Mining's environmental impacts on the Serise community

The injustice that the Serise community perceived at PT Arumbai's encroachment into Rengge Komba was first and foremost based on their claims to the land, and their belief that this should have guaranteed them an opportunity to provide consent and negotiate the terms of access, prior to the incursion. However, the location of the mine, and its proximity to the Serise homes, gardens and fishing grounds, also exposed the community to a greater level of environmental impact than the Satarteu community. According to the Serise residents, their greater exposure to the mine's environmental impacts provided them with an additional moral and economic basis for claiming compensation from the company, irrespective of any agreements the company had made with the Satarteu community, or the district government. At various points during their campaign for recognition and compensation following the mining company's incursions into Rengge Komba, the Serise leaders therefore sought to draw attention to the mine's impacts on the local environment and the community.

Serise's traditional leader, Siprianos Amon, told me that the mining operations had had adverse impacts on the health of community members, their homes (from dust) drinking water, crops, and the immediate marine environment where they fished.

> 'Before mining, when we looked for fish, the sea was just overflowing with them. It increased the prosperity of our families. Now we have to go to Labuan Bajo (in western Flores), or to Reok (a few kilometres away). Here there are no fish anymore because of the pollution. Whenever it rains, the

> manganese sediment (from the mine and the washing facility near the port) flows into the sea and turns the water black.'[194]

The community also reported significant noise pollution from explosives used at the mine, which were detonated without warning. The vibrations were said to be strong enough to make people's homes shake, frightening small children. The community also blamed the company for a perceived decrease in local rainfall.

> 'Since mining started, every year the rainfall has decreased. We're extremely sad. Two years ago, the rice turned to seed, and the corn turned white, because there was no rain. It would get overcast, look like it's going to rain, but then, I don't know how, it would disappear. We're very sad. With mining here it's very bad for our health, our agriculture, and our fishing.' [195]

Although significant reduction in vegetation cover over large enough areas is known to reduce precipitation, limited historical rainfall data and the lack of geographical granularity in available official rainfall records does not allow this claim to be either confirmed or disproven. However, the relatively small footprint of the mining area, and the fact that it was not forested prior to the commencement of mining, suggests any change in rainfall levels might have been more likely to have resulted from natural fluctuations associated with broader weather patterns. This is not to suggest that the Serise community did not genuinely believe they had observed decreasing rainfall, or that mining was the cause. At the same time, they were also astute enough to know that the idea that vegetation loss due to mining could reduce rainfall had the potential to attract sympathy for their plight.

---

[194] Interview with Siprinanos Amon, Satar Punda, East Manggarai, 18 April 2012.

The dark grey/ black manganese silt produced from the washing of the manganese ore, mixed with soil, creates clouds of sediment that filter out sunlight, killing coral and reducing habitat quality for fish and other marine life.

[195] Interview with Siprinanos Amon, Satar Punda, East Manggarai, 18 April 2012.

Without casting doubt on the Serise community's concerns about the environmental impacts they claimed to have experienced, it is important also to recognise that there can often be a strategic dimension to such claims. Even communities with relatively low levels of formal education quickly learn from their interactions with mining companies, governments and NGOs to frame their resistance and appeal for support in terms of 'the most potent and familiar tropes, such as abuses of fundamental human rights or environmental destruction' (Ballard & Banks 2003, pp. 287-313). Drawing attention to the impacts suffered by the Serise community helped to imbue the community's demands for compensation with these recognised notions of environmental and human rights, which, importantly, are not necessarily dependent on recognition of a community's landownership claims. Framing their struggle partly in such terms also provided a counterpoint to the attempt by district government officials, the mining company and the Satarteu community to portray the Serise community as rent-seeking opportunists, attempting to 'rewrite' the history of land settlement purely to extract a material benefit from the company's presence. Although community claims about the environmental impacts of mining projects can be motivated by financial reward, they can also be driven by a genuine desire to exert some control over the project, and limit its impacts on them (Filer 1997, p. 160-61; Macintyre 2007, p. 52).

Grievances about concrete environmental impacts also give legitimacy to expressions and concepts of local sovereignty, irrespective of whether landownership claims, formal or informal, are recognised. Although local landowners often do suffer the impacts of mining, the area within which mining's impacts are felt does not always map neatly to landownership. Non-landowners can also reside within the impacted area, while landowners both within and around mining concessions can sometimes be relatively unaffected (Burton 1997). In many cases in NTT, rural landowners relocated to towns or cities to pursue education or economic opportunities. Disagreements over the rights that these absentee landowners should enjoy

caused many disputes within families. If landownership is used as the sole basis for determining the distribution of compensation from mining projects, this also further marginalises those who are already marginalised: those who either do not claim to own the land on which they live and cultivate, or claim it but fail to have their claims recognised. Invoking basic human rights linked to the need for clean fresh water, the means of producing food and clean air can help to recast assumptions about compensation.

The Serise community's 2010 document, titled 'Position Statement: Evicted from our own land', although focused mainly on rebutting the arguments of the company over the landownership issues, also stated that the community had lost its 'sovereignty over the territory that is its living space' (Amon 2010). The document made the following demands that referenced or implied environmental impacts:

1. Surrender Rengge Komba to us to become farming land! We need the means of production (land) which is sustainable for our lives in the future.

2. Undertake reclamation to restore all the land in Rengge Komba that is owned by the *adat* community of Goloekoe/Serise to its previous condition.

3. Stop manganese processing activities in the middle of our community because we need to have healthy lives (Amon 2010).

Certainly, framing their resistance in the language of environmental justice and conservation resonated with the community's strongest source of external support—the Catholic Church, and specifically the Franciscans Office for Justice, Peace and Integrity of Creation (JPIC-OFM). JPIC-OFM Indonesia has a strong environmental and ecological ('eco-pastoral') focus to its pastoral work and a strong presence on the island of Flores. It is affiliated with the JPIC-OFM in Rome and Fransiscans International, which maintains offices in New York, Geneva and Bangkok (JPIC-OFM Indonesia 2008). These links connected the Serise community,

despite their relative geographical remoteness, to a global network of community and environmental activists, providing a two-way channel for their story to be heard, and for trans-national dialogues around ideas of environmental justice and local sovereignty to filter back through to the community.

The Catholic church's advocacy on mining in Flores was part of its broader work to promote environmental and social justice for the rural poor and took various forms. For example, in September 2008, just months before the conflict between PT Arumbai and the Serise community broke out, the JPIC-OFM published a glossy and carefully researched 56-page 'position paper' on mining in the Manggarai region. Titled '*Saving the land of Manggarai from destruction: An investigation by JPIC-OFM Indonesia about mining in Manggarai and the impacts now and in the future*', the booklet examined a range of issues associated with mining in Manggarai, including the environmental impacts, government policy, community attitudes and potential alternative paths to economic development (JPIC-OFM Indonesia 2008). In 2009, Catholic church leaders also collaborated to publish an edited collection of articles and statements on mining in Flores and the nearby island of Lembata, sub-titled 'Blessing or curse' (Jebadu et al. 2009). The interest shown by the church in mining in Flores helped attract the attention of foreign development practitioners and academics (Colbran 2010; Erb 2011).

From 2010, when the Catholic church in Flores became closely involved in the Serise case, its advocacy included making representations directly to district government officials, attending meetings between the community and the mining company, and making public statements aimed at both the district government and the mining company through the media. Local church leaders in Flores, particularly those based in Ruteng, the district capital of Manggarai, were often with the Serise community leaders during their meetings and other actions, even at risk of creating problems for themselves. In September 2010, for example, Father Simon

Suban Tukan accepted an invitation from Serise leaders to visit the mine site to see conditions on the ground and following a misunderstanding about permission to enter the area, had his vehicle detained for hours and was questioned by the company and police at the company's basecamp (*Pos Kupang* 2010b). In another instance, in November 2010, after Serise leaders had fenced off the land they claimed to be illegally occupied by PT Arumbai, another JPIC leader from Ruteng immediately travelled to the area to mediate a resolution to the standoff (*Pos Kupang* 2010q). Other groups expressing solidarity with the Serise community supported the JPIC-OFM's advocacy and leadership on the issue, with the Manggarai Democracy and Environment Forum calling for NGOs including the church leaders to play a formal role in mediating a resolution to the dispute (*Pos Kupang* 2010n).

The national JPIC-OFM office supported the work done by the local church leaders. For example, in November 2010, the JPIC-OFM national director in Jakarta was quoted in the NTT press calling for the East Manggarai district government and PT Arumbai to cease all mining activities in the Serise area, for the company to withdraw from the area, and 'liberate' the Serise community from the processing facility on their land. He further called on the district government to 'take real steps to protect the interests of the community, and said it 'that the government's attitude was regrettable' and that it appeared to put the interests of mining corporations ahead of those of communities struggling to defend their rights (*Timor Express* 2010h).

District government officials acknowledged the community had the full support of the church leaders. Although this activism clearly annoyed some officials, they were also generally careful about how they engaged with and spoke about the church leaders.

> 'On 9 November, this year (2010), people from Serise came and demonstrated here with people from JPIC, with all the pastors, in front of the district head's office and the district legislature. The

community there in Serise is only about 30 or 40 people. There were also others from the Catholic teaching college (STKIP) (in the Manggarai capital of Ruteng), but that is their right (to protest).' [196]

'Communication between us and the church is very good. Harmonious. Their activities don't break the communication. We discuss the environmental aspects and the kind of damage that it is. We exchange our views. But the position of just opposing mining without any argument is not good. If we have different opinions as organisations, that's appropriate and normal.

'I've said to the priests, if for argument's sake, you think the company does something wrong, take them to court and if it's proven, we're prepared to accept that. But if the court says the permit is legitimate, then JPIC has to accept that as the end of its struggle too. But they keep on struggling. In Manggarai Timur there has been no court cases yet.' [197]

The respect shown by district government officials to church leaders reflected the high level of esteem with which church officials were held by the community. District government officials were overwhelmingly sceptical of the community's claims of environmental impacts from the mine. The deputy district head of East Manggarai essentially characterised the claims as a tactic, largely 'invented' by the church and other advocates to increase pressure on the company to meet community demands for compensation.

'The main factor that makes them opposed to mining is damage to the environment. (But) this argument did not come from the people. It came from a group that cares about the environment. The interests of the people are actually very simple. "How much money am I going to get from this?"

'In Serise, if we go down to the location, there's a problem because there's pro and anti-(mining) groups and it's not really about the environment, it's a struggle over money; over who gets it and who doesn't get it. That's what it's all about. JPIC is struggling for them. The people are pressuring the government to intervene, but we can't.' [198]

[196] Interview with Thomas Ngalong, head of East Manggarai district mining office, Borong, East Manggarai, 17 December 2012.

[197] Interview with Agas Hendras, deputy district head, East Manggarai, 23 April 2012.

[198] Interview with Agas Hendras, deputy district head, East Manggarai, 23 April 2012.

Although the community highlighted the environmental impacts, their statements suggested they were not ultimately seeking to close the mine down. Most of the Serise households had at least one member employed as a labourer at the mine until all remaining workers from Serise withdrew their labour *en masse* in November 2010. The 39 Serise workers withdrew their labour in protest at the company's handling of 13 Serise workers who had participated in a 'Peaceful Demonstration of the Serise *Adat* Community' (*Timor Express* 2010i). The Serise *tua teno* himself had been a mine employee up until 2007, at which time his wife replaced him (JPIC-OFM Indonesia 2008, p. 37).

The community therefore had an ongoing financial interest in the mine's continued operation. Nevertheless, government officials sometimes tended to merge the community's specific grievances with the idea of a general or ideological opposition to mining, promoted by the church. This reframing helped the government to defend its role in the dispute, by standing behind the legal obligations tied to the valid mining permit.

> 'We've already issued a permit. So, whatever happens, we will defend the permits that we've already issued. In a legal sense we are obliged to defend those permits. Because there's lots of interests here. The government is in the middle actually. Between the company and the NGO. If I cancel the permit, the company is going to lose too. The labourers will lose too, and they're our people.' [199]

Even after they withdrew their labour in 2010, the Serise workers wanted to be able to resume working at the mine once the land issues had been resolved. Although the community leaders demanded the company retreat from Rengge Komba, this came after the community had become frustrated that the company would not recognise its right to compensation. Even then, the community did not demand the company stop mining, but only that it stop mining in

[199] Interview with Agas Hendras, deputy district head, Borong, East Manggarai, 23 April 2012.

Rengge Komba, undertake reclamation of the land in that area, and relocate the manganese processing (washing) facility away from the community.

The land in Rengge Komba was barren, rocky, steep, eroded, and of little agricultural value. However, the basis of the community's claim for compensation was not the agricultural value of the land that had been disrupted, but that its proximity to the Serise community a short distance downhill made the mine's expansion an existential threat to the community's continued viability in the area. They believed that in employment opportunities, they were entitled to compensation for the loss of amenity to land, and the associated environmental impacts of mining on gardens, wells, the immediate marine environment, air quality, and noise pollution.

One of the reasons mining companies pay compensation to landowners is for the dispossession of homes and farmland. However, according to any reasonable notion of environmental justice, compensation should also recognise the environmental impacts and loss of amenity to land borne by local communities, whether or not they are recognised as landowners, and whether or not they are physically displaced. Seen from this perspective, the unresolved dispute over landownership in Rengge Komba becomes less significant than the fact that it was the Serise community, directly downhill from the land under excavation, that was bearing the brunt of the mine's impacts. This single fact explains the refusal of the Serise community leaders to accept the suggestion that they should concede defeat just because others did not recognise their land claims.

By contrast with the Serise leaders, the Satarteu community did not raise any complaints, at least not in the public sphere or with district government officials, about the environmental impacts from the mine. This was despite the fact that the Satarteu community claimed authority over the entire area between the main (Satarnani) pit at the top of the hill, and the

shoreline. Aside from the fact that the Satarteu community had negotiated compensation from the company as part of its original access agreement, the different reactions of the two communities also reflected their respective proximity to the mine. The Satarteu houses and agricultural land are located on the opposite side of the hill to Serise, and around two kilometres of dense forest separates the backside of the Satarnani pit from the hamlet. Compared to Serise, Satarteu is much better insulated from the effects of the mine by distance, topography and vegetation.

In 2010, PT Arumbai began work on another pit that lies roughly halfway between the pit at Satarnani and the hamlet of Satarteu, in an area known as North Golobongko. By 2013 this pit was perhaps half the size of the Satarnani pit, and only around 1000 meters from the hamlet of Satarteu. Situated at a higher elevation than the hamlet, and in a natural catchment, the land's natural contours funnel water from this area directly towards the Satarteu hamlet and irrigated rice fields below. The closest of these rice paddies sit in the crease of this catchment only 500 meters below the Golobongko pit.

Yet, the kinds of tensions that emerged in Serise were not visible in the Satarteu community. While the protests from the Serise community generated articles in the local newspapers almost daily between 2009 and 2011, not a single story appeared about any expression of discontent from the Satarteu community in regard to the Golobongko pit. It must be said that this does not mean tensions were not present. It is possible that they were but dealt with through closed discussions with the mining company.

In looking for other possible explanations for these contrasting reactions, the most obvious difference between the two cases is that the Satarteu landowners had negotiated a formal compensation agreement with the company that applied to the entire concession, including the Golobongko pit and surrounding land. I was not able to find out many details of the

company's compensation agreement with the Satarteu landowners, other than that it included 117 individual landowners, all but six or seven of whom the district government claimed were content with the terms of the agreement.[200]

In October 2011, PT Arumbai announced it would abandon a 625-ha exploration concession at Golorawang in the village of Tengku Lawar, also in the sub-district of Lamba Leda, because of community opposition to its presence. The *Flores Pos* newspaper reported that initially the Tengku Lawar community had welcomed the company, believing it would bring prosperity. However, after community leaders undertook a number of study trips to PT Arumbai's mine in Satar Punda, and spoke with members of the Serise community, their attitude quickly changed (Pandong 2011).

> 'After that, the citizens started to oppose mining. Together, they signed a letter of opposition and sent it to the government and NGOs. The leaders and the citizens always consult to determine their stance towards the presence of mining companies because they feel they have been lied to by mining companies. The citizens agreed they would not give their land up to mining' (Pandong 2011).

Given that Serise had been prepared to settle its claims against the company for IDR 1 billion, or around USD 100,000, in 2009, in retrospect, this might have seemed a small price to pay if it had helped to ensure the company's new project in Tengku Lawar went ahead. On the other hand, there is also no way to know whether the compensation demands would have stopped if the company had agreed to pay the Serise community IDR 1 billion. The company might have calculated that giving in to the Serise demands would have made the Satarteu landowners feel cheated, particularly if they had received smaller payments. If so, this could have led them to start making fresh demands of their own on the company. This aside, there is little doubt that the company also felt confident that it had the support of the district government and the

[200] Interview with Agas Hendras, deputy district head, East Manggarai, 23 April 2012.

courts to uphold its rights to exploit resources within its concession, and ultimately would be able to wear down the community's spirit for resistance.

In the end, the conflict between PT Arumbai and the Serise community was resolved only as a consequence of regulatory changes that caused PT Arumbai to close down its operation. A decision by the central government in 2014 to impose a heavy and steadily escalating export tax on the sale of raw minerals to enforce domestic processing requirements introduced by the 2009 mining law dramatically reduced the profits of many mining companies operating in Indonesia. PT Arumbai opted to cease operations and withdraw from the area in the same year. By 2019, the company still had not undertaken reclamation of its former mining pits, which remained clearly visible, despite some natural regrowth of vegetation.

Chapter 6 – Company versus community: Manggarai's Torong Besi mine

At around the same time that the conflict in Satar Punda was unfolding, manganese mining was generating controversy just a few kilometres away in the neighbouring district of Manggarai. Manggarai was an even larger site of manganese mining operations, with nine active permits for production and a further 11 for exploration in 2010. All but one of the concessions attached to these licenses were located in the sub-district of Reok, which extends to the district's northern coastline. While concerns over land acquisition, environmental impacts and livelihoods were common wherever mining companies were present, one project accounted for a large share of the controversy in Manggarai. The project belonged to a domestic mining company called PT Sumber Jaya Asia (PT SJA). PT SJA held two production permits in Manggarai: one for a 689.2 ha concession in the sub-district of Cibal, and another covering two, much smaller concessions that combined covered around 77 ha, on a peninsula known as Torong Besi, in the sub-district of Reok. Due mainly to its location in a protected forest, the Torong Besi project generated local grievances around inequities in access to natural resources that also made it the focal point of broader, district-wide opposition to mining in Manggarai for several years. To critics of the district government's embrace of manganese mining, the Torong Besi project encapsulated the full range of injustices they perceived in unequal levels of access to natural resources afforded to communities and extractive industries produced by policies, laws, and their interpretation and enforcement.

The case study presented in the previous chapter highlighted the limitations of traditional institutions for navigating and representing community interests around mining. The case study presented in this chapter reveals how laws, policies and decisions related to conservation, forestry and mining work to deny communities access to land and natural resources on environmental grounds, while enabling mining companies unfettered access to the same areas. The case examines several contests between a mining company, communities, civil society organisations and district and national governments. The first of these contests involves PT SJA's (ultimately successful) efforts to preserve its rights to the entirety of its manganese concession in the face of changes to national forestry laws that appeared to demand a significant reduction in the size of its concession area. The mining company's ability to resist the state's attempt to enforce environmental laws is contrasted with the treatment of several local villagers accused of illegal logging in the same forest where the mining company was operating. The case also examines an attempt by local communities, supported by civil society organisations (CSOs), to use the courts to hold the mining company to account through for what they alleged were its negative impacts on their environment, amenity, health and livelihoods.

The Torong Besi mine

The Torong Besi mine is located on the Torong Besi peninsular known as, which is around four kilometres wide and four kilometres long and protrudes into the coral-fringed waters of the Flores Sea. The peninsula itself is almost uninhabited but its western half is included within the village (*desa*) of Robek, while the eastern half falls within the urban village (*kelurahan*) of Wangkung.

Figure 18. Satellite view of the Torong Besi peninsula and Kedindi Forest showing PT SJA's mine at Soga in 2012. District government maps show Protected Forest Nggalak Rego RTK 103 covered roughly the western half of the peninsula. The red line indicates the Soga pit's much smaller footprint in 2007, just before the permit was transferred to PT SJA. Source: Google Earth.

According to district government figures, in 2012 Robek had 470 households, and a population of 1,839, while Wangkung had 750 households and 3218 residents (BPS Kabupaten Manggarai 2012, p. 50). Most people in both Robek and Wangkung are farmers, with a small number of people making a livelihood from fishing. By February 2009, PT Sumber Jaya Asia was employing 52 permanent labourers and a further 112 casual labourers, mostly drawn from local communities (Labourers employed by PT Sumber Jaya Asia 2009).

Only a handful of households are located on the peninsula itself with the vast majority of the populations of both Robek and Wangkung living in hamlets between three and five kilometres away. Except for a brief period in the early1980s, there has been very little agriculture on most of the peninsula as local people's access to land was heavily restricted by the creation of a state forest in 1983. This occurred under the massive program of state appropriation of

forested land that occurred under the New Order regime from the 1970s (Duncan 2007). Although the creation of the state forest resulted in the eviction of local people, the area remained accessible to mining interests.

The origins of manganese mining at Torong Besi date back to 1997, when the central government issued a production permit to a subsidiary of state-owned mining company PT Aneka Tambang, a company called PT. Istindo Mitraperdana[201] (Manggarai District Head 2009a). The original permit authorised the company to extract manganese from 44.82 ha of land in an area known as Soga, on the western slope of the hill that dominates the peninsula's landscape. Most of the controversy around mining at Torong Besi stems from the location of this concession inside the boundaries of a state forest (Manggarai District Head 2009a). This state forest reserve is a sub-section of Kedindi Forest, the local name for the forest that covers most of the Torong Besi peninsula and extends several kilometres inland, to the south. According to the Manggarai district forestry office, the Minister for Forestry formally established the state forest reserve Nggalak Rego RTK 103 with Ministerial Decree 89/Kits-II/1983 on 2 December 1983, with a designated function of 'protected forest' and a total area of 42.4 ha. Further surveying work was undertaken to define and mark the forest's boundaries in 1998-1999 (Manggarai District Forestry Office 2008).

PT Istindo Mitraperdana subsequently obtained a second and separate concession of around 34 ha located in an area known as Bonewangka on the eastern side of the peninsula, giving the permit-holder rights to a total of 77 ha at the time a different company took over the permit in 2004 (Manggarai District Head 2004). The Bonewangka concession was the site of a processing facility and early excavations by the original permit-holder. Although much

[201] Issued by the Minister for Energy and Mineral Resources with Ministerial Decree 1546.K/2014/MPE/1997 on 22 September 1997.

closer to local communities than the Soga site, the Bonewangka site was located entirely outside the boundaries of state forest Nggalak Rego RTK 103. This location, and the fact that the Bonewangka site was no longer being used for mining by 2009, explains why it did not generate the same level of community opposition and public interest as the Soga concession.

The names Soga and Bonewangka both refer to *lingko*, which are, as previously noted, units of communally owned land attached to a *gendang*. Local communities have long regarded the Torong Besi peninsula, including Kedindi Forest, as part of their broader customary domains, even though government land policies have prevented them from exploiting resources or exercising practical control over the peninsular and its forests. State Forest Nggalak Rego RTK 103 covers roughly the western half of the Torong Besi peninsula, and extends several kilometres inland, to the east and southwest. Local communities reported being evicted from the gardens and plantations they had been cultivating in the Soga area when the forest was created in 1983, without any recognition of their customary land rights, or compensation. Father Aloysius Gonsaga, a Catholic Church leader and community advocate on mining in Ruteng, told me that all of the land and forests on the Torong Besi peninsula belonged to local communities under customary tenure (*hak ulayat*) until the protected forest was established in 1983.[202] Community leaders remember their eviction from Soga after half of the peninsula was turned into a protected forest.

> 'We were disappointed because we had been working in the area of the Soga *lingko* for years. [...] That was in the period of (former district head) Frans Dula Burhan (1980-1990). He said that *lingko* at Soga was closed forest (*hutan tutupan*). We were disappointed because we had been working and harvesting there for three years and suddenly the government said it was off-limits. We had timber, corn, rice

[202] Interview with Father Alosyius Gonsaga, Ruteng, Manggarai, 17 April 2012.

> growing there. We were rejected even though we worked there not to destroy the land but to cultivate it, and we could replant the forest too' (JPIC-OFM Indonesia 2008).

The creation of Protected Forest Nggalak Rego RTK 103 and subsequent removal of communities was not an isolated incident. It took place under the central government's massive nationwide 'land grab' of the 1970s and 1980s, which declared around 75 per cent of the country's landmass to be state forest, placing it under the control of the central government, and severely restricting communities' access to land and forest resources (Duncan 2007).

The eviction and subsequent exclusion of communities after the state forest was established at Torong Besi meant that the development of mining on Torong Besi from the late 1990s did not have the same direct impact on communities that it would have had if the eviction had not already occurred. The official justification for the evication was to establish a protected forest to preserve the area's ecological values. The obvious contradiction and double standard in the government's subsequent decision, a decade and a half later, to allow a mining company to exploit minerals in that very same protected forest was not lost on communities in the area. Although already displaced from the forest more than a decade before mining commenced, local communities experienced a range of negative impacts from the mine. Some households, those in the hamlet of Jengkalang, situated just a few hundred meters below the site of the Bonewangka concession, stood in the path of mine runoff, while communities in Jengkalang and Robek complained of the impacts of air, noise and marine pollution from the mine. A further source of resentment for local communities was that, because they had already been dispossessed of the forest at Soga long before the government granted mining rights, they also had not been in any position to negotiate compensation or other terms of access with the company granted those rights. All of these factors combined to fuel resentments that led to the communities launching a class action to seek compensation from the most recent holder of

mining rights on the peninsula, as discussed in detail later in this chapter. Before that contest began, however, another battle was played out over the protected forest's existence in a legal sense, and whether the mining companies had the right to be exploiting minerals at Soga.

Winners and losers from forest protection policies

The process of limiting local communities' access to forests had begun on Flores even before independence. The Dutch colonial government recognised worsening environmental degradation due to deforestation as a result of increasing population pressure and traditional slash and burn agriculture. In 1937, the Dutch negotiated with local communities the establishment of a series of forest reserves aimed at preserving tree cover, soil stability and water sources. However, the expansion and hardening of these boundaries that occurred following independence, increased during the 1980s under the New Order, and continued long after the democratisation and decentralisation reforms introduced in 2001, were the result of a unilateral, top-down process (Prior 2004).

By prohibiting open-cut mining in protected and conservation forests, the new forestry law appeared to restrict mining companies seeking access to resources in the same way communities had long been locked out and to give much greater priority to ecological considerations in economic development. The question was whether in the interpretation, implementation and enforcement of the new forestry law, district governments would be as strict in protecting local forests from mining as they were with ordinary villagers.

As outlined in the previous chapter, from 2002 to 2004, the Manggarai district government forcibly evicted people from forests in the newly declared Ruteng Recreational Park in the mountains above the district capital, Ruteng. Coffee and other tree crops that had provided

livelihoods for generations were hacked down. Those who dared to resist were arrested and threatened with other forms of intimidation. Several were even killed in clashes with police when villagers demonstrated at the district legislature (Embu & Mirsel 2004; Erb 2005). The district government attempted to justify this severe approach to conservation as necessary to address the full-scale ecological crisis the district was experiencing due to unsustainable land use practices, and the social conflict that it claimed stemmed from the loss of water sources (Erb 2005). This same zealous commitment to protecting local ecologies from local people was still evident in 2009, when eight local men from the village of Robek (within which Kedindi Forest is located), were charged and jailed for felling a few trees, as discussed later in this chapter.

Elsewhere in Indonesia, the creation of 'conservation parks' has led to land management regimes that prevent customary users of the land from collecting or harvesting forest products, and farming, grazing livestock or residing on customary land (Murray Li 2007, p. 216). In many cases, ecological objectives have served as a convenient pretext for removing communities from forests to clear the way for governments to allocate land to commercial interests, including plantation forestry and mining companies, unencumbered by customary land claims. Local civil society in Manggarai strongly suspected this was the ultimate objective of the district government's concerted policy of locking people out of forests (Prior 2004).

The strategy of denying people access to forests on conservation grounds before allowing mining companies to remove trees and exploit their subterranean resources was not uncommon. Haymon (2008) cites a district head in the mineral rich province of East Kalimantan who auctioned off the state forests within his constituency to a local mining company, and another in East Java province who even sold off a national park to local miners (pp. 14-15).

The central government's massive program of defining state forests achieved the same outcome, extinguishing any practical meaning in customary land claims in the new forest zones and placing up to three quarters of the country's landmass directly under state control (Duncan 2007). Historically, the mining industry has been one of the biggest beneficiaries of this program of mass land appropriation, as it often obliterated the land rights of local communities and customary landowners, while guaranteeing continued access to resources for mining companies.

Up until a new forestry law was passed in 1999, the rules governing management and use of forest resources in Indonesia were set out in Basic Forestry Law 5/1967. The forestry law of 1967 imposed no restrictions on the central government in issuing mining permits in forests, including those with protected or even conservation status. The law defined protected forests as a 'forest area that due to its natural character is designated to facilitate irrigation, to prevent flood and erosion, and to maintain the land's fertility'. Article 3 of the 1967 forestry law stated that 'harvesting of natural products can be undertaken within some protected forests without curtailing their function as Protected Forests' (Republic of Indonesia 1967c). In 2007, conservation forests covered around 10 per cent of Indonesia's landmass, with protected forests covering a further 17 per cent (Bhasin & Venkataramany 2007).

Prior to the enactment of a new forestry law, the central government issued hundreds of mining concessions in conservation and protected forests, many over vast swathes of land. According to the Indonesian Corruption Eradication Commission, in 2017, mining concessions covered a collective 26 million ha of formally designated state forest, with 4.9 million ha of this area within protected forests and a further 1.4 million ha in conservation forests (KPK 2017, p. 52). In other words, almost one quarter of the land held under mining concessions in Indonesia was located in protected or conservation forests, which under a new

mining law introduced in 1999, were supposed to be off-limits to mining.[203] Given the lengthy timeframes often attached to mining concessions, many, though not all, of these concessions, are a legacy of the rules under the old forestry law.

New rules for mining in protected forests

In 1999, just two years after PT Istindo Mitraperdana had been granted its production permit to exploit manganese in its Soga concession in Kedindi Forest at Torong Besi, the central government passed a new national forestry law: Law 41/1999 on Forestry (Republic of Indonesia 1999a). Unlike the old law, the new law expressly prohibited open-cut mining in all conservation and protected forests (Republic of Indonesia 1999a). The decision to make not only conservation forests but also protected forests off-limits to mining was a significant shift in Indonesia's approach to balancing the competing imperatives of its environmental and economic policies. Inevitably, the mining industry interpreted this change as a negative signal for investment, while environmental NGOs welcomed it as a win for the environment (Rosser et al. 2005).

However, ambiguity in the drafting of the new forestry law with respect to its application to the hundreds of existing mining concessions in protected and conservation forests created major legal, policy and political challenges for the central government. NGOs and other civil society actors opposed to mining in forested areas exploited this uncertainty and confusion to pressure governments at all levels to revoke existing mining permits for concessions in

[203] These figures are based on an aggregate of the new Mining Enterprise Permit, or IUP, the old Mining Rights (KK). They do not include an additional category of mining permit designed and issued specifically for forested areas – the Special Mining Enterprise Permit (IUP-K). This class of permit was created by Law 4/2009 on Mineral and Coal Mining to provide the government a way to authorise mining in all forested areas of a range of commodities regarded as having strategic importance due to their role in accelerating economic growth and meeting domestic energy needs, in the national interest (Gandataruna & Haymon 2011, p. 229).

protected and conservation forests, even if it meant closing down active mining operations. A five year struggle between the mining industry, civil society groups and pro-environment and pro-mining lobbies within the government ensured before finally, in 2004, the government issued a new regulation in-lieu-of-law (GR 1/2004) (Republic of Indonesia 2004a), which later became Law 19/2004, to address the issue. Article 83a of Law 19/2004 stated that

> 'all permits or agreements in the mining sector in forest areas which were in place before Law 41/1999 on Forestry took effect, are regarded as valid until the end of the permit or agreement' (Republic of Indonesia 2004b).

For a brief period, around two months, this legislative intervention appeared to provide clarity, and immunity, for mining concessions in protected forests that predated the forestry law, including that held by PT Tribina Sempurna/ PT SJA in Manggarai. However, another article in Law 19/2004 hinted at further uncertainty, adding that the meaning of Article 83a would be elaborated in a forthcoming presidential decree. Presidential Decree 41/2004 was issued two months later, and included a list of 13 major mining companies operating in protected forest areas whose permits or agreements would 'continue to be recognised until they expired' (President of the Republic of Indonesia 2004). Presidential Decree 41/2004 did not explicitly state that inclusion on the list was necessary for a company to have an existing permit or agreement recognised. However, equally, it did not state that any companies not listed would enjoy the same immunity from retroactive application of the forestry law as the 13 named companies explicitly granted exemption. This left much open to interpretation. Not surprisingly, mining companies, district governments, communities and civil society organisations interpreted the decree according to their own interests and agendas.

After four more years of uncertainty about the retroactive applicability of the forestry law to mining in protected forests, in 2008 the Minister of Forestry belatedly defined the government's view on the matter in a ministerial regulation. Ministerial Regulation

43/Menhut-II/2008 set out guidelines for companies or other entities to obtain and maintain a 'borrow-and-use' permit to use state forests for any purpose. Article 7 (2) reiterated the forestry law's prohibition on open-cut mining in protected forests, and (3) states that 'open-cut mining in protected forests only applies for the 13 permits named in Presidential Decree 41/2004' (Minister of Forestry 2008). These companies would need to obtain and maintain a borrow-and-use permit to operate open-cut mines in protected forests. For all other mining permits in protected forests, including those granted before the 1999 forestry law, it was clear that the forestry ministry intended for the prohibition on open-cut mining to apply.

The delay in issuing MR 43/2008, and the confusion this created, no doubt helped countless mining companies holding concessions in protected forests to hold onto their mining permits in protected forests, at least for a few more years. Even two years after the forestry minister had issued MR 43/2008, affirming that the ban on open-cut mining in protected forests also applied to permits issued before 1999, some mining companies and their lawyers either remained unaware of its existence, or refused to accept its retro-active application. Lawyers representing PT SJA (and other parties) in defending the class action that communities in Torong Besi brought in 2010 for damage caused noted that the concession at Soga dated back to 1997, two years before the 1999 forestry law took effect. The company's lawyers argued that therefore 'Law 41/1999 on Forestry and all regulations of the forestry minister after 1999 cannot be applied' (T Mendrofa SH & Partners 2010, paragraph 10).

Many district governments, as in the case described here, also either proved reluctant or found it difficult to revoke permits in protected forests that pre-dated the forestry law. Some district government officials in Manggarai told me in 2010 that they still believed mining permits and agreements issued before 1999 were exempt from the 1999 forestry law's restrictions on

mining in protected forests.[204] However, this view was ultimately not the position taken by the Ministry of Forestry, while civil society organisations in Manggarai rejected it from the beginning (JPIC-OFM Indonesia & JPIC SVD Ruteng 2009).

> 'From the point of view of the law, lots of officials within the government don't understand the law itself. As a result, they issue regulations that are in conflict with each other and overlap (jurisdictions). For example, people in the (district) mining and forestry offices, have different understandings about the status of that mining. The forestry people say, "that's a protected forest". The mining people say, "no it's not". So, they're all interpreting it according to their own interests.'

> 'They should have asked for the permission from the (forestry) minister before they started mining in a protected forest. But whether because the (district) government really didn't know or they just pretended not to know. As far as I can see, they deliberately tried not to know, because they already have staff in their own forestry office who provided input. This is all due to sectoral egos. They have their own interests, so they don't want to look too closely.'[205]

For its part, the central government lacked complete and reliable data about the locations of vast numbers of mining concessions across the country. Although the Ministry of Energy and Mineral Resources commenced a thorough audit to address the informational problem in 2011 (Ministry of Energy and Mineral Resources 2011), to a significant extent it still lacked the resources and powers to ensure district governments revoked permits tied to concessions in protected forests. As this case also reveals, however, the Ministry of Forestry also proved willing and capable of helping mining companies circumvent the restriction on mining in protected forests. All of these factors explain to some degree the vast amounts of land still

[204] Interviews with officials from the Manggarai District Forestry Office (16 December 2010), Manggarai District Environment Office (16 December 2010), Manggarai District Mining Office (9 December 2010), and the Public Prosecutor (10 December 2010 and 16 April 2012), Ruteng, Manggarai.

[205] Interview with Father Simon Tuban, SVD-JPIC, Ruteng, 11 December 2010.

held under mining concessions in protected and conservation forests up until 2016 (KPK 2017).

Interpreting and contesting national laws in Manggarai

In Manggarai, the 11-year permit granted to PT Istindo Mitraperdana in 1997 was due to expire in 2008, if it was not revoked or extended before then. This meant it still had nine years remaining in 1999 when the forestry law was passed, and four years remaining when Presidential Decree 41/2004 was issued. In December 2004, the Manggarai district head approved the transfer of the permit from PT Istindo Mitraperdana to PT Tribina Sempurna (Manggarai District Head 2004). Relatively little mining occurred at the controversial Soga concession under these two companies (Andara et al. 2010). However, three years later, in October 2007, with only one year remaining on the original permit, the district government approved another transfer of the permit, to its third and final owner, PT SJA. With the same executive decree, the district government also extended the permit by five years for its new owner, taking its expiration date out to 2012 (Manggarai District Head 2007).

It was this second permit transfer and extension, and the significant increase in mining activity it facilitated under the permit's new owner that provoked the strong and sustained reaction from many in local communities and civil society groups in Manggarai from 2007. Local CSOs strongly believed that the applicability of the 1999 forestry law to the Soga concession at Torong Besi had already been clearly established by Presidential Decree 41/2004. To them, and their supporters in the community, any mining activity that took place after the issuing of Presidential Decree 41/2004 was already unlawful. When the forestry minister issued MR 43/2008 reaffirming that interpretation, it validated their view that the

district government, far from extending the permit, should have revoked it in 2004 (ALMADI NTT & Institute for Ecosoc Rights 2009). Possibly, extending a permit that existed before the 1999 forestry law was passed may have gone beyond the general exemption provided by Law 19/2004, which stated only that 'permits and agreements issued before the 1999 forestry law would continue to be recognised *until they expired*' (Republic of Indonesia 2004b).

Remarkably, the district head claimed that at the time he issued the permit extension he was unaware that PT. SJA's operation was located in a designated forest area, let alone one classified as protected.[206] The deputy district head offered the same explanation when I interviewed him in 2010 about the decision to extend the permit:

> 'We thought that when the central government issued the original permit, they had already evaluated the project from all aspects, from the forestry aspect, from the mining aspect. So, the district government was not in a position to conduct a review of the permit that had been issued by the central government. Because we assumed this was already legal. For certain, if they issued a permit it must've been legal. So according to the law regarding extensions, we just extended it, without needing to make an issue again out of the conditions for granting a permit. The former district head extended it in 2002[207], then in 2007 it was extended again. It was only when it was extended again in 2007 that it became an issue.' [208]

The decision to approve the transfer of the permit from PT Tribina Sempurna to PT SJA and extend it precipitated a rapid expansion in mining activity at Torong Besi, generating much greater resentments in local communities, and intensifying the attention from civil society groups. Indeed, the deputy district head told me it was 'certain other elements' who first

[206] Interview with Public Prosecutor, Ruteng, Manggarai, 10 December 2010.

[207] Author correction: this was not an extension, but merely a transfer from one company to another with the term unchanged, and took place in 2004, not 2002.

[208] Interview with Manggarai Deputy District Head, 10 December 2012, Ruteng, Manggarai.

raised the issue of the mine's location in a protected forest, prompting 'much discussion, debate and controversy'.[209]

Also fuelling the public reaction was the sudden and sharp increase in mining activity in the protected forest. Up until at least 2005, the 44 ha Soga concession had remained relatively undisturbed, as both of the previous permit-owners had concentrated their activities on the 33 ha Bonewangka concession, located outside the protected forest (Andara et al. 2010). However, from 2007, when PT SJA took over, the mine's footprint expanded rapidly into the surrounding forest as the company sought to maximise production and capitalise on high prices for manganese. Images from Google Earth (see photo earlier in this chapter) show that in 2005, the Soga pit was only around 150 meters long. The next available image, from 2011, shows a pit measuring around 600 meters in length and around 300 meters across. Although still small scale by global mining industry standards, the mine was beginning to become a highly visible feature of the landscape at Torong Besi. The district government's decision in 2007 to extend the permit, followed by the gradual expansion of the mine, and the forestry minister's regulation in July 2008 reaffirming the retroactive nature of the prohibition on open-cut mining in protected forests, together provided the catalyst for a well-organised and concerted campaign against the mine by local CSOs.

Their objective was to force the district government to reverse its decision to extend PT SJA's permit, and thereby bring about the mine's closure effective immediately. They used a multi-pronged strategy in their campaign against the mine, which included writing letters to district, provincial and central government officials, using local media to influence public opinion in Manggarai and Flores, and finally supporting villagers to launch a class action against the

[209] Interview with Manggarai Deputy District Head, 10 December 2012, Ruteng, Manggarai.

company to seek compensation for alleged impacts of the mine suffered by local communities.

The most prominent groups among the CSOs advocating on mining in Flores include two orders of the Catholic Church: the Fransiscan Order, or OFM (Order of Friars Minor), and the Society of the Divine Word, or SVD (*Societas Verbi Divini*). Both groups are Indonesian derivatives of global orders. NTT, and in particular the island of Flores, are the regional stronghold for both groups within Indonesia, where they have had a presence for around 100 years. As a core part of their missions, both groups have long maintained 'commissions for Justice, Peace, and the Integrity of Creation (JPIC)', which are the vehicle for their advocacy work on a range of social and environmental justice issues.

From the outset of the manganese mining boom in NTT in 2007, both groups paid particular attention to the impacts of mining on local communities, environments, and district-level political and policymaking processes (JPIC-OFM Indonesia 2008; JPIC-OFM Indonesia & JPIC SVD Ruteng 2009; JPIC SVD 2016). Leaders of this work for both organisations were internationally educated, articulate, well-informed, and highly skilled at using the immense social capital the church enjoys in Manggarian society to maintain networks and channels of influence within and outside government circles. In addition to JPIC-OFM Indonesia and JPIC SVD Ruteng, the Ruteng diocese of the regular Catholic Church also paid close attention to mining issues and advocated on behalf of communities through its own JPIC. Although the church is the dominant actor, Manggarai's vibrant and exceptionally activist civil society landscape was not limited to the various branches of the Catholic Church. The church organisations also collaborated with a wide range of secular civil society organisations, local and national, and often under an umbrella grouping known as ALMADI (*Aliansi Masyarakat Peduli*), or the Community Care Alliance (ALMADI 2009).

In 2008 and 2009 combined advocacy efforts of the church and secular groups proved extremely effective in pressuring the company, the district government of Manggarai and the Ministry of Forestry to take steps to close down the Soga mine, or at least that was how it appeared initially. In March 2008, five months after it acquired the mining rights for Torong Besi, and extension to 2012, PT SJA wrote to the district government's forestry office to request a 'borrow and use' permit in order to continue operating the open-cut mine in its Soga concession (PT Sumber Jaya Asia 2008). The 1999 forestry law required mining firms wishing to operate in production and protected forests to hold a 'borrow and use' permit from the forestry minister. However, the forestry law also made it clear that protected forests were off-limits for open-cut mining. The company's request acknowledged the Soga concession was located within Forest Nggalak Rego RTK 103, and that the recommended approach was an 'open pit'. However, the letter did not mention whether the forest where its Soga concession was situated was designated as 'limited production', 'protected' or 'conservation' Meanwhile, the company was continuing to extract manganese from and expand its open-cut mine at Soga.

As campaigning by the CSOs started to focus public pressure on the district government, in June 2008, the district head wrote to the director of PT SJA ordering the company to suspend its operations until it had obtained a 'borrow and use' permit from the forestry minister (Manggarai District Head 2008). The district head also ordered his forestry office to investigate the status of the forest at Soga to confirm whether in fact it was a protected forest. On 9 July 2008, the forestry office in Ruteng reported back to the Manggarai district head that Forest Nggalak Rego RTK 103 had indeed been established with the designated function of 'protected forest' by Forestry Minister Decree No.89 on 2 December 1983 (Manggarai District Forestry Office 2008).

This advice was timely because the next day, 10 July 2008, the current forestry minister issued Ministerial Regulation 43/2008, confirming that, at least as far as he was concerned, only the 13 companies named by Presidential Decree 41/2004 could undertake open-cut mining in protected forests. That meant that even though the original 1997 permit for the Soga concession predated the forestry law by two years, the law's restrictions regarding mining in protected forests still applied. Consequently, MR 43/2008 also made it clear that the forestry minister would not be granting 'borrow and use' permits for any companies other than the 13 already exempted from application of the forestry law to undertake open-cut mining in protected forests (Minister of Forestry 2008).

Despite this, and notwithstanding the advice of his own forestry officials confirming the existence, location and function of Protected Forest Nggalak Rego RTK 103, on 25 August 2008, the district head wrote to PT SJA urging the company to cease mining at Soga until it had obtained a 'borrow and use' permit from the forestry minister (Manggarai District Head 2008). Given how clearly MR 43/2008 had spelled out that 'borrow and use' permits were not available for open-cut mining in protected forests (except for the 13 companies already exempted), it is not clear why the district head encouraged PT SJA to take this course of action. Even once it obtained a 'borrow and use' permit, as long as the forest was still classified as 'protected', and the forestry minister still insisted on applying the 1999 forestry law retrospectively, the company was still prevented from lawfully operating an open-cut mine in its Soga concession.

Six months later, on 9 February 2009, PT SJA finally replied to the district head's letter, advising him that it had lodged a request for a 'borrow and use' permit on 24 November, 2008, but was still waiting on the outcome of this request (PT Sumber Jaya Asia 2009). Possibly, the company had not yet received the forestry minister's letter, dated two weeks earlier (27 January) informing its director that the company's request for a 'borrow and use'

permit had been denied. The reason given by the minister was that the company had indicated it wished to undertake open cut mining in Protected Forest Nggalak Rego RTK 103, which was prohibited under the 1999 forestry law (Minister of Forestry 2009b).

In its reply to the district head's letter, the company informed the district government that, due to the long wait to hear about the outcome of its permit application from the forestry ministry, its workers wanted to keep working until it received notification of the outcome (PT Sumber Jaya Asia 2009). The company attached a hand-written letter signed by almost 200 employees expressing support for the company and a desire to keep working (Labourers employed by PT Sumber Jaya Asia 2009). Both the company's letter and the labourers' letter indicated the company was still operating, even though it did not yet have the 'borrow and use' permit that would be required to operate an open-cut in a production forest, and despite there being no change to the forest's presumed classification to this stage. On 17 February 2009, the head of the Manggarai district mining office wrote back to PT SJA on behalf of the district head. This second letter was terser in tone and instructed the company to immediately cease and desist from all mining activities in the Soga area until it had obtained a permit from the forestry minister (Manggarai District Head 2009b).

Throughout this period, the local CSOs based in Manggarai's capital, Ruteng, maintained the pressure on the district government by ensuring that the public and district legislature in Manggarai, forestry ministry officials in Jakarta and the provincial government in Kupang were aware of the company's ongoing mining activities. For example, in November 2008, JPIC-OFM wrote to the forestry minister to inform him that the company was still exploiting manganese in Protected Forest Nggalak Rego RTK 103 and request an audience with the minister. This request was granted, and JPIC-OFM leaders met with the minister in Jakarta on 5 December 2008 (Minister of Forestry 2009a). This meeting had a chain effect, triggering a

flurry of other letters to the provincial government that put more pressure on the district government to act to uphold the forestry law.

On 27 January, 2009, the forestry minister wrote to the governor of NTT, informing him of the situation, and reminding him that except for the 13 companies previously exempted by Presidential Decree 41/2004, open-cut mining was not permitted in protected forests. The minister confirmed that PT SJA was not one of these 13 companies, and therefore did not have (and would not receive) a 'borrow and use' permit from the forestry minister. The forestry minister asked the governor to take the appropriate actions in accordance with the applicable laws (Minister of Forestry 2009a).

On the same day, officials from the minister's department in the Directorate General of Forest Protection and Nature Conservation wrote to their regional representative office in NTT, the Office for Natural Resource Conservation, or BBKSDA (*Balai Besar Konservasi Sumber Daya Alam*). The central government forestry officials instructed the regional office to investigate the reported allegations of unauthorised mining in a protected forest at Soga, and, if substantiated, take any necessary actions to enforce the law (Ministry of Forestry 2009).

This intervention resulted in two important developments that for a while at least appeared to signal the end of PT SJA's ability to mine manganese at Soga. In the following days, the provincial police (*Polda*) ordered the district police (*Polres*) to investigate the company's activities at its Soga concession to determine whether any laws had been broken. Finally, on 12 March, 2009, the district head issued a decree to remove the entire 44.82 ha Soga concession from the extension he had granted to PT SJA's mining permit (Manggarai District Head 2009a). This meant PT SJA's rights to the Soga concession had expired at the end of the permit's initial term, in 2008, leaving the company only with its 33 ha Bonewangka concession. Nine months after the forestry minister had issued MR 43/2008 clearly

articulating the intended meaning and application of the forestry law's restrictions on mining in protected forests, it seemed the implications had finally filtered down to the district government level.

However, on two fronts this proved to be a pyrrhic victory for the CSOs and local people at Torong Besi who wanted the mine closed permanently. Firstly, once again defying the district government's authority, the company continued to extract manganese from its Soga concession, even after the district head had revised the permit (Bataona 2009). Secondly, within weeks, the company launched a legal challenge of the district government's revocation of its permit extension for the Soga concession. Judging from comments attributed to him in a local newspaper, the district head appeared unconcerned by the company's legal challenge.

> 'They can go ahead and sue. The court's decision will be good to have because from there we will know if what we've done is correct or not. The decision will be a guide for us' (Lawudin 2009a).

In challenging the district government's revocation of its mining permit, PT SJA did not attempt, as might have been expected, to argue against the retroactive application of the forestry law to a pre-existing mining permit. Instead, the company's lawyers relied on a seemingly (to all who followed the case) obscure claim that Protected Forest Nggalak Rego RTK 103 had never been properly established, and therefore did not exist. As the case related to the state's interpretation and application of administrative laws it was heard in the Court of State Administration, or PTUN (*Pengadilan Tata Usaha Negara*) in the provincial capital of Kupang.

To the surprise of most observers, in July 2009, the court handed down its judgment upholding the company's challenge, ruling that its Soga concession was not located in a protected forest, because the area where it was located had never been a 'protected forest'. The Kupang administrative court based its decision on Presidential Decree 32/1990 on

Management of Protected Areas (*kawasan lindung*), Article 40 of which stated that provinces and districts 'must pass regional regulations, or *perda* (*peraturan daerah*) on establishing protected areas' (within two years of that decree being issued). The PTUN reasoned that as the Manggarai district government had not passed a regional regulation on the creation of protected areas, any protected areas within the district had not been legally established (*Kompas* 2009; ALMADI NTT & Institute for Ecosoc Rights 2009; ALMADI 2009; JPIC-OFM Indonesia and ALMADI 2009; Tarong et al. 2009b; T Mendrofa SH & Partners 2010).

The district government appealed this decision to the Higher Court of State Administration (PTTUN) in Surabaya, but the higher court upheld the original decision. Finally, in July 2010, the district government asked the Supreme Court (*Mahkamah Agung*) to undertake a judicial review (*peninjauan kembali*) of the evidence and judgments of both administrative courts. In late February 2011, the Supreme Court handed down its decision, supporting the Kupang court's judgment. The obvious flow-on effect of this was that the district head had had no legal basis for reducing the company's concession as he had done in March 2009. The Supreme Court thus also instructed the district government to reinstate PT SJA's rights to the 44 ha of land at Soga that it had removed from the company's permit (Lawudin 2011a). The district head complied shortly after. PT SJA was now free to apply for a 'borrow and use' permit from the forestry minister to and resume its mining activities. According to media reports, however, it already had (*Flores Pos* 2011c).

Local reactions to the company's legal victory

The public prosecutor, who represented the district government in the case, told me he had been very surprised by the original decision of the PTUN in Kupang, and could not

understand how it had reached it. He regarded the absence of a local regulation to establish the forest as irrelevant, as the 1999 forestry law articulated a distinct mechanism for establishing protected forests, as distinct to protected areas, which were the subject of Presidential Decree 32/1990. The public prosecutor also told me that he found it highly unusual that the company's lawyers had prevailed despite relying on a single page document as their only evidence throughout the case.[210]

A senior member of the district police in Ruteng, who investigated the company for illegally mining in a state forest without a 'borrow and use' permit from the forestry minister (as required even if the forest was a limited production forest), expressed a similar view. He had obtained expert legal advice from an academic source, who said if the PTUN's judgment was correct, it would mean that central government forestry laws would be dependent on district regulations to give them force, and were therefore subordinate to them, which was not possible under Indonesia's legal system.[211]

CSOs also made these arguments in a lengthy op-ed published in the national daily, *Kompas* (ALMADI NTT & Institute for Ecosoc Rights 2009). The CSOs were responding to an article about the case in the same paper that quoted PT SJA's lawyers, who cited the issue of the missing local regulation as key to the court's decision confirming the company's right to mine minerals in its Soga concession (*Kompas* 2009).

Reporting the outcome of the Supreme Court's judicial review, local media in Flores asked how it was possible that a forest that the national, provincial and district governments had agreed was a protected forest, suddenly was now deemed not to be. One article referred to the

[210] Interview with public prosecutor in Ruteng, Manggarai, 10 December, 2010.

[211] Interview with head of criminal investigations, Manggarai District Police, Ruteng, Manggarai, 15 December, 2010.

original demarcation of the area as a 'forest reserve' by a forestry minister decree in 1983, which had designated one section of the forest as 'protected', and the other, Torong Besi, as 'limited production'. However, the article also noted that between 1995 and 1997, the provincial government had delineated the forest's boundaries and reclassified the entire area as a protected forest (Lawudin 2011b). Another article cited the specific gubernatorial decree, Decree 64/1999 regarding 'harmonisation' of land use plans and agreement on forest functions, which had referred to Forest Nggalak Rego RTK 103 as a protected forest in 1999. It noted that the Forestry Minister had then reinforced the governor's decree with Ministerial Decree 423/Kpts-II/1999 regarding forest areas in NTT (Lawudin 2011d). Other articles and editorials cited numerous other ministerial decrees and regulations from 1999, 2001 and 2009 that all referred to the forest as protected (*Flores Pos* 2011b). Articles also highlighted the letter from the forestry minister himself to PT SJA in January 2009 advising the company that he was rejecting its request for a borrow and use permit because its mine was 'open pit' and located in a protected forest (*Flores Pos* 2011a). On the day it broke the news of the Supreme Court's decision, the *Flores Pos* editorialised that the case contained an 'extraordinary degree of absurdity', while 'truth and justice in a substantive sense seemed to be easily subordinated to a transactional version of truth and justice' (*Flores Pos* 2011c).

Absurd or not, officials at the forestry ministry had also now decided that Forest Nggalak Rego RTK 103 had never been a protected forest, albeit on different grounds to the courts. In the days immediately following the announcement of the Supreme Court's final verdict in 2011, local media in Flores began to highlight a letter from the forestry ministry to PT SJA, dated 16 September 2010. According to a *Flores Pos* editorial on 2 March 2011, the key to the mystery of the court decisions was 'implied' in this letter. The newspaper reported PT SJA had requested 'clarification' from the forestry ministry in July 2010 regarding the status of the forest at its Soga concession. This request had resulted in a 'coordination meeting'

between the company and forestry ministry officials. Following this meeting, the ministry provided the company with a letter stating that the forestry ministry no longer regarded Forest Nggalak Rego RTK 103's functional status as 'protected', but rather as 'limited production'. This advice did not reflect a decision by the ministry to change the forest's classification, but rather a revision of the forest's historical status based on a 'review' of the documents (*Flores Pos* 2011a). The revision of the forest's classification by the forestry ministry meant that two different state institutions had separately and for very different reasons decided that Protected State Forest Nggalak Rego RTK 103 had in fact never been a protected forest.

The outcomes of the court process in the led many observers, including among CSOs, to conclude that the company and the district government had colluded to contrive an outcome that allowed the company continued access to the resource, while allowing the government to appear to be upholding the relevant laws in acknowledging and seeking to correct its apparent error.

> 'This is a political tactic, to manipulate the law and policy. They thought if they revoke it then the people will think, 'ah, this is a good government'. Because the pressure (from the people) was pretty substantial. But what was amazing was that the leader of the DPR said, it was as if there had been a negotiation, between the company and the government. 'I'll revoke it first, and then you sue me'. And then the government ensures that the decision of the courts will go the way of the company. […] I'll revoke it first, then if you want to sue me, go ahead. So, the bupati revoked it, but they continued to operate down below. And then they played it out in the courts. They negotiated to work it all out, step by step.'

> 'The government deliberately played dead, lost on purpose. Because actually there are several parties that could have faced consequences from (the court's) decision. Not just the company. Because in reality they were mining in a protected forest. The district government, because they issued the permit,

would have been implicated too. So really, the decision that has been taken is to safeguard these parties.'[212]

A particularly activist member of the Manggarai district legislature also told me he believed the outcome had been manipulated.

'I went to the location when I found out SJA was mining there and discovered it was in a protected forest. The Catholic Church got involved after I told them it was in a protected forest. […] The area outside the forest area had already finished being exploited. That's why they took the government to court. And beyond what any of us could have guessed, the court said that's not protected forest. The pillars are very clear. The forestry office could point to the pillars. […] The police then initiated a criminal case against the company. This is now being heard in the court in Ruteng and is still continuing.'

'Suddenly, a few months ago, we received a letter from the Director General of Forestry and Secretary of Forestry, which said the status of the forest at Torong Besi had been changed and was no longer protected forest but was now limited production forest. […] So why, suddenly, in July (2010), did the Dir Jen put out a letter saying that the forest's status had changed? That forest is spread all over Reok (sub-district) – why is it only this area that's had its status changed?'[213]

However, if the district government leadership felt surprised, disappointed or humiliated by the courts' decisions, it was not evident in the public comments of the deputy district head soon after the final decision by the Supreme Court.

'Up until now we have all misunderstood about the status of this forest. What stood out was the destruction of the forest, the damage to nature, the environmental problems and so forth. But from this case there is a blessing. We have unpacked all of the documents that exist. And, from there, we now know the real status of the forest. We've been misled until now.' (Lawudin 2011a)

[212] Interview with civil society organisation leader, Ruteng, Manggarai, December 2010.

[213] Interview with Ronny Marut, Manggarai district legislator, Ruteng, Manggarai, 9 December, 2010.

Regardless of whether or not these theories of deliberate manipulation, indeed corruption, of judicial and bureaucratic processes contained any truth or not, they revealed the deep mistrust and frustration among local communities and civil society towards state institutions and their implementation of laws and regulations that denied them access to the same valuable resources that commercial interests were exploiting.

Local communities living near Forest Nggalak Rego RTK 103 had been living with the restrictions imposed on them by the creation of the state forest since 1983, and constantly reminded of the forest's protected status since at least 1999. They too, questioned the integrity and legitimacy of legal and bureaucratic processes that suddenly overturned the forest's long-assumed protected status as soon as it proved to be inconvenient for a mining company. Communities were quick to highlight the stark contrast between the outcomes the justice system and bureaucracy delivered for the mining company, and their own experience of exclusion from the forest and its resources. This contrast led communities to accuse authorities of applying a 'double standard of law' ('*hukum yang berstandar ganda*') (Tarong et al. 2009b; ALMADI 2009).

Not 'protected', but still off-limits

The coincidental timing of an incident that occurred in July 2009 reinforced this view. Police arrested eight men from the village of Robek, the village closest to the Soga mining concession and Forest Nggalak Rego RTK 103, for illegally felling trees in the forest. Police charged the men under the provisions of Law 41/1999 on Forestry (Article 78), with 'deliberately felling trees or harvesting or collecting forest products in a forest without possessing the right or a permit from the responsible government official' (Ruteng District Court 2009).

It is important to note that the case against the men did not depend on Forest Nggalak Rego RTK 103 having a 'protected' classification. To sustain the charge under the forestry law, all that mattered was that it was a state forest reserve (*kawasan hutan*). The decision of the administrative court in Kupang, handed down within weeks of the arrests, and four months before the men went on trial, had not erased the existence of Forest Nggalak Rego RTK 103. The administrative court had said only that it was not a protected forest; its status as a state forest (limited production) was not in dispute. If the men had felled the trees without a permit, under the forestry law, their crime was the same, irrespective of the forest's state-designated function (Lawudin 2009b).

However, in presenting their case, prosecutors repeatedly referred to the offences having been committed in a '*protected forest*', and specifically in Protected Forest Nggalak Rego RTK 103, even citing the legal instruments that had established its protected status. This implied that the forest's protected status was central to prosecutors' case against the men. This apparent contradiction with the administrative court's finding invited the men, their communities and their civil society supporters to ask how the forest could be 'protected' in their case, but not when it came to PT SJA's right to exploit minerals. This was the basis of the men's claim that the state was effectively applying a double legal standard, that discriminated against local communities (Tarong et al. 2009a; Lawudin 2009c).

The trees the men had cut were only 500 meters from the site of PT SJA's main pit at Soga. The men admitted cutting the trees, but claimed the timber was to be used to help build a local school funded by the Australian government's overseas aid body, then known as AusAID. In a 'position statement' document, prepared with the support of local CSOs and sent to judicial and government officials at district, provincial and national levels, the men also pointed out that (unlike the mining company) they had not profited from their actions, only receiving money to cover 'operational expenses' (Tarong et al. 2009a). One of the men had even gifted

his own land for the school. The district prosecutor did not dispute that this was the reason the men had cut the trees. Nevertheless, the men were convicted of illegal logging.

The severity of the punishments, prison sentences ranging from 18 months to two years and seven months (Ruteng District Court 2009), strengthened the belief of local communities that, whatever the letter of the law said, they were unfairly treated in respect to natural resources. Community frustrations and resentments at their own denial of resource rights grew when they saw a mining company exploiting resources in an area that governments had told them was necessary to protect for ecological reasons. In November 2009, as the trials for the men were in progress, 82 villagers from Robek expressed these sentiments in a hand-written letter to the national parliament. In the letter, the villagers protested at what they perceived as the highly unequal and inequitable treatment of communities and mining companies in regard to natural resources.

> 'In July 2009, our traditional leader, Sylvester Tarong, and six other citizens were detained by the police. They are still being detained until now on the grounds that they illegally felled timber in Protected Forest RTK 103 Nggalak Rego. They felled the trees to build school classrooms, office and change-rooms. The location where they cut the trees is close to the area of the mining concession of PT Sumber Jaya Asia. After our traditional leader was detained for cutting trees in the protected forest, our hearts were wounded to see the heavy equipment of PT Sumber Jaya Asia still freely destroying our forest in the name of their profits. We feel there is an injustice in the treatment (provided) by the security and law enforcement agencies in Manggarai district. We are wounded by this sense of injustice, and because of that we ask all our representatives who are now sitting on Commission VII to help give legal certainty and fix the injustice that we have experienced in Manggarai district' (Citizens of Robek village 2009).

The conclusion that many in the Robek community and other local communities around Torong Besi, as well as that of the CSOs who backed them, drew from the contrasting fortunes of the eight Robek men and the mining company was access to valuable natural

resources was fundamentally dependent on access to capital. However, rather than simply concede defeat in their struggle to remove PT SJA, the community and the CSOs decided to try to use the legal system to hold the company to account for the environmental impacts of its activities. Neither PT SJA nor either of the two previous permit-holders had compensated local communities for the use of the land at Soga, for the simple reason that the concession's location, in a state forest, had negated any need to do so to acquire access.

Environmental impacts and compensation

In March 2010, with financial and advocacy support provided by CSOs, in particular the Catholic Church organisations, five individuals claiming to represent a total of approximately 1,000 households launched a class action against PT SJA, the previous permit-holders, and the district, provincial and central governments. The group's aims were to force the company to cease mining at Torong Besi and obtain compensation for a wide range of environmental impacts they alleged had adversely affected the livelihoods and health of the local population. Each of the five plaintiffs claimed to represent their hamlets: Jengkalang, Kerkuak, Robek, Gincu and Racang, around 1000 households in total (Andara et al. 2010).

The class action did not seek recognition of claims to customary land rights (*hak ulayat)* in the area, as these had long since been extinguished when the state forest was created, but rather focused on the fact that the mine was located within what communities still maintained was a protected forest. Therefore, in addition to the three companies that had held mining rights in the area, the lawsuit also named the mining ministry, and both the provincial and district governments as defendants.

> 'Actually, this land from time immemorial was owned under communal rights by the kampungs surrounding the forest. But then it was determined by the forestry ministry to be a protected forest [...]. So, the class action was based on documents that say this is a protected forest. It focused on the loss of water springs, the pollution that has affected the community, and the loss of livelihoods.' [214]

The action held that PT Sumber Jaya Asia was responsible for a range of environmental impacts including: (i) large, deep craters that were dry and completely infertile, preventing natural revegetation; (ii) Trees that had previously been green and lush, were now bare; (iii) destruction of the landscape due to the clearing and excavations; (iv) once-abundant animals such as white monkeys and lizards had disappeared from the area, while snakes had moved out of the forest and started to proliferate in fields cultivated by the community; (v) crop failure, which villagers attributed to mining's depletion of freshwater sources, and; (vi) the drying up of underground springs that provided drinking water .

People in all five villages claimed the mine had also had a range of negative effects on their health, including an increase in respiratory infections, an increase in cases of the mosquito-borne Chikungunya virus, and 'black saliva'. The people of Wangkung kampung also claimed that the close proximity of the mine to their settlements meant they suffered from high levels of air pollution caused by manganese dust.

In addition, the people of Wangkung claimed manganese-contaminated waste had flowed into the sea causing the destruction of the marine ecosystem just offshore from where the mine's processing facility was located. Specifically, coral had begun to die, and it was becoming increasingly difficult for villagers to catch fish, an important source of livelihood for them. The destruction of the marine ecology also threatened to undermine the district government's plans to develop the area's tourism potential. The district government had already designated

[214] Interview with Father Aloysius Gonsaga, Ruteng, Manggarai, 17 April 2012.

Ketebe Beach that ringed Torong Besi a ‘maritime tourism location’, because of its white sands and extensive coral reefs (JPIC-OFM Indonesia 2008, p. 29).

According to the claimants, the effects of mining also went beyond impacts that could be seen with the eye. They claimed mining had altered the microclimate in the area, reducing humidity and precipitation, which in turn had upset the balance of the local ecosystem. This, they said, had reduced the ability of local people to rely on signs of natural changes and events that signalled the optimal time to undertake various activities related to agriculture.

> ‘The disappearance of these animals is strongly suspected to be because the forest ecosystem has started to be disturbed, and the impact on the community is that they can no longer know, or catch the signals provided by the natural ecosystem in protected forest Nggalak Rego RTK 103. The result is that our traditional farming enterprises that are based on natural events have started to experience lots of problems and failures’ (Andara et al. 2010).

The class action specified compensation amounts sought for specific impacts alleged to have resulted from the mine. All five villages sought damages to the value of:

- IDR 10,000,000 for every 1 ha of rice, per planting season since October 2007;
- IDR 2,500,000 per month since October 2007 for adverse health effects (Andara et al. 2010).

The kampung of Wangkung also claimed IDR 1,500,000 per day for every fishing boat from October 2007, while, the kampung of Gincu also claimed IDR 100,000,000 for every household head, on the basis that the loss of springs providing water for crops was permanent and would force farmers to find new land elsewhere. The villagers also demanded the company undertake rehabilitation and reclamation of the excavation sites within the protected forest area.

The class action also specified ‘non-material losses’ for the loss of

> ‘the spiritual connection between nature, in the form of the ecosystem of protected forest Nggalak Rego RTK 103, and all of the citizens in the area around the mine, including traditional culture which is reflected in the *adat istiadat* (customs) in the area, which emphasise harmony between nature, God the creator, and humans. According to the Manggarai culture and adat, the loss of this balance will destroy all systems of life. This cosmological balance is not, and cannot be valued in material terms, but because in a formal sense, this loss must be given a nominal value, IDR 500,000,000 per sub-group of the community in vicinity of the mine is regarded as appropriate to restore the natural balance that has been broken’ (Andara et al. 2010).

In its formal response, PT Sumber Jaya Asia raised a number of legal issues in relation to the validity of the class action, including the lack of clarity about which individuals the action represented. Lawyers for the company also pointed out that the class action did not articulate any law that the company had violated that had led to the environmental impacts alleged by the villagers. And, to succeed, the plaintiffs would need to show that the adverse impacts they had suffered were the direct result of the company’s failings to meet its obligations under the relevant laws governing mining activities (T Mendrofa SH & Partners 2010).

The only specific accusation of illegality that the villagers made was that the company violated the 1999 forestry law for operating an open-cut mine in a protected forest. However, at the time the community lodged its class action, as both the company and the judges later noted, the Court of State Administration in Kupang, had already examined the issue of the forest’s classification, and determined that Forest Nggalak Rego RTK 103 was not a protected forest, but rather a limited production forest. Given that open-cut mining in limited production forests nevertheless required companies to hold a ‘borrow and use’ permit from the forestry minister, and PT SJA had been mining in the area for some time without one, it might still have had an issue.

However, it mattered not as the Ruteng district court ultimately found that the communities should not have raised the issue of the legality of the mine's permit to operate in Nggalak Rego Forest RTK 103 in the same action as one seeking damages for the adverse impacts of the mine, as this was a separate matter, and one that had been decided already by the Court of State Administration. Nevertheless, the Ruteng district court also accepted the administrative court's finding that Forest Nggalak Rego Forest RTK 103 was not a 'protected' forest (Ruteng District Court 2011, p. 85).

The defence also responded that the class action had not provided any detail to show how the amounts being claimed in compensation had been calculated. In relation to the communities' claims of environmental damage, the company rejected them entirely, and suggested that the communities were exaggerating and even inventing the claimed impacts. The company claimed many factors contributed to crop failures including poor quality seed, farmers failing to follow 'the agricultural program', and natural or weather-related factors. The company rejected the allegation that it was responsible for changes in the microclimate of the area around Torong Besi, and any ecological changes that might have stemmed from this.

PT SJA also rejected the villagers' claim that its activities had had a negative impact on fisheries, suggesting that instead any reduction was likely to be due to seasonal fluctuations caused by weather. The company's lawyers pointed out that large seas during the rainy season from December to February often prevented the fishermen from going out to sea anyway and suggested full moons and unfavourable tides were other alternative explanations for the reduced catches.

Several times throughout its formal response to the allegations, the company invoked God, in an apparent attempt to absolve itself of all responsibility for any impacts that might have occurred, or that conceivably ever could occur, as a result of mining activity.

> ‘(That) whatever problems have been suffered by the community groups in Reok, especially in Soga, the village of Robek and the other villages, all of them we refer back to God Almighty, because He is the one who arranges things; blessings that we encounter originate from Him and we as humans can only strive, but it is God who determines (fates)’ (T Mendrofa SH & Partners 2010).

The district court in Ruteng, which heard the case, decided to hold several sessions in villages in Soga to allow judges to assess conditions around the mine and in the forest for themselves and hear testimony from villagers. The judges, public prosecutor and police all joined representatives of the mining company and villagers during these sessions. The court insisted that the plaintiffs pay for the traveling costs of all of those who attended, including representatives of the company. The Catholic Church provided them with financial support to cover this and their legal costs.

During the trial, members of the community testified that the mine had also caused a decline in rainfall in the area, and that drinking water from underground springs had acquired a bad taste. Some witnesses claimed since the company started production in 2007 many people had complained of ‘itchy skin’.

In May 2011, the court handed down its decision, rejecting all of the claims against the company (Ruteng District Court 2011). The court’s full judgment, which ran to almost 100 pages, provided several reasons for finding against the communities. Some were related to legal issues, such as a lack of clarity about who the class action represented, given that the names of the 1000 or more individuals it claimed to represent had not been included in the document.

On the more substantive issues related to the mine’s impacts on the local environment, livelihoods and human health, the court found the evidence presented had not been sufficient to prove the claims made. The court accepted the testimony of government officials that

where dangerous levels of pollution were suspected this should be verified by laboratory testing by a government-accredited agency to determine whether water, air and soil quality were within standard limits (Ruteng District Court 2011).

One of the Catholic Church leaders who actively supported the claimants throughout the case acknowledged that the failure to obtain more scientific data to back up the villagers' claims had severely weakened their case.[215] In the absence of scientific testing it is of course impossible to know to what extent, if at all, results would have supported the villagers' claims. But without it, the company's lawyers were able to argue there was no evidence to support the villagers' assertion that the company's activities had produced pollution levels that would potentially pose a risk to human health, crops or marine life (T Mendrofa SH & Partners 2010).

The villagers had only one expert witness testify in support of their case—an epidemiologist from the University of Indonesia in Jakarta, who gave evidence on the question of whether the health complaints raised by the community were likely to have been caused by the mine's environmental impacts. The company used explosives to expose manganese deposits, which villagers claimed produced dust laden with manganese that travelled on the wind and ended up in their houses.

The expert witness said that exposure to manganese dust was a known cause of respiratory infections, asthma, central nervous system damage, hallucinations, a loss of IQ and liver and lymphatic disease. He said research suggested inhalation of dust containing 10 microns of manganese was enough to trigger respiratory infections. In the view of the witness, depending on topography, vegetation density and weather conditions, dust could be expected to travel in

[215] Interview with Father Aloysius Gonsaga, Ruteng, Manggarai, 17 April 2012.

the air for up to 2-3 kilometres. The problem for the villagers, however, was that there had been no testing of air quality in the area, and they therefore had no scientific evidence that manganese particles were posing a threat to health (Ruteng District Court 2011).

Citing data from the sub-district health center (*Puskesmas*), regarding patients treated from 2005 to 2010 who were from the villages surrounding the mine, the expert witness said the records showed there was a high and increasing incidence of respiratory tract infections. He also said studies have shown that communities living in close proximity to mines tend to suffer higher rates of respiratory infection, anaemia, skin and liver conditions compared to the general population, but admitted he could not confirm that these ailments had resulted from the mining undertaken by PT Sumber Jaya Asia. To do so, the witness said, would require undertaking scientific research in the location, which he had not been asked to do (Ruteng District Court 2011, p. 61). The judges noted that the mine was located sufficently 'far' from the villagers' houses and crops, and in the absence of scientific data proving otherwise, said they were forced to reject the allegations that the mine had caused health problems (Ruteng District Court 2011).

In relation to the charges of springs drying up, the villagers did not present any evidence depicting the soil hydrology in the region and how it might be affected by mining. Regarding the villagers' charge that mining had both reduced annual rainfall in the area and made the timing of rain more unpredictable, the company had acknowledged in its environmental management plan that the loss of vegetation cover over the mine would reduce humidity and possibly raise temperatures in the immediate area (Ruteng District Court 2011).

The class action's sponsors and advocates, the leaders of the Catholic Church, readily admitted that their inability to present scientific evidence to the court had severely undermined their prospects of winning the case. Although the church provided significant

material support to the class action, this did not extend to scientific studies of the mine's impacts.[216] Even if the church had sponsored such independent research once communities started to experience the impacts, this may have been too late, without baseline data that it could be measured against.

Clearly, the technical complexity of many of the complaints raised demands that objective scientific data play a role in assessing the validity of claims of ecological damage. However, this highlights the disadvantaged position poor rural communities often find themselves in when confronting mining companies. Poor communities such as those living around Torong Besi lack the means to commission independent scientific research on their own behalf, and also may lack the scientific literacy or awareness of the risks to realise the importance of baseline environmental data, before mining begins. Mining companies, to varying degrees, and for various reasons may arrange their own data collections, but clearly have very different interests attached to the outcomes of any studies.

No environmental impact assessment

Another major challenge for the communities to prove the impacts they claimed, and that they had been caused by mining, was that no baseline measures of soil, water and air quality had been taken prior to mining commencing. In defending the company against the claims of environmental damage, lawyers for PT SJA pointed to two documents that all mining companies in Indonesia must possess, maintain and report to government against: the company's Environmental Management Measures, or UKL (*Upaya Kelola Lingkungan*) and Environmental Monitoring Measures, or UPL (*Upaya Pemantauan Lingkungan*). The company submitted that these documents, which had been made public and approved by the

[216] Interview with Father Aloysius Gonsaga, Ruteng, Manggarai, 17 April 2012.

district government, were evidence of its commitment to protecting the environment (T Mendrofa SH & Partners 2010).

These two documents respectively explain how the company plans to manage and monitor environmental impacts. However, at least in PT SJA's case, the documents were general in nature and lacked the kind of detail that would be necessary to allow the government to hold the company to account for any impacts from its activities. They contained no baseline data related to the soil, water or air quality in the area around the mine that would enable comparisons later (Ruteng District Court 2011).

As is common for smaller projects, the Manggarai district government had not insisted that PT SJA undertake an environmental impact assessment (AMDAL) process when it approved the company's takeover of the existing license and five-year extension. During the court case to hear the community's class action against the company, a government official testified that PT SJA had not been required to undergo an impact assessment process as it had obtained its license through a transfer of rights from another company (Ruteng District Court 2011). The previous holders of the permit also had not undertaken environmental impact assessments as part of their permit approval processes. However, this was consistent with the regulations as the concession was smaller than 200 ha, the size at which an impact assessment is automatically required.

After the district court handed down its finding in May 2011, the villagers immediately appealed to the provincial High Court (*Pengadilan Tinggi*) in Kupang. One of the JSMP-OFM leaders, Father Aloysius Gonsaga, told me that the proponents of the class action had no illusions about their prospects for success with either the original case or the appeal. The strategy behind both actions was to tie up the company's resources in defending itself in the hope that this would eventually wear down the company's resolve to continue mining at

Torong Besi.[217] The company's five-year license extension was also due to expire in 2012, which meant to continue operating it would require another permit extension from the district government. Although the legal obstacles had been removed with the resolution of the forest's status, opponents of the mine also hoped to exert political pressure on the district government to refuse any request for a permit extension.

> 'So that was the strategy we took, because opposing the company it's always the people who come out worse off in the courts. So, it was just to stop the company so they would not dare commence mining activities again, because from the perspective of security, they are always under pressure, from demonstrations, protests and also court cases.'[218]

For the Catholic Church on Flores, which is philosophically deeply opposed to mining, the overall objective—stopping mining—would have been the same regardless of the benefits the company provided to local communities. For the church and environmental NGOs, mining represents an existential threat to the environment, and as such is therefore intrinsically antithetical to the interests of people whose livelihoods are tied to it, and who they claim to represent.

Interpreting community resistance to the PT SJA mine

The protagonists in the class action managed to compile a litany of environmental, economic and health damages that they attributed to the company, even if they were unable to convince the court of these impacts, or the mine's responsibility for them. Although mining projects can undoubtedly present an existential threat to nearby communities, and there is no reason to

[217] Interview with Father Aloysius Gonsaga, Ruteng, Manggarai, 17 April, 2012.

[218] Interview with Father Aloysius Gonsaga, Ruteng, Manggarai, 17 April, 2012.

assume the claims the litigants put forward in their class action were baseless, the nature of relations between the mining company, the community, and the district government are just as important as the objective truth of the claims in seeking to understand the litigants' actions, and community resistance more broadly. As discussed in the previous chapter, mining companies need to obtain and maintain a 'social license to operate' if they wish to protect their projects from the disruptions and costs associated with community opposition. There are many elements that can bolster or erode the company's standing with a community, or its 'license to operate', including approaches to land rights and compensation/ revenue-sharing, consultation and participation, employment, environmental standards and impact mitigation strategies, and community development initiatives. All of these elements, along with payment of taxes and royalties, can be viewed as part of the company's commitment to CSR.

Members of local communities are rarely homogeneous in their interests, including how they are positioned to benefit or be adversely affected, from mining. Not all local residents wanted to see PT SJA's Soga mine closed down. As mentioned already, almost 200 local labourers had a material interest in the company's continued operation. They made this clear in early 2009, when they signed a letter of support for the company declaring their wish for it to continue operating when it was resisting the district government and Ministry of Forestry's attempts to close it down (Labourers employed by PT Sumber Jaya Asia 2009). In their letter, the workers provided four reasons they wanted to continue working for the company: (i) there was no other work available in the area; (ii) the location of the work was close to their homes and therefore convenient; (iii) the company had provided accommodation for those who came from other areas beyond the villages of Jengkaleng, Bonewangka and Gineau; and (iv) the project provided work opportunities for women (Labourers employed by PT Sumber Jaya Asia 2009). For those directly employed by the mine, the opportunity to earn income, however meagre, was apparently enough to satisfy the cost-benefit threshold to give the

project legitimacy. Clearly, however, for many more, the mine's proximity to their homes made them perceive it not as an opportunity, but a threat.

Nevertheless, the fact that PT SJA had done very little in the way of development initiatives to improve the lives of people in the surrounding communities meant it had little to no social capital on which to draw. As the mine was located in a state forest reserve, no compensation had ever been paid to acquire the land, and no revenue-sharing agreements were in place with landowners for its continued use. The company detailed its relatively paltry contribution to the wellbeing of local communities, besides employment, in its formal written response to the class action.

Apart from building two wells for people living near the mine, the company reported that it had made available its heavy machinery after a landslide, without payment, and sometimes transported sick villagers to hospital late at night using company vehicles. In addition, 'other forms of social cooperation that don't need to be mentioned have all been given with pure intentions'. The company also emphasised that it paid royalties and taxes to the state (T Mendrofa SH & Partners 2010), but given that none of this income is redistributed below the district level, it cannot be expected to have any impact on the orientation of communities towards the company's presence. Ultimately, the only test of whether a mining company has 'done enough' to secure a social license to operate is whether the company enjoys the broad acceptance and support of the community, and is able to operate relatively unencumbered from protests, sabotage and political and legal campaigns. Clearly, PT SJA did not achieve this level of broad community support from whatever benefits its activities provided.

Post-mining legacy

As the district government of Manggarai issued its license extension to PT SJA in 2007, the license application would not have been subject to the new, more onerous requirements regarding the submission of detailed reclamation plans. Nevertheless, the company was still required to carry fill in its excavations and replant the land according to the regulations in place when it ceased mining. Article 21 of Government Regulation 78/2010 states that reclamation must occur within 30 days of mining discontinuing on an area of disturbed land.

In 2009, the company claimed to have already undertaken reclamation and planted 10,000 trees somewhere within its concession. In a 2009 letter to the editor of the national daily newspaper, *Kompas*, organisers from JPIC-OFM and the Institute for Ecosoc Rights rejected this claim as 'a shameful lie', and challenged the company to show them where the trees were if indeed they had been planted (ALMADI NTT & Institute for Ecosoc Rights 2009). In their class action against the company in 2011, the community members bringing the action also claimed the company had still failed to undertake reclamation of land that it was no longer exploiting. The court, however, decided that the company was not yet in breach of its reclamation obligations as its license did not expire until 5 October 2012. As the license period still had some months to run, the court found the company still had plenty of time to undertake reclamation. This would appear to be a dubious and extraordinarily generous interpretation of the regulation, given that it requires continuous reclamation of disturbed land during the mining process.

Leaving reclamation of the entire area of excavations until the expiration of the company's mining license was also at odds with the approach articulated by in the company's own environmental management plan. However, the plan provided little detail about how

reclamation would be undertaken, besides acknowledging the importance of doing so in a phased manner. The plan stated that

> 'The use of a systematic and 'stepped' approach to mining and the return of topsoil to areas that have been mined will avoid erosion and ensure the safety of mining activities.
>
> '(The company will) involve the landowners in the restoration of the land's function, both through reclamation and re-vegetation of mined areas so that the land can be returned to its economic function.
>
> 'In relation to efforts to restore the fertility of the land in ex-mining areas, apart from returning the topsoil that contains nutrients, fertilisation will be undertaken in accordance with the program of revegetation before the land's designated function is determined by the district government.
>
> 'The company will undertake revegetation in areas where reclamation is done, with plants selected for their economic value, fast-growth rate and desirability to the local community. These decisions will be made through consultation with the local community' (Ruteng District Court 2011).

While this sounded impressive, it amounted in the end to naught. Satellite images available on Google Earth taken in July 2013, some nine months after the company's license expired, continue to show the large expanse of white and grey earth exposed by the company's excavations at both of its pits at Torong Besi.

The failure of companies to undertake reclamation and restoration of disused mining areas is yet another source of resentment felt by local communities towards mining, and another example of the way in which the industry collectively fails to do what is necessary to maintain a social license to operate. The failure to undertake reclamation not only means communities are left with severely degraded landscapes, it also reinforces the perception that mining companies are able to exploit mineral and forest resources without regard for the environmental impacts, while communities are denied access to the same resources, often largely on the pretext of environmental protection. The failure of local governments to

enforce requirements on mining companies to undertake reclamation and post-mining management of mining sites erodes both the physical landscape, and public trust in government institutions.

Explaining government actions and inaction

One former member of the Manggarai district legislature, who was aware of the requirement for mining permit-holders to have a CSR plan, said mining companies avoided their obligations to negotiate agreements with communities over CSR and land with the support of the district government. The legislator said the district regulation (*perda*) he helped to create, passed in 2008, included a clause requiring district governments to obtain the agreement of communities to use land for mining, and to develop a CSR plan, but that neither of these provisions were ever observed. Instead, mining companies employed police and military personnel to coerce communities to accept mining companies.[219]

Another close observer of mining in Manggarai said the district head had leveraged his power over mining companies to extract funds from them, particularly during campaign periods, to develop and improve roads, which helped to ensure his re-election despite the unpopularity of his support for mining.

> 'He must have support from the mining companies. For example, he asked a mining company to cut a new road through a village area. So, he exploits the money from the mining companies during the campaign period. He borrows their excavators and gets them to cut new roads. The companies support him in the expectation that after he's elected their permits will be renewed and they'll be able to continue operating.

[219] Interview with former Manggarai district legislator, Ruteng, Manggarai, 16 April 2012.

> ‘It’s a policy problem. The government has its interests, especially if we see that all the permits tend to be issued in the lead-up to elections, and secondly, they’re all certain to have their own private interests there. One permit, one signature, can be worth IDR 300 million (USD $30,000).
>
> ‘In Manggarai there were 23 permits issued in 2009, and then in 2010 there was an election. We don’t know precisely the relationship between these two things but when you consider the number of permits and the small amount of revenue they raise for the district; the political interests are huge. One candidate can spend IDR 1 billion on a campaign (USD $100,000).’[220]

Despite community anger towards the district government’s support for mining companies, the incumbent district head in Manggarai won a second term at elections in 2010. Even in the sub-district of Reok, where most of the mining in Manggarai was concentrated, the incumbent won a majority of votes. According to the local legislator I spoke to, the reason for this was that the community was given money generated by mining, and being so poor, this was enough to influence their vote.

[220] Interview with local community advocate on mining, Ruteng, Manggarai, 11 December 2010.

Chapter 7 – Conclusion

Mining presents a conundrum for governments and local communities in developing countries. For countries or regions endowed with accessible mineral resources, mining offers an accelerated pathway to economic development and industrialisation. It has the potential to improve rural livelihoods and alleviate poverty. A well-managed mining sector can increase government revenue, potentially benefiting regional and national populations through increased budgetary resources for spending on public services and infrastructure. In the communities and regions where mining takes place, the benefits can be more direct: jobs and new income opportunities as demand for goods and services filters through local economies. The extent to which local communities or regions feel these benefits depends on many factors: the scale of mining, the level of mechanisation and opportunities for unskilled labour, mining companies' community development and benefit-sharing practices, and the policies of governments at various levels.

NTT is one of Indonesia's newest mining frontiers, with investment in mine construction still increasing. During the first few years of the manganese boom, mining in NTT did generate some positive outcomes for some parts of the rural population. Most of the livelihood opportunities, and certainly the most lucrative ones, were a consequence of the sector being at an early stage of development and relying heavily on manual labour.

Even at that early stage of labour-driven expansion, this dissertation has shown that the way mining was allowed to develop in NTT fell short of community expectations. The experience of mining in NTT has highlighted the obstacles local populations face in securing many of the benefits that mining promises. At the same time, mining led to an increase in conflict and social division. The dissertation has examined the nature of these conflicts and competing interests and shown how unequal relations of power shaped who gets what. The study's

findings revealed a strong and consistent correlation between actors' access to power—political, bureaucratic, economic and social—and their ability to benefit from mining. The most marginalised sections of society—poor local villagers, often lacking recognised claims to land or political and social standing in their own communities—tended to experience most of the negative impacts of mining. Not only did these groups have the most limited opportunities to share in the wealth generated, the most vulnerable communities also suffered the lion's share of mining's negative impacts—environmental degradation, dislocation and social conflict.

Local elites—entrepreneurs, politicians, bureaucrats, security force personnel, traditional and community leaders, and a small number of recognised landowners—were, on the other hand, more able to insulate themselves from the negative impacts of mining, and better positioned to take advantage of profit-making opportunities. These basic findings challenge commonly held assumptions about mining's potential to improve the economic, environmental and social wellbeing of rural communities in developing countries like Indonesia.

Three inter-connected factors limited the benefits of the manganese boom for the rural poor in NTT. The first relates to access and control over valuable natural resources, in this case manganese, and the implications of this for both mining and non-mining livelihoods. The second relates to land rights, landownership, and environmental impacts, and how these issues interacted with processes of consent and compensation in the context of mining. Finally, politics and regulatory environments conspired to prevent a more equitable sharing of the benefits of mining.

In examining these three phenomena and the intersections between them, this study contributes to important debates that span the literatures on democratic decentralisation and natural resource management. The evidence presented challenges the core theoretical claims

put forward for decentralisation's potential to empower local communities to participate in decision-making processes that affect them, suggesting instead that local institutions and processes are relatively easily captured and tamed by the same kinds of coalitions of business and political power that assert control over central government decision-making.

Arguments for the decentralisation of control over natural resources in particular assert that for reforms to empower local communities power must be devolved to locally elected bodies to have the desired effect. The findings from my study suggest that even this is not necessarily enough, however. Although Indonesia's district government units may be much closer than the central governments to communities, they are often still relatively remote in both a physical and political sense. The size of district populations and the highly localised nature of natural resource management issues ensures that the political power of community grievances over natural resource decision-making are heavily diluted within district level institutions.

By focusing on mining, the study has also challenged the natural resource management literature's assumptions about the basis for recognising natural resource rights and granting communities direct control to manage and exploit them. Minerals can only be exploited once, whomever is exploiting them, and exploitation has other environmental costs. Granting communities rights to them does not sit easily within a resource rights framework predicated on aims of 'sustainable', 'traditional' use, or even conservation. However, if the alternative is to allow business interests exclusive and unfettered access to mineral resources, with communities systematically marginalised in the process, perhaps it is time to question the basis for viewing minerals differently to other natural resources.

Access to resources

As outlined in Chapters 2 and 6, the Indonesian state has maintained firm control over natural resources through a range of national laws. The access regimes governing all exploitable

resources, and for minerals in particular, have been heavily tilted in favour of commercial interests over local communities' rights to manage resources for their own livelihoods and needs.

In many settings, minerals can only be reached and extracted with heavy equipment, and artisanal mining is not possible. Even then, however, recognising communities' rights to minerals, or at least to the land that contains them, is necessary for communities to negotiate adequate compensation. In West Timor, however, where NTT's manganese boom was most concentrated, manganese deposits were highly accessible, creating an entirely new livelihood opportunity for tens of thousands of people. This opportunity had two, somewhat contradictory, effects. On the one hand, the prospect of a lucrative new livelihood available to all those willing to submit to the necessary physical labour and risks, meant local communities were overall receptive to the manganese mining sector establishing itself in West Timor. On the other hand, however, their ability to pursue income opportunities in mining were often frustrated by the efforts of district governments to privilege commercial interests and industrial development of resources over livelihoods. This approach sought to push artisanal miners out of areas where they were already working or force them to accept exploitative conditions to work with concession-owners. These twin processes of exclusion and co-optation into industrial marketing chains followed a well-established pattern of subordinating rural livelihoods to industrial priorities in regulating access to land and other valuable natural resources in Indonesia. This pattern follows the principle that the more valuable a resource, the more likely it will be off limits to the rural poor (Dove 1993, p. 18). As Murray Li (2001, p. 161) observes, if land or natural resources become too profitable,

> 'these too are taken away from categories of people whose poverty renders them ineligible as beneficiaries […] Poverty, powerlessness and exclusion from valuable resources are integrally related'

For local people in West Timor, the practical effect of their lack of formal rights to manganese deposits was a significantly diminished ability to generate income. In places such as Buraen, Supul and Naioni, lack of mineral rights deprived local people of the ability to freely extract and then sell manganese to any buyer offering the most favourable prices. It also prevented them from profiting by engaging or licensing others to develop the resource for or with them.

Unlike artisanal gold miners, who often tend to be highly itinerant, artisanal miners of manganese in West Timor were seeking to exploit a new livelihood opportunity that had opened up in the midst of their own communities, often on their own land, in a region with very few viable alternatives. It was this connection to the land, and through it, the resource, that underpinned the miners' deep claims of entitlement to the resource. This sense of entitlement was evident in the strong indignation, even disbelief, that local villagers in Buraen expressed when authorities accused them of acting illegally by mining and selling manganese from their own land.

The clearest evidence that villagers regarded their lack of full mining and marketing rights as unjust was their resistance, as indicated by the widespread 'leakage' of ore from within concessions through organised smuggling networks. But the miners' engagement with illegal brokerage and smuggling networks to take advantage of market competition only underscored the extent to which a lack of formal mining rights marginalised them. The case of the OBAMA smuggling network that sprang up around the PT SMR mine in South Central Timor highlights the way criminalising profitable activities can serve other, more powerful interests, even when it fails in its ostensible objective of stamping out the illegal activity. The ability of local artisanal miners in West Timor to continue working and selling through organised smuggling channels, backed by state actors, showed the extent to which parts of the state and communities in Indonesia are far more intertwined that they can sometimes appear.

Nevertheless, this did not mean there was no cost attached to the miners' lack of formal rights to resources. They were still vulnerable to exploitation by concession-owners on the one hand, or harassment and extortion by security forces on the other. And the bribes, other inducements and implied threats and intimidation required to ensure safe passage for the contraband cargo further squeezed the returns to artisanal miners.

A consequence of district governments' antipathy to artisanal mining has been to drive more people into illegal mining. For artisanal miners to maximise their income they needed to work without any assistance from, or obligation to, a mining company or concession-owner so that they could sell the ore they extracted to brokers for the highest price they were offered. However, district governments did not encourage artisanal miners to apply for artisanal mining permits—only a handful of such permits were issued across West Timor. The district government instead issued many large commercial concessions over the areas where artisanal miners also wanted to work. If miners worked within concession boundaries, the ore they extracted legally belonged to the concession-owner. The only option for such artisanal miners was to sell the ore to the concession-owner, who, holding monopoly rights over the ore, was able to squeeze prices. Artisanal miners who refused to accept this restriction and sold ore to other buyers without the concession-owner's knowledge or consent, risked serious sanctions.

A fundamental issue that any such system of artisanal mining rights needs to address is how, and where, artisanal miners are able to exploit resources. There is little value in obtaining artisanal mining rights in locations where there are no accessible minerals. If governments have already allocated almost all of the land in areas known to contain accessible deposits to commercial miners, as happened in West Timor, the permits granting artisanal mining rights provide little meaningful opportunity to rural communities. Prevented from gaining legal access to resources, artisanal miners either had to negotiate terms of access with concession-

owners from a position of weakness, take their chances mining, transporting and selling ore without the concession-owner's permission, or cease artisanal mining altogether.

Alternatively, some took the safer option of working as manual labourers on semi-mechanised mines. Some of these workers were paid based on their output, while others were paid very low daily rates. Those paid according to their productivity earned more, but had to constantly compete against their fellow workers, who included members of their own families, kinship groups and communities. Whatever the method of remuneration, an oversupply of labour in a region with few other jobs suppressed wages to barely above subsistence levels, even to the point where many people withdrew their labour to re-focus on agriculture.

For artisanal miners in West Timor to have been able to work with the same freedom to exploit and market manganese that commercial concession-owners enjoyed, they needed to formally secure rights to the resource. Although artisanal mining rights are formally recognised in Indonesian law, and regulated through an artisanal mining permit, these rights are heavily circumscribed and very difficult to obtain. For artisanal mining rights to have any value, miners would also need access to land where resources are located. One way of doing this would be for district governments to set aside some land within areas known to contain minerals and invite artisanal miners to apply for mining rights. However, district governments in West Timor showed no interest in doing this while they still had the opportunity during the first two years of NTT's mining boom (2008 to 2010). This window of opportunity effectively closed in late 2010 when new national regulations prevented the allocation of land to artisanal mining in areas where it was a new (less than 15 years continuous duration) livelihood activity (Republic of Indonesia 2010a, Article 26 (2f)).

A possible alternative to quarantining land for artisanal miners would have been to encourage mining companies and artisanal miners to negotiate some form of co-tenancy arrangement

that still granted artisanal miners full marketing rights. However, this too would have raised political and regulatory challenges. Examples of commercial miners voluntarily agreeing to allow artisanal miners to work within their concessions are so rare they are considered noteworthy (Lange 2008, p. 24). The more typical dynamic where artisanal and industrial miners encounter each other, in West Timor, Indonesia and throughout the developing world, is one of conflict, rather than cooperation. To change this would require a new paradigm, supported by a clearly defined regulatory framework outlining the rights and obligations of each party.

Governments are reluctant to compel mining companies to share land with artisanal miners for fear of deterring investment. And lest any local government be tempted to consider such an experiment, Indonesia's mining laws expressly prohibit governments issuing artisanal mining permits within commercial mining concessions (Article 20 (2e), Republic of Indonesia 2010a). So while formal artisanal mining rights would empower local communities in West Timor, governments would either need to allocate land specifically for this purpose outside commercial mining concessions, or revise the law to formally establish some form of co-tenancy arrangement between artisanal miners and commercial concession-owners.

The alternative to fostering cooperation between commercial and artisanal miners is for governments to try to suppress it. This has been the default approach to date in Indonesia. Where efforts at suppression are not completely successful, which is usually the case, authorities have tended to quietly accommodate and exploit artisanal miners the sector. As this study has documented, efforts by governments in West Timor to stamp out artisanal mining have largely failed for the same reason such efforts have failed elsewhere in Indonesia (Spiegel 2012), and throughout the developing world (Geenen 2012)—the economic incentives have compelled miners to persist, while the criminalisation of their activities creates opportunities for a range of state actors to benefit. The current approach of authorities

towards artisanal miners in West Timor can therefore best be characterised as a strategic combination of suppression and exploitative accommodation. Different interests within the politico-bureaucratic-security establishment simultaneously compete and cooperate to disrupt artisanal mining activities, mainly to protect and enable concession-owners, in order to derive benefits for themselves. This tension maintains artisanal miners in a perpetually vulnerable state and prevents them from recouping the full value of their labour.

As industrial mining's footprint expands, locking up and consuming more and more land previously available for agriculture, mining might become increasingly important as a livelihood. In sub-Saharan Africa, the displacement and dispossession of people from agricultural land (and from legal artisanal mining sites) to make way for fully mechanised, industrial mining has been identified as a major cause of increased illegal artisanal mining activity. This is because large-scale, highly mechanised mining does not provide enough new jobs or livelihoods to replace those lost in agriculture (Banchirigah 2006; Bush 2009; Bryceson & Jonsson 2010).

Industrial manganese mining in NTT was only semi-mechanised, and individual projects small to medium scale. This meant they generated significant demand for unskilled labour relative to their physical footprint, but at a lower income than that potentially available from artisanal mining. However, as the case studies from Buraen, Kupang (Chapter 3) and Satar Punda, East Manggarari (Chapter 5) showed, even relatively small-scale industrial mining was a potential threat to rice crops, gardens and fresh water sources, and ultimately, therefore, to the sustainability of entire communities. As investment in the sector expands further into agricultural land, and extraction becomes increasingly mechanised, greater numbers of people may be forced into artisanal mining, increasing the potential for conflict with mining companies. This reinforces the need for governments to implement a system of mining rights that balances the needs and rights of both commercial and artisanal miners.

As has been widely accepted for more than two decades, formalising artisanal mining rights, through widespread issuance of some form of mining permit offering real incentives for miners to accept regulation, would be the essential first step to regulating artisanal mining in West Timor (Barry 1995; IIED 2002, p. 322). International experience suggests an essential element of successful regulation of artisanal mining also requires liberalisation of markets to enable miners legal access to competitive pricing. In such an environment, the opportunities for those controlling illegal trading and smuggling networks quickly disappear (Barry 1995). The chaos, conflict and corruption around artisanal mining in West Timor shows that new approaches are needed that meet the livelihood needs of artisanal miners and provide the certainty required by commercial miners to invest. The basic challenge of balancing these competing priorities has long been defined by international development organisations focused on mining and livelihoods (Barry 1995; Jennings 1999; Centre for Development Studies 2004).

Land tenure and compensation

In NTT, as in most of Indonesia, the industrial extraction of minerals remains the default policy setting. As long as this is the case, it is imperative to understand how communities fare when mining backed by capital and heavy machinery intrudes on their physical and social landscapes. When mining takes on an industrialised form, the threat to local communities, and the disparity in power between communities and miners, is far greater than for artisanal mining. My field observations in West Timor and Flores showed that as production output and profits increase, expectations among local communities for a share in the wealth generated also increase proportionately. Even when production had yet to commence, once mining rights were issued to commercial entities, communities began to expect some sign from the rights-owner that they would share in the benefits to come. When concession-owners

failed to recognise them through consultations and negotiations, communities quickly became resentful and some became opposed to mining.

This study's other major finding in respect to relations between industrial mining projects and communities was that when deserving beneficiaries for compensation are defined exclusively in terms of landownership, only a small subset of all of those who see themselves as 'deserving' of compensation, will be compensated. As Bebbington (2013, p. 13) notes, minerals are 'extracted from particular territories', and it is often identity-based connection to these places, as much as any formal landownership rights, that informs claims of entitlement to compensation when local resources are extracted. At the provincial or district level, attachment to a territorially defined collective identity has proved a powerful vehicle for staking claims to natural resource revenues and control over resource management in Indonesia, to the point that they contributed to the move to decentralisation. Below the level of these political units, the expectation that proximity to resources be recognised through compensation and the distribution of benefits more broadly, is even stronger, and strongest at sites of extraction.

Communities in NTT expected mining companies to respect and acknowledge their local sovereignty by consulting, seeking their consent, and offering a level of compensation that they could accept as roughly proportionate to the scale of impacts, investment, production output and profits to be made. In most cases, this did not occur.

There are many ways governments in Indonesia could ensure that local communities receive some form of compensation for the disruptions and loss of local sovereignty they experience as a result of mining. One way would be for regional governments to redistribute a proportion of the rents they receive from mining companies to mining-affected communities at the village level. As state mining rents such as royalties and third-party contributions are already

based on production levels, this would ensure that compensation is tied to the scale of mining projects and bear some relationship to their impacts on the local landscape and communities.

Under Indonesia's revenue-sharing arrangements for natural resources, royalties are shared among the central, provincial and district governments, but not with the local communities where they were generated. This situation is at odds with the principle that informs revenue-sharing between governments—the need to return a share of natural resource wealth to the regions and populations where it was generated. Even rents collected from mining companies by district governments were not shared with the local communities in NTT, through infrastructure spending or any other means. Changing the redistribution of these resource rents to ensure communities received a share would not be difficult but would require more political pressure than currently exists.

Alternatively, district governments could make revenue-sharing requirements a condition of commercial mining permits. The PT SMR company operating in South Central Timor voluntarily decided to negotiate revenue-sharing agreements with local landowners. This model was widely regarded by local observers as an innovation in the region and appeared to have some potential. However, ultimately it failed in one of its key aims: ensuring community goodwill towards the project and preventing illegal mining within its concession. The main reason for this was that the agreements were with a very small number of landowners, which excluded the vast majority of people from direct access to the income.

The basis for governments making such agreements mandatory already exists—Indonesia's 2007 corporations law, unusually, introduced mandatory Corporate Social Responsibility (CSR) provisions for companies operating in the natural resource sectors (Republic of Indonesia 2007b). National mining laws and regulations also impose obligations on mining companies to invest in the social and economic development of local communities. District

governments are responsible for approving and enforcing mining companies' CSR and community development plans, which suggests they could, if they wished, use or modify these powers to specify a requirement for mining companies to negotiate revenue-sharing arrangements.

As this study's findings in both West Timor and Flores highlighted, if landownership is the only basis by which mining companies compensate local communities for the impacts of mining, this can exclude much of the affected local population. The case studies presented in Chapters 3 and 5 highlight that control over land in rural communities in NTT can be highly uneven, often residing with a small number of powerful individuals. Some landowners, or their descendants, can be absent, and no longer dependent on the land for their livelihood, yet be entitled to compensation. Meanwhile those who settled more recently and lack landowner status can potentially be displaced and deprived of their livelihood without receiving anything. Another limitation with landownership providing the sole basis for compensation is that customary land tenure in NTT is heavily patriarchal. This means that women who have left the family home and married are relatively more disadvantaged when compensation only recognised landowners.

As attested by the many examples of disputes between competing claimants to land precipitated by mining in NTT described in the study, the persistence of customary land tenure principles, often overlapping state-issued formal land title, means landownership is almost always a complex matter and often a highly contestable concept. Proving landownership in this context, can mean not only satisfying formal legal standards but achieving universal social recognition. This can be problematic at any time, but when the value of land is tied to its direct use and productivity for agriculture, there is relatively little incentive to spend precious resources and social and financial capital in protracted struggles to assert one's claims to the exclusion of another.

Mining, however, changes these calculations dramatically. As the cases in Supul, Buraen, Naioni, Nonbes (Chapter 3) and Satar Punda (Chapter 5) showed, the promise of substantial windfalls for a select few pitted community, kin group and even family members against each other in what the disputants, often correctly, interpreted as a zero-sum game. There is no simple solution to the lack of certainty and contestability around land claims under customary land tenure systems. Attempts to address it through land registration programs must confront the fact that such efforts can often create even more conflict, by replacing land rights concepts that are fluid, relative and negotiable, with ones that are final, binary and absolute (Fitzpatrick 1997, p. 173). The prospect of achieving permanent recognition by a mining company as a landowner and the wealth that can potentially deliver, has a similar effect to land registration. A formal compensation or revenue-sharing agreement with a mining company, based on land, creates binary categories of landowner and non-landowner that replace much more complex, fluid and negotiated land relations.

Some disputes over land and compensation were not between individuals asserting private property rights, but rather between self-defined communities or groups asserting collective rights. These inter-group disputes, such as the one in Satar Punda detailed in Chapter 5, revolve around the origins, definition and recognition of traditional community groupings, which in NTT underpin collective claims over land. As the Satar Punda case showed, the political effects of selective or partial recognition of local communities by mining companies when they first acquire access to land can continue to reverberate for many years afterwards.

Invariably, villagers who were opposed to mining were those who had not been granted an opportunity to negotiate terms of access or receive compensation. Arguably, in some cases, mining companies could have reduced the problems they experienced with communities by taking more time to work through and understand the complexity of local land relations. Many companies and concession-owners hastily committed themselves to working with a

small number of self-proclaimed local landowners, only to learn that the claims of these individuals were strongly contested, and any agreements based on them would not insure against further demands from others. Whether or not a more patient and informed approach to identifying landowners would have resolved these issues is difficult to know—the exercise of seeking out landowners itself seems to encourage conflict between competing claimants. Aside from the practical difficulties, the approach fundamentally fails politically because it sets up permanent winners and losers in tight-knit communities, ignoring the social impacts of mining and compensation.

Aside from the inevitable and often intractable challenges for mining companies in identifying 'real landowners', using landownership as the sole basis of compensation creates a fundamental social justice problem: the environmental impacts of mining are not necessarily confined to landowners, or even to people residing within mining concessions. Many people cultivated crops, tended livestock, drew water, and used roads within an area over which the impacts of mining were felt, but were not recognised as landowners within the concession, and therefore were not eligible for compensation on the basis of landownership. In Buraen, Satar Punda and the villages around Torong Besi (Chapter 6), crops, gardens, fresh water sources, and marine fishing grounds were situated outside the boundaries of a mining concession but remained highly vulnerable to the impacts of mining. The effects on air quality, noise pollution and road infrastructure spread even further from the point of extraction. Spreading the benefits over a similar area would likely be a much more successful way of obtaining and preserving the social license than strictly limiting the beneficiaries to a small group of landowners.

It can be easy, as an outsider, to interpret the strong, often courageous expressions of community resistance towards mining in places like Satar Punda, East Manggarai and Supul, South Central Timor, as indicative of a basic, deep cultural hostility towards mining. Such a

view dovetails with the simplistic frames often applied to mining in developing countries by environmentalist or human rights NGOs, both local and international. However, my observations in NTT do not support such a conclusion. Rather, local grievances tended to be much more specific, and primarily grounded in the distribution, or lack thereof, of meaningful compensation, broadly defined.

Many people who later protested at mining projects had earlier willingly participated as mining labourers. When they subsequently withdrew their labour and expressed opposition to a mining project, it was because the negative impacts of mining on the local environment and their non-mining livelihoods had become increasingly evident, impacts for which they had not been compensated. Within the communities living around the PT SJA mine in Torong Besi that supported a class action against the mining company, many people had been, or still were, working for the mining company. Despite this, many perceived the mine as a threat to the environment and their livelihoods that depended on it. Because the mining concession was located in a state forest, and off limits to local people, they had not received any compensation for the environmental disturbance. Whether the true extent of the mine's environmental impact was as great as villagers claimed or not is probably immaterial to the question of whether the company could have avoided its problems with the community. Had the company committed itself to financially compensating communities at the outset, possibly through some form of revenue-sharing arrangement, the villagers would also have had a stake in the mine's ongoing operation, and a reason to continue supporting it.

What might appear to be ambivalence in community attitudes towards mining can on closer inspection be understood as a rational response to changes in conditions and information on the ground. Expressions of opposition can also be viewed as a legitimate negotiating tool employed by weak actors trying to extract a share of the benefits from much more powerful interests. The Serise community, the artisanal miners and smugglers in Supul, and the illegal

loggers in Torong Besi, Manggarai were protesting the extractive process itself, but rather the terms and conditions they were asked to accept. Tania Murray Li (2005, p. 31) sums up the equation thus:

> 'The complaint is not against market-oriented production, but against the terms under which such production takes place, terms which reflect the uneven distribution of power'.

For much of the period that the Serise and Torong Besi mines operated, there was little sign of community opposition. Many local people earned livelihoods directly and indirectly from these mining projects. Many of these people continued to support their local mine's ongoing operation, even as other members of the community turned against the projects. The diversity of views towards the projects within local communities, and the change in sentiment over time, reflects the contradictions and trade-offs that mining always represents.

For mining companies to secure and maintain the social license to operate that are essential to the smooth and ethical operation of their projects, they need to recognise the rights and claims of entitlement of local communities, by compensating them. Some mining companies were implementing small social development projects in communities, but these tended overwhelmingly to look tokenistic in comparison with revenue-sharing payments enjoyed by a small number of landowners. To some extent, the mindset mining companies bring to these negotiations with communities in Indonesia is shaped by national laws, which focus mainly on landowners. Nevertheless, if mining companies wish to enjoy broader legitimacy and support in the communities in which they work, and minimise social tensions rather than aggravate them, they need to share the wealth they generate across entire communities. If a more miserly approach to compensation results in increased conflict with and within communities, this could discourage new investment in mining, which indirectly would

deprive regional populations of the additional revenues and government spending mining can generate.

Government interests and mining

The pattern of local people's livelihood and environmental rights being subordinated to commercial mining and other elite interests in NTT's manganese boom was broadly consistent with the experience of local communities throughout Indonesia since democratic decentralisation in 2001. Although traditional groups and customary landowners briefly enjoyed some rights to manage forests (Wollenberg et al. 2006), these rights were quickly curtailed, and never extended to minerals. To students of Indonesia's pre-reform era history, this is hardly remarkable. However, some proponents of democratic decentralisation suggested that decentralising control over natural resources to local units of government, as Indonesia did in 2001, would enable local people to directly exploit local natural resources (Ribot 2002, p. 9). It is not immediately clear how, or why, democratic decentralisation that places control over natural resources in the hands of local government institutions should necessarily result in local people enjoying greater control over those resources and how they are used. The experience of communities in NTT, both as easily exploited mining labour and as those who bear the impacts of mining's intrusions, suggests more work needs to be done to show how and why decentralised forms of government promotes greater community control over natural resources, if in fact they do.

If mining companies' behaviour towards labour and local communities reflects their own self-interest, even if narrowly defined, this is only to be expected. Like all corporations, their decisions and actions are ultimately driven by the pursuit of profit, which in part means not spending more than is absolutely necessary, including on labour costs, accommodating artisanal miners, compensation or other forms of revenue-sharing. Governments, on the other

hand, and particularly local governments, have a broader range of interests to consider, including the welfare of a largely unregulated labour force seeking to eke out a precarious livelihood from informal mining. The conditions that produce the exploitation and vulnerability of this labour force, and keep most in a state of poverty, are biproducts of regulatory regimes governing access to minerals and labour relations. As such, it is important to examine the underlying causes of government apathy and indifference that underpin the marginalisation of informal mining labour (Lahiri-Dutt 2018, p. 10). The same could be said for unjust outcomes in relation to landowners, and environmental impacts on communities more broadly.

As outlined in the introduction and in Chapter 4, one of the key justifications for Indonesia's decision to decentralise control over natural resources to district governments was the belief that local decision-makers would be more attentive to the aspirations and concerns of local communities than central government officials, and also better informed about local social, economic and environmental conditions. As such, this should lead to better decision-making and better outcomes for local populations in the regions where natural resources extraction takes place, or so it was argued. As the findings presented showed, this was not necessarily the case in NTT.

According to the prevailing orthodoxy of decentralisation in vogue at the time, the Indonesian central government could be assumed to be somewhat indifferent to the interests of local communities around resource extraction, because the imperative of generating government revenue simply too powerful. However, the extent to which district governments massively and rapidly increased the volume of land held under mining concessions across the country from 2001 suggests the pressure or incentive to generate revenues was even more influential when authority over mining was localised. But pressure to generate local sources of revenue alone does not explain why district governments so consistently, and in so many ways,

favoured the interests of mining businesses over local communities in regulating access to resources. Rather, a range of factors tied to the local political and institutional context combined to produce this outcome.

Chapter 4 of the dissertation focused on the role of district governments in facilitating the mining boom in NTT, and politicians' and bureaucrats' motives for supporting mining. Probably in hindsight, we should not have been surprised to learn that the agendas of local political, bureaucratic and business elites were often quite different from those of the NGO, academic, civil society and grassroots actors who had earnestly lent their support to the decentralisation reforms. While activists and academics hoped decentralised decision-making would empower local communities, local elites saw an enormous opportunity to be exploited for their own advantage. The disappointment expressed by many local communities and their civil society supporters about the management of mining by district governments in NTT merely highlights that, in retrospect, some of the optimism surrounding Indonesia's democratic decentralisation reforms was based on a shallow analysis and understanding of political power in regional Indonesia, and therefore naive.

As scholars have observed since the decentralisation reforms were introduced, rather than representing the interests of local constituents, newly democratised local institutions were soon captured to a large extent by predatory alliances of business and political elites looking to capitalise on the new opportunities to collude in their own narrow interests (Robison & Hadiz 2004; Hadiz 2010; Hadiz & Robison 2013). Many of these opportunities related to natural resources.

Ironically, the democratic process itself has shaped alliances between capital and political and bureaucratic power. Candidates in local elections had to finance election campaigns, the costs of which spiralled following the move from indirect to direct elections from 2005,

encouraging candidates to enter into illegal quid pro-quo deals with businesses seeking government contracts, licenses and support (Mietzner 2011). Licenses to exploit natural resources provided one of the most convenient ways for successful candidates to repay the local business figures who bankrolled their campaigns.

The localisation of control over mining created new opportunities for district bureaucrats and politicians to leverage their administrative powers to obtain private benefits. These benefits could take the form of bribes for permit approvals and letters, opportunities to invest in mining businesses, consultancies and employment opportunities, and various other favours. In NTT, it was widely assumed by the general public that many politicians and bureaucrats took full advantage of such opportunities, and further, that they had a material influence on the way they discharged their official functions.

The expansion of mining, and in particular the creation and co-existence of legal and illegal activities, also created new income opportunities for elements within the state security apparatus, both through their direct involvement in the extractive process, and by leveraging their power to regulate the transportation of ore within and from the province. The direct involvement of state security forces in mining, and their use of the sector as an important source of 'off-book' income created an obvious conflict of interest. Security forces are often contracted to provide private security services for mining projects, in addition to their general role of enforcing the law around mining and its regulation. This conflict was a major factor in the vulnerability of any grassroots actors who sought to resist the terms and conditions under which mining took place. While greater political space exists to voice dissent in Indonesia since the democratic and decentralisation reforms in 2001, the nexus of overlapping interests that exists between mining companies, bureaucrats and elements of the state security forces, which, is a clear example of institutional continuity with the New Order.

The convergence of all of these powerful interests helps explain why decentralisation did not produce the pro-poor, pro-livelihoods or sound environmental approach to the regulation of mining in NTT that some had hoped it would. Instead, the regulations, policies and behaviours that emerged sprang from the commercial mining sector's capacity to provide reciprocal benefits for government officials and was always going to be skewed against the interests of the rural poor. On this basis, peasant farmers were always going to lose out to those with greater resources and more powerful connections.

Grassroots actors tend to lack bureaucratic literacy and access to insider networks that could help to navigate complex administrative approval processes (IIED 2002, pp. 222-23). Lacking capital to invest in the industrial extraction of minerals, villagers as concession-owners would not generate the capital needed to become a significant source of further patronage to politicians and bureaucrats. Of course, for governments it is also much more administratively efficient to license fewer, larger concessions to commercial interests, even if they are exploited by artisanal miners, than license and oversee the activities of hundreds or even thousands of artisanal miners.

Findings from this study suggest that localising control over mining in Indonesia likely increased, rather than reduced, corruption in the sector, with real consequences. Poor decision-making based on an alignment of interests between capital and official power has generated conflict, marginalised communities and workers, undermined environmental protections, and eroded the public's trust in their local democratic institutions. Such was the depth of mistrust towards government that even when officials took regulatory action against a mining company, as the Manggarai government did against PT SJA to revoke its permit in line with forest regulations (Chapter 6), people questioned whether the action was genuine or merely a ruse designed to appease community anger.

The basic premise of devolving decision-making authority over natural resources under democratic decentralisation is that moving decision-making closer to people affected by resource use improves decisions and policies by making it easier for local communities to hold governments to account. However, people in rural NTT showed no greater faith in district governments to act in their interests than the central government. Despite communities' best efforts to convey their grievances to officials around mining in a variety of ways—from writing letters to visiting government offices, demonstrating, and direct resistance—rarely were they able to have any clear, lasting and positive effect on policies, decisions or outcomes. This finding challenges one of the main arguments for devolving control over natural resources to elected local government units.

There is a basic problem with numbers and representative weight in the idea that democratic decentralisation, through electoral competition, should necessarily lead to better experiences with mining for communities. Mining activity, and particularly industrialised mining activity, usually covers only a tiny proportion of land in a limited number of sites within an Indonesian province or even district. Industrial mining projects therefore directly touch a relatively small proportion of the population. Most of the population in most districts is insulated from mining's negative impacts and has little opportunity to engage in mining as a livelihood. This suggests that if localised decision-making has any potential to improve outcomes for communities through democratic processes, decision-making would need to be moved much closer still to near-mine communities than remote district and provincial capitals. Otherwise, highly localised grassroots preferences and grievances around mining are diluted far too much to exert any real influence on local politics.

To localise decision-making power over minerals even further than Indonesia did in 2001 might have been technically possible if it meant more formal community rights or a mechanism to allow greater community voice over decisions regarding minerals. Although

the Community-Based Natural Resource Management (CBNRM) approach provides a model for more localised resource control, it has rarely, if ever, been applied to minerals in the same way as forests, in any country. Politically, given the concerns of the mining industry with the level of decentralisation already in place, further experimentation with even more local forms of control was always unlikely. Ultimately, Indonesia's central government took steps in the opposite direction.

Epilogue – recentralisation of mining governance

By the time national lawmakers began drafting the new 2009 mining law, many central government officials, both elected and unelected, had concluded that the experiment with local government control over mining had created more problems than it had solved. While their views might have been informed partly by self-interest, there was also considerable evidence that local governments had performed poorly, with significant adverse effects for communities, the mining industry, environments, the country's reputation as a place for mining companies to invest, and even state revenues.

The 2009 mining law was the first of a series of legal instruments that over a five-year period incrementally moved authority over mining back to the central and provincial governments. The mining law gave the Minister for Energy and Mineral Resources the power to define, in consultation with regional governments and the national parliament, 'mining enterprise areas' (*wilayah usaha pertambangan, WUP*), where mining projects could be approved. This effectively allowed the central government to control how many new permits could be issued and where and laid the initial foundations for subsequent efforts to further reduce the role of district governments in mining.

In 2012, the government went further, revising a government regulation to give the mining minister exclusive authority over licensing for mining projects financed by foreign capital (Article 6 (3b), Republic of Indonesia 2012a). In 2014, the Minister of Energy and Mineral Resources issued Ministerial Regulation 2/2014 on the Delegation of Certain Duties to the Governors (Minister of Energy and Mineral Resources 2014). This regulation paved the way for the provincial governors to perform, on behalf of the minister, supervisory duties towards the activities of district governments in respect to (i) mining area determination, licensing and compliance; (ii) minerals and coal business activity, and; (iii) environmental, technical and work healthy and safety matters. Finally, with the passing of an updated Law on Regional governance, also in 2014 Indonesia completely abolished the district government authority to issue mining licenses, transferring it to provincial governments (Republic of Indonesia 2014). With this final act, Indonesia's 13-year experiment with localised government control of mining came to an end.

References

Acciaioli, G 2009, 'Conservation and community in the Lore Lindu National Park (Sulawesi): Customary custodianship, multi-ethnic participation, and resource entitlement', in C Warren & J McCarthy (eds), *Community, Environment and Local Governance in Indonesia: Locating the commonweal,* Routledge, New York, pp.

Aditjondro, G 2009, 'Dialektika antara pemekaran daerah dan pertambangan di NTT', in A Jebadu, MV Raring, M Regus & SS Tukan (eds), *Pertambangan di Flores-Lembata: Berkah atau Kutuk?,* Ledalero Publishers, Maumere, pp. 321-329.

Agrawal, A & Gibson, CC 1999, 'Enchantment and disenchantment: The role of community in natural resource conservation', *World Development,* Vol. 27. (4)**,** pp. 629-49.

Agrawal, A & Ribot, JC 1999, 'Accountability in decentralization: A framework with South Asian and West African cases', *The Journal of Developing Areas,* Vol. 33. (4)**,** pp. 473-502.

Ahmadi, S & Amon, S 2002. Berita acara serah terima (Record of handover event), 4 July 2002. Reo, East Manggarai.

Ahmadi, S, Encok, M, Radu, M, Amon, S, Beak, Y & Jawa, L 2002. Surat pernyataan kesepakatan bersama antara PT Arumbai Mangabekti dengan masyarakat Golo Koe/Serise (Statement of agreement between PT Arumbai Mangabekti with the communities of Golo Koe/Serise), 23 April 2002. Signed agreement between PT Arumbai Mangabekti and community leaders.

Ali, SH 2009, 'Mining Dilemma', *Alternatives Journal,* Vol. 35. (1)**,** pp. 8-11.

ALMADI 2009. Letter to Manggarai District Legislature re.: *Decision of Court of State Administration, Kupang, 28 July 2009,* 30 November 2009.

ALMADI NTT & Institute for Ecosoc Rights 2009. Letter to the editor of *Kompas*. '*PT Sumber Jaya Asia lakukan kebohongan publik: tanggapan terhadap pernyataan PT Sumber Jaya Asia*' (PT Sumber Jaya Asia deceiving the public: response to statement of PT SJA), 18 October 2009. Jakarta.

AMAN 2012. *Sustainable management of gold mining by traditional communities is the solution to the management of gold mining on traditional lands: rights to political sovereignty, economic independence and cultural dignity* (*Pengelolaan tambang emas lestari oleh masyarakat adat adalah solusi pengelolaan pertambangan emas di wilayah adat: Hak untuk berdaulat secara politik, mandiri secara ekonomi dan*

bermartabat secara budaya)[Online]. Available: http://www.aman.or.id/solusi-pengelolaan-pertambangan-emas-di-wilayah-adat-melalui-pengelolaan-tambang-emas-lestari-oleh-masyarakat-adat/ [Accessed 10 December 2012].

Amon, S 2010. Pernyataan sikap: Terusir dari tanah sendiri (Statement of position: Evicted from our own land), 4 November 2010. Unpublished statement of the Serise *adat* (customary) community.

Amon, S, Beak, Y, Jambar, P, Deon, D, Brodus, K, Eban, S, Weang, K & Donatus, G 2009. Untitled, 28 May 2009. Letter to PT Arumbai Mangabekti.

Amon, S & Raba, B 2009. Tuntutan tanah hak ulayat lokasi Rengge Komba (Communal land rights claim in Rengge Komba), 20 May 2009. Unpublished letter.

Amsikan, G 2012a, 'Gabriel Manek diperiksa penyidik' ('Gabriel Manek interviewed by investigators'), *Victory News*, 27 July 2012, Kupang.

Amsikan, G 2012b, 'Masyarakat tagih janji infrastruktur dari perusahaan tambang' ('Community demands fulfilment of infrastructure promise from mining company'), *Victory News*, 21 May 2012, Kupang.

Amsikan, G 2012c, 'Pemkab tolak cabut izin perusahaan tambang' ('District government refuses to revoke mining company's permit'), *Victory News*, 5 September 2012, Kupang.

Amsikan, G 2012d, 'Warga dua desa tolak tambang' ('Citizens of two villages reject mining'), *Victory News*, 6 July 2012, Kupang.

Amsikan, G 2012e, 'Warga Oekopa tolak mangan' ('Citizens of Oekopa reject manganese'), *Victory News*, 18 July 2012, Kupang.

Andara, S, Odo, B, Dewan, M, Saleh, G & Ander, F 2010. Class action against PT Sumber Jaya Asia; PT Tribina Sempurna; PT Istindo Mitra Perdana; the Government of the Republic of Indonesia (Minister for Energy and Mineral Resources, President, Governor of Nusa Tenggara Timur and District Head of Manggarai District), 1 March 2010. Ruteng.

Apemindo. 2013. Larangan ekspor bijih mineral: Pemerintah Indonesia serahkan kekayaan sumber daya alam Indonesia pada perusahaan asing dengan harga murah. 12 December 2013. Available: http://www.apemindo.com/news [Accessed 2014].

ARANG TTS (People's Alliance for Opposing Mining in South Central Timor) 2011,'Pernyataan sikap'. ('Position statement'), 20 May, 2011, Kupang.

Aspinall, C 2001, *Small-scale mining in Indonesia* International Institute for Environment and Development, Mining Minerals and Sustainable Development Report,30.

Aspinall, E 2005, 'Elections and the normalization of politics in Indonesia', *South East Asia Research,* Vol. 13. (2)**,** pp. 117-156.

Baker, J. 2011. Bribes and bullets: police corruption linked to violence at the world's biggest mine. *The Conversation* [Online]. 18 November, 2011. [Accessed 9 November, 2018].

Baker, J. 2012. *The Rise of Polri: The Political Economy of Security in Indonesia.* Doctoral thesis, London School of Economics and Political Science.

Bakker, L 2009, 'Community, *adat* authority and forest management in the hinterland of East Kalimantan', in C Warren & J McCarthy (eds), *Community, environment and local governance in Indonesia: Locating the commonweal,* Routledge, New York, pp.

Ballard, C 1997, 'It's the land stupid! The moral economy of resource ownership in Papua New Guinea', in P Larmour (ed.) *The governance of common property in the Pacific Region,* ANU Press, Canberra, pp. 47-66.

Ballard, C 2002, *Human rights and the mining sector in Indonesia: a baseline study*. International Institute for Environment and Development.

Ballard, C & Banks, G 2003, 'Resource Wars: The Anthropology of Mining', *Annual Review of Anthropology,* Vol. 32. pp. 287-313.

Banchirigah, SM 2006, 'How have reforms fuelled the expansion of artisanal mining? Evidence from sub-Saharan Africa', *Resources Policy,* Vol. 31. pp. 165-171.

Banchirigah, SM 2008, 'Challenges with eradicating illegal mining in Ghana: A perspective from the grassroots', *Resources Policy,* Vol. 33. pp. 29-38.

Bardhan, P 2002, 'Decentralization of governance and development', *Journal of Economic Perspectives,* Vol. 16. (4)**,** pp. 185-205.

Barlow, C & Gondowarsito, R 2009, 'Socio-economic conditions and poverty alleviation in East Nusa Tenggara', in B Resosudarmo (ed.) *Working with nature against poverty:*

development, resources and the environment in eastern Indonesia, Institute of Southeast Asian Studies (ISEAS), ANU, Canberra, pp.

Barry, M, (ed.) *Regularizing informal mining: A summary of the proceedings of the International Roundtable on Artisanal Mining,* International Roundtable on Artisanal Mining, 1995 Washington D.C. World Bank, Washington D.C.

Bartley, T, Andersson, K, Jagger, P & Laerhoven, FV 2008, 'The contribution of institutional theories to explaining decentralization of natural resource governance', *Society and Natural Resources,* Vol. 21. (2)**,** pp. 160-174.

Bataona, P 2009, 'PT Sumber Jaya Asia tetap operasi' ('PT SJA still operating'), *Flores Pos*, 2 April 2009, Ende.

Bebbington, A 2013, *Natural resource extraction and the possibilities of inclusive development: politics across space and time* ESID Working Paper No. 21,No. 21. Effective States and Inclusive Developmenmt Research Centre (ESID), Manchester.

Bere, SM 2012, 'Warga desa Oekopa resah ternacam limbah mangan' ('Citizens of Oekopa restless about threat from manganese'), *Kompas*, 10 July 2012, Jakarta.

Bhasin, B & Venkataramany, S 2007, 'Mining law and policy: replacing the contract of work (COW) system in Indonesia', 10th International Conference of the Society for Global Business and Economic Development (SGBED), 8-11 August, 2007, Kyoto.

Bottema, T, Sukesi, K & Seran, S 2009, *NTT at a crossroads*. Report of the UN Resident Coordinator under the UN Development Assistance Framework, Kupang, NTT.

BPS 2011, *Trends of the Selected Socio-economic Indicators of Indonesia – 2011*. Badan Pusat Statistik (Statistics Indonesia), Jakarta.

BPS 2016, *Trends of the Selected Socio-economic Indicators of Indonesia – 2016*. Badan Pusat Statistik (Statistics Indonesia), Jakarta.

BPS 2020, *Statistical Yearbook of Indonesia 2020*. Badan Pusat Statistik (Statistics Indonesia), Jakarta.

BPS Kabupaten Manggarai 2012, *Manggarai dalam angka 2012, (Manggarai district in figures),* Badan Pusat Statistik Kabupaten Manggarai (District statistics bureau of Manggarai district), Ruteng.

BPS Kabupaten Manggarai Timur 2013, *Kecamatan Lamba Leda dalam angka, (Sub-district of Lamba Leda in figures),* Badan Pusat Statistik Kapbupaten Manggarai Timur (District statistics bureau of East Manggarai district), Borong.

Brown, M 2011. *Australian miner halts work after protest deaths*)[Online]. ABC News - *AM*. Available: https://www.abc.net.au/news/2011-12-28/protesters-killed-at-mine-site/3749236 [Accessed 1 July 2012].

Brown, M 2012. *Australian miner under pressure over deaths*)[Online]. ABC News. Available: https://www.abc.net.au/news/2012-01-04/indon-mining-protesters/3757390 [Accessed 1 July 2012].

Bryceson, D & Jonsson, J 2010, 'Gold digging careers in rural East Africa: Small-scale miners' livelihood choices', *World Development,* Vol. 38. (3)**,** pp.

Burton, J 1997, 'The principles of compensation in the mining industry', in S Toft (ed.) *Compensation for resource development in Papua New Guinea,* Law Reform Commission of Papua New Guinea, and the Research School of Pacific and Asian Studies and the National Centre for Development Studies at the Australian National University, Canberra, pp. 116-36.

Bush, R 2009, 'Soon there will be no-one left to take the corpses to the morgue: Accumulation and abjection in Ghana's mining communities', *Resources Policy,* Vol. 34. pp. 57-63.

Campbell-Nelson, K. 2003. *Learning resistance in West Timor.* PhD dissertation, University of Massachusetts.

Casson, A & Obidzinski, K 2002, 'From new order to regional autonomy: shifting dynamics of "illegal" logging in Kalimantan, Indonesia', *World Development,* Vol. 30. (12)**,** pp. 2133-2151.

Centre for Development Studies 2004, *Livelihoods and Policy in the Artisanal and Small-scale Mining Sector - an Overview*. University of Wales, DfI Development, Swansea.

Centre for International Environment Law, Association for Community and Ecologically-Based Law Reform, Lembaga Studi dan Advokasi Masyarakat (ELSAM), Indonesian Centre for Environmental Law (ICEL) & International Centre for Research in Agroforestry (ICRAF) 2002, *Whose resources? Whose common good? Towards a new paradigm of environmental justice and the national interest in Indonesia*. Jakarta.

Citizens of Robek village 2009. *RE: Villagers' letter to Commission III of the national parliament.*

Clark, S & Palmer, B 2008, *Peaceful pilkada, dubious democracy: Aceh's post-conflict elections and their implications* Indonesian Social Development Paper No. 11. The World Bank, Jakarta.

Clement, F 2010, 'Analysing decentralised natural resource governance: proposition for a "politicised" institutional analysis and development framework', *Policy Sciences*, Vol. 43. (2)**,** pp. 129-156.

Colbran, N 2010, 'Mining is booming in East Nusa Tenggara, but where is the wealth going?', *Inside Indonesia*, July-September 2010.

Community leaders 2010. 'Surat pernyataan tua-tua kampung' ('Statement of hamlet leaders'), 18 June 2010. Signed agreement between leaders from Serise, Satarteu, Luwuk and Weleng hamlets from meeting in Golokoe, Serise on 18 June 2010.

Conde, M & Le Billon, P 2017, 'Why do some communities resist mining projects while others do not?', *The Extractive Industries and Society*, Vol. 4. pp. 681-697.

Crouch, HA 2010, *Political reform in Indonesia after Soeharto*, Institute of Southeast Asian Studies, Singapore.

Dauvergne, P 1997, *Shadows in the forest: Japan and the politics of timber in Southeast Asia*, MIT press, Cambridge & London.

Dendi, A, Heile, H-J & Makambombu, S 2009, 'Improving the livelihoods of the poor: challenges and lessons from East Nusa Tenggara', in BP Resosudarmo & F Jotzo (eds), *Working with nature against poverty: development, resources and the environment in eastern Indonesia*, Institute of Southeast Asian Studies, Singapore, pp. 305-320.

Devi, B & Prayogo, D 2013, *Mining and development in Indonesia: an overview of the regulatory framework and policies*. Interrnational Mining for Development Centre, March 2013, Jakarta.

Directorate General of Minerals Coal and Thermal Energy. 2010. *Sectional information: minerals, coal, thermal energy and groundwater*, map. Jakarta: Ministry of Energy and Mineral Resources, Directorate General of Minerals, Coal and Thermal Energy.

Djalal, D 2001, 'Jakarta to pass the buck', *Asian Business*, February 2001, 66-67.

Djoeroemana, S, Myers, B, Russell-Smith, J, Blyth, M, Salean, E & (eds.) 2007, *Integrated rural development in East Nusa Tenggara, Indonesia*, proceedings of a workshop to

identify sustainable rural livelihoods, 2006 Kupang, NTT. Australian Centre for International Agricultural Research (ACIAR), Kupang.

Djogo, T & Syaf, R 2004, *Decentralization without accountability: power and authority over local forest governance in Indonesia*. Center for International Forestry Research Organization (CIFOR), Bogor.

Dove, MR 1993, 'A revisionist view of tropical deforestation and development', *Environmental Conservation*, Vol. 20. (1)**,** pp. 17-24.

Dreher, A & Herzfeld, T 2005, 'The economic costs of corruption: A survey and new evidence'. Working paper. Thurgau Institute of Economics and University of Konstanz. Available at https://ssrn.com/abstract=734184.

Duncan, CR 2007, 'Mixed outcomes: The impact of regional autonomy and decentralization on indigenous ethnic minorities in Indonesia', *Development and Change*, Vol. 38. (4)**,** pp. 711-733.

East Manggarai District Government Mining and Energy Office 2010, '*Daftar usaha pertambangan pada Kabupaten Manggarai Timur di Propinsi NTT Year 2009*', (List of mining companies operating in East Manggarai District in NTT as at December 2009), Borong, East Manggarai District.

Embu, EJ & Mirsel, R (eds.) 2004. *Gugat! darah petani kopi Manggarai (Sue! The blood of Manggarai coffee farmers),* Maumere: Ledalero Publishers.

Erb, M 2005, 'Shaping a 'New Manggarai': Struggles over culture and tradition in an Eastern Indonesian regency'', *Asia Pacific Viewpoint*, Vol. 46. (3)**,** pp. 323-34.

Erb, M 2011, 'Talk of corruption in eastern Indonesian communities: reactions to local government in the post-Suharto reform era', *Asian Journal of Social Science*, Vol. 39. (2)**,** pp. 171-195.

Erman, E 2005, 'Illegal coalmining in West Sumatra: access and actors in the post-Soeharto era', in B Resosudarmo (ed.) *The politics and economics of Indonesia's natural resources*, ISEAS, Singapore, pp. 206-215.

Erman, E 2007, 'Deregulation of the tin trade and creation of a local shadow state: A Bangka case study', in HS Nordholt & G Van Klinken (eds), *Renegotiating boundaries: local politics in post-Suharto Indonesia*, KITLV Press, Leiden, pp. 177-202.

Evaquarta, R 2010, 'Corrupting politics - corruption continues to shape the political landscape in Kutai Kartanegara, Indonesia's richest district', *Inside Indonesia*, No. 99, January-March 2010.

Faot, I 2010, 'Delapan perusahaan mangan di TTS kantongi izin operasional' ('Eight manganese companies in TTS holding operational permits'), *NTT Online News*, 17 July 2010, Kupang.

Feka, V 2012, 'Dokumen Amdal tambang hanya copy paste' ('Impact assessment documents for manganese mining just 'copy-paste''), *Victory News*, 23 May 2012, Kupang.

Filer, C 1997, 'Compensation, rent and power', in S Toft (ed.) *Compensation for resource development in Papua New Guinea*, Law Reform Commission of Papua New Guinea, and the Research School of Pacific and Asian Studies, and the National Centre for Development Studies at the Australian National University, Canberra, pp. 156-190.

Fisher, E 2007, 'Occupying the margins: labour integration and social exclusion in artisanal mining in Tanzania', *Development and Change*, Vol. 38. (4)**,** pp. 735-760.

Fitzpatrick, D 1997, 'Disputes and pluralism in modern Indonesian land law', *Yale Journal of International Law*, Vol. 22. pp. 172-212.

Fitzpatrick, D 2007, 'Land, custom, and the state in post-Suharto Indonesia: A foreign lawyer's perspective', in JS Davidson & D Henley (eds), *Revival of tradition in Indonesian politics*, Routlege, Abingdon, Oxon, pp. 130-148.

Flores Pos 2011a, 'Ada apa hutan Nggalak Rego?' ('What's up with Nggalak Rego Forest?'), *Flores Pos*, 2 March 2011, Ende.

Flores Pos 2011b, 'Lanjutkan usut tuntas SJA!' ('Continue with thorough investigation of SJA!'), *Flores Pos*, 9 March 2011, Ende.

Flores Pos 2011c, 'Sikap pemkab Manggarai?' ('What is the view of Manggarai district government?'), *Flores Pos*, 1 March 2011, Ende.

Fox, JJ, Adhuri, DS & Resosudarmo, IAP 2005, 'Unfinished edifice or Pandora's box? Decentralisation and resource management in Indonesia', in B Resosudarmo (ed.) *The politics and economics of Indonesia's natural resources,* Institute of Southeast Asian Studies, Singapore, pp. 92-108.

Fraser Institute 2006, *Annual Survey of Mining Companies 2005/2006*. The Fraser Institute, Vancouver.

Fraser Institute 2011, *Annual Survey of Mining Companies 2010/11*. The Fraser Institute, Vancouver.

Gandataruna, K & Haymon, K 2011, 'A dream denied? Mining legislation and the constitution in Indonesia', *Bulletin of Indonesian Economic Studies,* Vol. 47. (2)**,** pp. 221-231.

Geenen, S 2012, 'A dangerous bet: The challenges of formalizing artisanal mining in the Democratic Republic of Congo', *Resources Policy,* Vol. 37. pp. 322-330.

Gellert, PK 2010, 'Extractive regimes: toward a better understanding of Indonesian development', *Rural Sociology,* Vol. 75. (1)**,** pp. 28-57.

Grindle, MS 2007, *Going local: decentralization, democratization, and the promise of good governance,* Princeton University Press, Princeton.

GTZ 2008, *Costs of corruption: everyone pays -- and the poor pay more than others*. GTZ, 2008, Eschborn.

Hadiz, L 2006, *Development challenges in East Nusa Tenggara*. SMERU Research Institute, Jakarta.

Hadiz, V 2010, *Localising power in post-authoritarian Indonesia: A Southeast Asia perspective,* Stanford University Press, Stanford, CA.

Hadiz, VR & Robison, V 2013, 'The political economy of oligarchy and the reorganization of power in Indonesia', *Indonesia,* Vol. (96)**,** pp. 35-57.

Hagerdal, H 2012, *Lords of the Land, Lords of the Sea: Conflict and adaptation in early Colonial Timor: 1600-1800,* KITLV Press, Leiden.

Hasiman, F 2013, *Monster tambang: Gerus ruang hidup warga Nusa Tenggara Timur (Mining monster: Eroding the living space of the people of Nusa Tenggara Timur),* JPIC-OFM, Jakarta.

Haymon, K 2008, 'Nuisance or necessity? Regional autonomy and the mining industry in Indonesia', paper presented at the 17th Biennial Conference of the Asian Studies Association of Australia, 1-3 July, 2008, Melbourne.

Heller, P & Ismalina, P 2014, *Considerations for Indonesia's new government: Transparency and accountability in the oil and mining industries* Natural Resource Governance Institute Briefing. Natural Resource Governance Institute, UGM, Yogyakarta.

Henley, D & Davidson, JS 2007, 'Radical conservatism - the protean politics of adat', in D Henley & JS Davidson (eds), *The revival of tradition in Indonesian politics: the deployment of adat from colonialism to indigenism*, Routledge, London, pp.

Hentschell, T, Hruschka, F & Priester, M 2002, *Global Report on Artisanal and Small-Scale Mining* - Commissioned by the Mining, Minerals and Sustainable Development (MMSD) project. International Institute for Environment and Development and World Business Council for Sustainable Development.

Higher Court of Kupang 2011. Decision No. 99/PDT/2010/PTK Thobias Selan, Frans Betty and Nixon Nesimnasi v's Eliaser Bulla, Case decided: 11 April 2011. Jakarta: Supreme Court of Indonesia. https://putusan.mahkamahagung.go.id/pengadilan/pt-kupang/periode/putus/2011/4/.

Hillman, B 2017, 'Increasing women's parliamentary representation in Asia and the Pacific: The Indonesian Experience', *Asia and the Pacific Policy Studies*, Vol. 4. (1)**,** pp. 38-49.

Hillman, B 2018, 'The limits of gender quotas: Women's parliamentary representation in Indonesia', *Journal of Contemporary Asia*, Vol. 48. (2)**,** pp. 322-328.

Hilson, G (ed.) 2006. *Small-scale Mining, Rural Subsistence and Poverty in West Africa* Rugby, UK: Intermediate Technology Publications.

Hilson, G 2009, 'Small-scale mining, poverty and economic development in sub-Saharan Africa: An overview', *Resources Policy*, Vol. 34. pp. 1-5.

IIED 2002, *Breaking New Ground - Report of the Minerals, Mining and Sustainable Development (MMSD) Project*. International Institute for Environment and Development (IIED) and World Business Council for Sustainable Development, Earthscan Publications, May 2002, London and Sterling, VA.

Indonesian Mining Association 2011. 'Re-evaluasi hubungan pusat dan daerah di sektor pertambangan' (('Re-evaluation of the relationship between the centre and the regions in the mining sector')), Letter to government. Jakarta: IMA.

Ito, T 2011, 'Historicizing the power of civil society: a perspective from decentralization in Indonesia', *The Journal of Peasant Studies*, Vol. 38. (2)**,** pp. 413-433.

Jebadu, A, Raring, MV, Regus, M & Tukan, SS (eds.) 2009. *Pertambangan di Flores-Lembata: Berkah atau kutuk? (Mining in Flores-Lembata: blessing or curse?),* Maumere: Ledalero Publishers.

Jengamal, Y 2012, 'Warga tolak eksplorasi mangan' ('Citizens reject manganese exploration'), *Victory News*, 28 July 2012, Kupang.

Jennings, N 1999, *Social and labour issues in small-scale mines: Report for discussion at the ILO's Tripartite Meeting on Social and Labour Issues in Small-scale Mines.* International Labour Organization (ILO), Geneva.

JPIC-OFM Indonesia 2008, *Mencegah tanah Manggarai hancur: Investigasi JPIC-OFM Indonesia tentang pertambangan di Manggarai dan dampak kini dan masa depan* (*'Saving the land of Manggarai from destruction: an investigation of mining in Manggarai and impacts now and in the future'*). Secretariat of Fransiscans Office for Justice, Peace and Integrity of Creation (JPIC-OFM), 2008, Jakarta.

JPIC-OFM Indonesia & JPIC SVD Ruteng 2009. Letter to: Minister for Energy and Mineral Resources; Minister for Forestry; Minister for the Environment; Minister for Tourism and Culture, 6 February 2009. Ruteng.

JPIC-OFM Indonesia and ALMADI 2009. Letter to the Manggarai district legislature, re: '*Perempuan-pereumpuan pengemis keadilan*' (Women begging for justice), 21 December 2009. Ruteng.

JPIC SVD 2016. *JPIC SVD dan Misi SVD Sejagat* (*JPIC SVD and the SVD global mission*)[Online]. JPIC SVD Ruteng. Available: http://jpicsvdruteng.com/jpic-svd-dan-misi-svd-sejagat/ [Accessed 19 August 2019].

Kapelus, P 2002, 'Mining, Corporate Social Responsibility and the "Community": The Case of Rio Tinto, Richards Bay Minerals and the Mbonambi', *Journal of Business Ethics,* Vol. 39. pp. 275-296.

Kemp, D 2009, 'Mining and community development: problems and possibilities of local-level practice', *Community Development,* Vol. 45. (2)**,** pp. 198-218.

Kleden, T 2010, 'Tambang dan pemekaran wilayah' ('Mining and the proliferation of new regions'), *Pos Kupang*, 5 February, 2010.

Kompas 2009, 'Keberadaan PT Sumber Jaya Asia sah' ('Presence of PT Sumber Jaya Asia is legitimate'), *Kompas*, 10 October 2009, Jakarta.

Kompas 2012, 'Izin pengelolaan SDA banyak keluar menjelang pilkada' ('Many natural resource extraction permits issued in lead-up to local elections'), *Kompas*, 27 December 2012, Jakarta.

KPK (Corruption Eradication Commission) 2017, *Coordination and supervision: Mineral and coal mining sector* National Movement in Rescuing Natural Resources (GN-PSDA). Komisi Pemberantasan Korupsi (KPK), December 2017, Jakarta.

KPK (Corruption Eradication Commission) 2018, *Laporan Tanunan KPK 2017* (*Annual Report of the KPK 2017*). Komisi Pemberantasan Korupsi (KPK), Jakarta.

Kupang District Government 2010, '*Daftar lampiran verifikasi lapangan 27 KP yang akan dirubah menjadi IUP (Izin Usaha Pertambangan)*', (Attached list of field verifications for 27 mining authorisations (KP) which will be converted to Mining Business Permits (IUP)), Office of Mining and Energy, Kupang.

Kupang District Head 2009, *Instruksi - Penghentian sementara kegiatan eksplorasi dan eksploitasi penambangan mangan di wilayah Kabupaten Kupang*, No. 01/540 11/IV/2009, (Instruction - temporary suspension of exploration and exploitation activity for manganese mining in the territory of Kupang District.). Kupang.

Kursor 2010a, 'Ada aksi gali, angkut, jual' ('Digging, transporting and selling'), *Kursor*, 20 July, 2010, Kupang.

Kursor 2010b, 'Kadis datang, Supul bebas pemblokiran' ('Mining head visits, Supul's blockade cleared'), *Kursor*, 31 July, 2010, Kupang.

Kursor 2010c, 'Mangan Naioni "diamankan" di Fatukoa' ('Naioni manganese "secured" in Fatukoa'), *Kursor*, 31 July, 2010, Kupang.

Kursor 2010d, 'Mangan Supul 'diojek' bebas lintasi jalan raya' ('Manganese from Supul 'taxied' freely on the main road'), *Kursor*, 20 July, 2010, Kupang.

Kursor 2010e, 'Modus baru, bawa langsung mangan ke Cina' ('A new mode, take the manganese directly to China'), *Kursor*, 13 July, 2010, Kupang.

Kursor 2010f, 'PolPP amankan 2897 karung mangan ilegal ' ('Police secure 2,897 sacks of illegal manganese'), *Kursor*, 30 November, 2010, Kupang.

Kursor 2010g, 'SMR minta ketegasan pemkab' ('SMR asks for firmness from the district government'), *Kursor*, 22 July, 2010, Kupang.

Kursor 2010h, 'Warga blokir jalan ke lokasi tambang mangan Supul' ('Citizens block roads to the location of manganese mine in Supul'), *Kursor*, 22 July, 2010, Kupang.

Kwong, M & Ronnas, P 2011, *Employment diagnostic analysis: Nusa Tenggara Timur, Indonesia* Employment Working Paper No. 95. International Labour Organization (ILO), Geneva.

Labourers employed by PT Sumber Jaya Asia 2009. Surat pernyataan bersama - karyawan PT Sumber Jaya Asia (Collective statement of employees of PT Sumber Jaya Asia), 9 February 2009. Reok.

Lagaligo, A 2010, 'Polemic in the manganese warehouse', ('Polemik di gudang mangan'), *Tambang - the Indonesian Mining Magazine*, 25 October, 2010.

Lahiri-Dutt, K 2004, 'Informality in mineral resource management in Asia: Raising questions relating to community economies and sustainable development', *Natural Resources Forum*, Vol. 28. (2)**,** pp. 123-132.

Lahiri-Dutt, K 2006, '"May God give us chaos, so that we can plunder": A critique of "resource curse" and conflict theories', *Development*, Vol. 49. (3)**,** pp. 14-21.

Lahiri-Dutt, K 2018, 'Reframing the debate on informal mining', in K Lahiri-Dutt (ed.) *Between the plough and the pick: informal, artisanal and small-scale mining in the contemporary world*, ANU Press, Canberra, pp. 1-28.

Lange, S 2008, *Land tenure and mining in Tanzania* CMI Reports. Chr. Michelsen Institute, 2008, Bergen, Norway.

Larson, AM 2003, 'Decentralisation and forest management in Latin America: towards a working model', *Public Administration and Development*, Vol. 23. (3)**,** pp. 211-226.

Larson, AM & Ribot, JC 2004, 'Democratic decentralisation through a natural resource lens: an introduction', *The European Journal of Development Research*, Vol. 16. (1)**,** pp. 1-25.

Lati, Y 2010a, 'Keberadaan OBAMA dan broker mengganggu PT SMR (paid editorial)' ('The presence of smugglers and brokers disturbs PT SMR'), *Timor Express*, 6 November, 2010, Kupang.

Lati, Y 2010b, 'Menanti ketegasan pemkab TTS atasi broker dan OBAMA (paid editorial)' ('Waiting for firmness from the TTS district government towards brokers and smugglers (paid editorial)'), *Timor Express*, 3 November, 2010, Kupang.

Lau, J 2012a, 'Pemkab inkonsisten kelola pertambangan' ('District government inconsistent managing mining'), *Victory News*, 18 June 2012, Kupang.

Lau, J 2012b, 'Pemkab TTS diminta segera kaji upah pengumpul mangan' ('South Central Timor government asked to immediately investigate the wages for manganese labourers '), *Victory News*, 10 November, 2012, Kupang.

Lau, J 2012c, 'Penambang tak miliki rencana reklamasi' ('Miner doesn't have a reclamation plan'), *Victory News*, 13 August 2012, Kupang.

Lau, J 2012d, 'Stop monopoli SMR' ('Stop SMR's monopoly'), *Victory News*, 12 November, 2012, Kupang.

Lau, J 2012e, 'Upah buruh tambang langgar HAM' ('Mining labourer wage violates human rights'), *Victory News*, 13 October, 2012, Kupang.

Lawudin, C 2009a, 'Cabut izin operasi PT SJA sudah final' ('Revocation of PT SJA's operating permit final'), *Flores Pos*, Ende.

Lawudin, C 2009b, 'Dinilai diskriminasi perlakuan hukum antara warga dan SJA' ('Seen as discimination in application of the law between citizens and SJA'), *Flores Pos*, 11 December 2009, Ende.

Lawudin, C 2009c, 'Illegal logging, para istri tersangka ke dewan' ('Illegal logging - wives of accused attend legislature'), *Flores Pos*, 1 December 2009, Ende.

Lawudin, C 2011a, 'MA minta bupati cabut keputusannya soal PT SJA: Mahkamah Agung tolak banding bupati Manggarai' ('Supreme Court asks the district head to withdraw his decree regarding PT SJA: Court rejects Manggarai district head's appeal'), *Flores Pos*, 28 February 2011, Ende.

Lawudin, C 2011b, 'Polemik hutan Soga, skenario apalagi' ('Soga forest polemic: what kind of scheming now?'), *Flores Pos*, 7 March 2011, Ende.

Lawudin, C 2011c, 'Polisi dalami bukti-bukti kepemilikan Rengge Komba' ('Police build evidence on ownership of Rengge Komba'), *Flores Pos*, 9 June 2011, Ende.

Lawudin, C 2011d, 'Status hutan Nggalak-Rego hutan lindung' ('Status of Nggalak-rego Forest is protected forest'), *Flores Pos*, 2 March 2011, Ende.

Leith, D 2002, 'Freeport and the Suharto regime, 1965-1998', *The Contemporary Pacific*, Vol. 14. (1)**,** pp. 69-100.

Leith, D 2003, *The politics of power: Freeport in Suharto's Indonesia,* University of Hawaii Press, Honolulu.

Lemos, MC & Agrawal, A 2006, 'Environmental governance', *Annual Review of Environment and Resources*, Vol. 31. pp.

Lestari, N. 2011. *Mineral governance, conflicts and rights: Case studies on the informal mining of gold, tin and coal in Indonesia.* PhD dissertation, ANU.

Liu, H 2011, 'Korban tewas di Sape menjadi 3 orang' ('Death toll in Sape reaches three'), *Kompas*, 24 December 2011, Jakarta.

Lucarelli, B 2010, 'The history and future of Indonesia's coal industry: impact of politics and regulatory framework on industry structure and performance'. Working Paper No. 93, Program on Energy and Sustainable Development. Stanford University. Available at

Lucas, A & Warren, C 2003, 'The state, the people, and their mediators: The struggle over agrarian law reform in post-New Order Indonesia', *Indonesia,* Vol. (76)**,** pp. 87-126.

Macintyre, M 2007, 'Informed consent and mining projects: A view from Papua New Guinea', *Pacific Affairs,* Vol. 80. (1)**,** pp. 49-65.

Maconachie, R & Hilson, G 2011, 'Safeguarding livelihoods or exacerbating poverty? Artisanal mining and formalization in West Africa', *Natural Resources Forum,* Vol. 35. pp. 293-303.

Mahi, BR 2010, 'Improving of investment climate in the era of decentralization and regional autonomy', Seminar presentation, 22 July 2010, University of Indonesia.

Manggarai District Forestry Office 2008. Technical consideration of request for borrow and use permit for a forest area for manganese mining for PT Sumber Jaya Asia., 9 July 2008. Ruteng: Manggarai District Government.

Manggarai District Government Office of Mining and Energy 2010, '*Daftar usaha pertambangan pada Kabupaten Manggarai Provinsi Nusa Tenggara Timur, posisi 25 Augustus 2010*', (List of mining companies in Manggarai District, NTT, as at 25 August 2010), Ruteng.

Manggarai District Head 2004, *District Head Decree No. HK/172/2004 regarding a permit to transfer mining production rights KW 96 PP 0208 and KW 97 PP 0274 from PT Istindo Mitra Perdana to PT Tribina Sempurna*, Manggarai District Government, Ruteng.

Manggarai District Head 2007. District Head Decree No. HK/287/2007 regarding the transfer and extension of mining rights KW 96 PP 0208 and KW 97 PP 0274 at Reok Sub-district from PT Tribina Sempurna to PT Sumber Jaya Asia 5 October 2007. Ruteng: Manggarai District Government.

Manggarai District Head 2008. Penghentian sementara kegiatan eksploitasi (Temporary suspension of production activities), 25 August 2008. Letter to PT Sumber Jaya Asia. Ruteng.

Manggarai District Head 2009a, *Decree No. HK/72/2009 regarding Decree No. HK 287/2007 regarding transfer and extension of mining rights for manganese from PT Tribina Sempurna to PT Sumber Jaya Asia in Reok, Manggarai District*, Ruteng, Manggarai.

Manggarai District Head 2009b. Re.: Larangan untuk melanjutkan kegiatan eksploitasi tambang mangan di lokasi Soga (Ban on continuing manganese exploitation activities in Soga), 17 February 2009. Letter to PT Sumber Jaya Asia. Ruteng.

Manyella, G 2010a, 'Uji petik ranperda pertambangan (2)' ('Study visit for draft mining regulation (2)'), *Pos Kupang*, 13 October, 2010, Kupang.

Manyella, G 2010b, 'Uji petik ranperda pertambangan (3)' ('Study visit for draft mining regulation (3)'), *Pos Kupang*, 14 October, 2010, Kupang.

Marbun, D, Bachtiar, P & Mawardi, S 2009, *Iklim usaha di Kabupaten Timor Tengah Utara (TTU): Kajian Kondisi Perekonomian dan Regulasi Usaha (Investment climate in TTU District: Analysis of Economic Conditions and Business Regulation)*. SMERU, Jakarta.

Marohasy, J 2007, 'Politics and the environment in Indonesia', *Review - Institute of Public Affairs,* Vol. 59. (2)**,** pp. 11-15.

McBeth, J 1999, 'Indonesian Mining: Bleak Prospects', *Far Eastern Economic Review*, 16 December, 1999, 46-48.

McBeth, J 2000, 'Undercut', *Far Eastern Economic Review*, 13 July, 2000, 27-29.

McCarthy, JF 2002, 'Turning in circles: District governance, illegal logging and environmental decline in Sumatra, Indonesia', *Society & Natural Resources,* Vol. 15. (10)**,** pp. 867-886.

McCarthy, JF 2004, 'Changing to gray: decentralization and the emergence of volatile socio-legal configurations in Central Kalimantan, Indonesia', *World Development,* Vol. 32. (7)**,** pp. 1199-1223.

McCarthy, JF 2007, 'Sold down the river: renegotiating public power over nature in Central Kalimantan', in HS Nordholt & G van Klinken (eds), *Renegotiating boundaries: local politics in post-Suharto Indonesia,* KITLV Press, Leiden, pp. 151-170.

McCarthy, JF 2011, 'The limits of legality: state, governance and resource control in Indonesia', in G van Klinken & E Aspinall (eds), *State and illegality in Indonesia,* KITLV Press, Leiden, pp. 89-106.

McCarthy, JF, Barr, C, Resosudarmo, IA & Dermawan, A 2006, 'Origins and scope of Indonesia's decentralization laws', in C Barr, IA Resosudarmo, A Dermawan, J McCarthy, M Moeliono & B Setiono (eds), *Decentralization of forest administration in Indonesia,* Center for International Forestry Research, Bogor, pp. 31-57.

McCarthy, JF & Warren, C 2009, 'Communities, environments and local governance in reform era Indonesia', in C Warren & JF McCarthy (eds), *Environment and governance in Indonesia: Locating the commonweal,* Routledge, Oxon, pp. 1-27.

McWilliam, A 1999, 'From lord of the earth to village head; Adapating to the nation-state in West Timor', *Bijdragen tot de Taal,* Vol. 155. (1)**,** pp. 121-144.

McWilliam, A 2001. Haumeni, not many: renewed plunder and mismanagement in the Timorese sandalwood industry, *Resource management in Asia-Pacific Working Paper No. 29.* Canberra: Research School for Pacific and Asian Studies, The Australian National University.

McWilliam, A 2002, *Paths of origin: gates of life, a study of place and precedence in Southwest Timor,* KITLV Press, Leiden, The Netherlands.

McWilliam, A 2007, 'Looking for Ade: A contribution to Timorese historiography', *Bijdragen tot de Taal, Land en Volnekunde (BKI),* Vol. 163. (2/3)**,** pp. 221-238.

McWilliam, A 2011, 'Mining and regional autonomy in Eastern Indonesia', Association of Asian Studies (AAS) Annual Conference, 5-8 July 2011, Perth.

Media Indonesia 2011, 'Pemprov cabut enam izin tambang di hutan lindung di TTU' ('Provincial government cancels six mining permits in protected forest in North Central Timor'), *Media Indonesia*, 10 September 2011, Jakarta.

Meitzner Yoder, L. 2005. *Custom, codification, collaboration: Integrating the legacies of land and forest authorities in Oecusse Enclave, East Timor.* PhD thesis, Yale University.

Menyen, W & Doornbos, M 2004, 'Decentralising natural resource management: A recipe for sustainability and equity?', *The European Journal of Development Research*, Vol. 16. (1)**,** pp. 235-254.

Metzner, J 1977, *Man and Environment in Eastern Timor: A Geoecological Analysis of the Baucau-Viqueque Areas as a Possible Basis for Regional Planning*, ANU Press, Canberra.

Mietzner, M 2007, 'Party financining in post-Soeharto Indonesia: Between state subsidies and political corruption', *Contemporary Southeast Asia,* Vol. 29. (2)**,** pp. 238-263.

Mietzner, M 2011, 'Funding *pilkada*: illegal campaign financing in Indonesia's local elections', in E Aspinall & G van Klinken (eds), *The state and illegality in Indonesia*, KITLV Press, Leiden, pp. 123-139.

Minister of Energy and Mineral Resources 2014, *Ministerial Regulation No. 2/2014 Regarding the Delegation of Certain Duties to Governors*, Republic of Indonesia, Jakarta.

Minister of Forestry 2008, *Ministerial Regulation 43/Menhut-II/2008 regarding guidelines for borrow and use permits for forest areas*, Ministry of Forestry, Jakarta.

Minister of Forestry 2009a. Penambangan mangan di dalam kawasan hutan lindung (Manganese mining in Protected Forest Areas.), 27 January 2009. Letter to Governor of Nusa Tenggara Timur. Jakarta.

Minister of Forestry 2009b. Re.: Permohonan izin pinjam pakai kawasan hutan (Request for borrow and use permit for forest reserve), 27 January 2009. Letter to PT Sumber Jaya Asia. Jakarta.

Ministry of Energy and Mineral Resources 2010, ''Penanggulangan dan pencegahan peti' ('Countering and preventing unauthorised mining')', Seminar on Socialisation of countermeasures and prevention of unauthorised mining (PETI) - Nusa Tenggara Timur Province, 4-5 June, Kupang.

Ministry of Energy and Mineral Resources 2011, '*Koordinasi pendataan izin usaha pertambangan nasional*', (National coordination of mining enterprise permits), Jakarta.

Ministry of Energy and Mineral Resources 2014, '*Sosialisasi dan koordinasi mineral dan batubara (Socialisation and coordination of minerals and coal)*', Ministry of Energy and Mineral Resources, Jakarta.

Ministry of Finance 2010, '*Data anggaran pendapatan dan belanja daerah tahun 2010*', (Regional income and expenditure budget for fiscal year 2011), Jakarta.

Ministry of Finance 2011a, '*Data anggaran pendapatan dan belanja daerah tahun 2011*', (Regional income and expenditure budget for fiscal year 2011), Jakarta.

Ministry of Finance 2011b, *Ministerial Regulation No. 40/2011 regarding natural resources shared revenue allocation estimates from general mining for fiscal year 2011*, Ministry of Finance, Jakarta.

Ministry of Finance 2013, *Ministerial Regulation No. 7/2013 regarding natural resources shared revenue allocation estimates from general mining for fiscal year 2013*, Ministry of Finance, Jakarta.

Ministry of Forestry 2009. Re.: Pengecekan lapangan (Field check), 2 February 2009. Letter from the Directorate General Forest Protection and Nature Conservation to Office for Forest Protection and Nature Conservation, NTT. Jakarta.

Moeliono, M. 2000. *Land tenure and the making of place in Manggarai, West Flores, Indonesia.* Unpublished PhD dissertation, University of Hawaii.

Murray Li, T 2001, 'Boundary work: Community, market and state reconsidered', in A Agrawal & CC Gibson (eds), *Communities and the Environment: Ethnicities, gender and the state in community-based conservation,* Rutgers University Press, New Brunswick, New Jersey and London, pp. Pp. 157-179.

Murray Li, T 2005, 'Marginality, power and production: analysing upland transformations', in T Murray Li (ed.) *Transforming the Indonesian uplands: marginality, power and production,* Harwood Academic Publishers, Halifax, pp. 1-46.

Murray Li, T 2007, *The Will to Improve: Governmentality, Development and the Practice of Politics,* Duke University, Durham.

Nachuk, S, Anggraini, NC, Donohoe, J, Ginting, JI, Hackett, J, Endarso, GKA, Lemargie, K & Paramita, A 2006, *The impact of roads upon local small and medium enterprises in Manggarai district, NTT province* Rural Investment Climate Assessment. World Bank, Jakarta.

Naif, H 2010, *Mangan di Biinmaffo (Kabupaten TTU): Berkah atau malapetaka?* (*Manganese in Biinmaffo (North Central Timor District): Blessing or catastrophe?*). Walhi, 2010, Maumere.

Naif, H 2011, *Pertambangan mangan: Menjawabi atau membawa multi-krisis?* (*Manganese mining: the answer to or the cause of multiple crises?*). Walhi, 9 October, 2011, Kupang.

Nathan Associates Inc. 2013, *Economic effects of Indonesia's mineral processing requirements for export*. USAID, Jakarta.

Neumann, RP 1998, *Imposing Wilderness: Struggles over Livelihood and Nature Preservation in Africa,,* University of California Press, Berkeley.

North Central Timor District Government 2009, '*Investor mangan di Kabupaten Timor Tengah Utara - keadaan sampai dengan akhir Mei, 2009*', (Manganese investors in North Central Timor District - situation up until the end of May, 2009), District Government Office of Mining and Energy, Kefamenanu, North Central Timor.

North Central Timor District Legislature 2010, *Laporan hasil kerja Pansus Pertambangan Mangan DPRD Kapbupaten Timor Tengah Utara* (*Report of the findings of the Special Committee on Manganese Mining by the North Central Timor District Legislature*). 4 September, 2010, Kefamenanu.

NTT Online 2010, 'Harga mangan di NTT dikendalikan mafia pertambangan' ('The price of manganese in NTT driven by mining mafia'), *NTT Online*, 27 March, 2010, Kupang.

NTT Online. 2011. Empat pejabat di NTT tersangka kasus korupsi mangan. 20 May 2011.

NTT Online News 2010, 'Harga mangan di NTT dikendalikan mafia pertambangan' ('The price of manganese in NTT driven by mining mafia'), *NTT Online*, 27 March, 2010, Kupang.

NTT Provincial Legislature 2010, *Peraturan Daerah Provinsi Nusa Tenggara Timur 8/2010 tentang pengelolaan pertambangan mineral dan batubara*, (Provincial Regulation of Nusa Tenggara Timur 8/2010 regarding the management of mineral and coal mining). Kupang.

OCallaghan, T 2010, 'Patience is a virtue: Problems of regulatory governance in the Indonesian mining sector', *Resources Policy*, Vol. 35. (3)**,** pp. 218-225.

Ormeling, FJ 1957, *The Timor Problem: a geographical interpretation of an underdeveloped island,* Groningen, Jakarta.

Otto, J, Andrews, C, Cawood, F, Doggett, M, Guj, P, Stermole, F & Tilton, J 2006, *Mining royalties: A global study of their impact on investors, government and civil society* Directions in Development - Energy and Mining. The World Bank, 2006, Washington.

Palmer, C & Engel, S 2007, 'For better or for worse? Local impacts of the decentralization of Indonesia's forest sector', *World Development*, Vol. 35. (12)**,** pp. 2131-2149.

Pandong, A 2011, 'PT Arumbai Tinggalkan Golorawang: di Serise, Arumbai berperkara dengan warga' ('PT Arumbai leaving Golorawang: In Serise, Arumbai has a legal case with citizens'), *Flores Pos*, 29 October 2011, Borong.

Patlis, JM 2005, 'The role of law and legal institutions in determining the sustainability of integrated coastal management projects in Indonesia', *Ocean & Coastal Management*, Vol. 48. (3-6)**,** pp. 450-467.

Patunru, A, Adrison, V, Azar, MS, Usman, Huda, A, Samosir, AH & Aryandani, R 2010, *Transportation of goods in East Nusa Tenggara: problems and costs*. The Asia Foundation & the Institute for Economic and Social Research, Universitas Indonesia.

Peluso, NL 2007, 'Violence, decentralization, and resource access in Indonesia', *Peace Review: A Journal of Social Justice*, Vol. 19. (1)**,** pp. 23-32.

Pos Kupang 2009, 'Harga mangan di TTU Rp 450/Kg' ('Price of manganese in North Central Timor Rp 450/Kg'), *Pos Kupang*, 16 August, 2009, Kupang.

Pos Kupang 2010a, '70 per sen TTS mengandung mangan' ('70 per cent of North Central Timor contains manganese'), *Pos Kupang*, 6 July, 2010, Kupang.

Pos Kupang 2010b, 'Arumbai hadang Pater Simon ke lokasi tambang' ('Arumbai prevents Father Simon entering mine'), *Pos Kupang*, 24 September 2010, Kupang.

Pos Kupang 2010c, 'Banyak penampungan mangan di Wini' ('Lots of manganese stockpiles at Wini'), *Pos Kupang*, 1 September, 2010, Kupang.

Pos Kupang 2010d, 'Bertengkar soal mangan: Kabag Hukum Polisikan Kadistamben TTU' ('Arguing over manganese: head of the legal office reports head of the mining office to police'), *Pos Kupang*, 3 June 2010, Kupang.

Pos Kupang 2010e, 'Disesalkan, Polisi-PolPP ribut' ('Regrettable, police and civil police tussle'), *Pos Kupang*, 22 September, 2010, Kupang.

Pos Kupang 2010f, 'Harga mangan perlu diatur' ('Price of manganese needs to be regulated'), *Pos Kupang*, 28 September, 2010, Kupang.

Pos Kupang 2010g, 'Kasatpol PP dirayu lepas truk mangan' ('Head of Kupang District civil police asked to release manganese truck'), *Pos Kupang*, 30 September, 2010, Kupang.

Pos Kupang 2010h, 'Mabes Polri berantas mafia mangan di NTT' ('Police headquarters smashing the manganese mafia in NTT'), *Pos Kupang*, 21 December, 2010, Kupang.

Pos Kupang 2010i, 'Mantan Kapolres Kupang perintah angkut mangan' ('Former Kupang District police chief ordered manganese be collected'), *Pos Kupang*, 14 October, 2010, Kupang.

Pos Kupang 2010j, 'Pemilik batu mangan asal Blitar ditahan' ('Owner of manganese ore from Blitar arrested'), *Pos Kupang*, Kupang.

Pos Kupang 2010k, 'Polisi bersenjata kawal mangan ilegal' ('Police with guns escorting illegal manganese'), *Pos Kupang*, 13 March, 2010, Kupang.

Pos Kupang 2010l, 'Polisi kawal satu container mangan ke Tenau' ('Police escort manganese container to Tenau'), *Pos Kupang*, 18 September, 2010, Kupang.

Pos Kupang 2010m, 'PolPP siap buktikan' ('Civil police prepared to prove (allegations)'), *Pos Kupang*, 21 September, 2010, Kupang.

Pos Kupang 2010n, 'Soal tambang mangan di Serise - Selesaikan dulu masalah tanah' ('Manganese mining issue in Serise - resolve the land problems first'), *Pos Kupang*, 27 November 2010, Kupang.

Pos Kupang 2010o, 'Titu Eki enggan bicara marmer' ('Titu Eki reluctant to talk about marble'), *Pos Kupang*, 21 October 2010, Kupang.

Pos Kupang 2010p, 'Titu Eki: Tangkap pencuri mangan' ('Titu Eki: Catch the manganese thieves'), *Pos Kupang*, 20 September, 2010, Kupang.

Pos Kupang 2010q, 'Warga Serise blokir lokasi tambang mangan' ('Citizens of Serise block access to manganese mining location'), *Pos Kupang*, 23 November 2010, Kupang.

Pos Kupang 2010r, 'Wawancara dengan Benny Litelnoni' ('Interview with Benny Litelnoni'), *Pos Kupang*, 26 July, 2010, Kupang.

Pos Kupang 2011, 'Anggota DPD temui OBAMA di TTS' ('National parliament member meets manganese couriers in South Central Timor'), *Pos Kupang*, 5 May, 2011, Kupang.

Prabowo, D 2009, 'Regional autonomy and the issue of land rights: the case of the PT CPM Mine in Central Sulawesi', in J Holtzappel & M Ramstedt (eds), *Decentralization and Regional Autonomy in Indonesia: Implementation and Challenges*, Institute of Southeast Asian Studies, Singapore, pp. 244-255.

President of the Republic of Indonesia 2004, *Presidential Decree 41/2004 regarding mining sector permits or agreements in forest areas*, Republic of Indonesia, Jakarta.

Prior, J 2004, 'Land, church and state', *Inside Indonesia*, April-June 2004.

PT Arumbai Mangabekti 2009. Tuntutan tanah hak ulayat adat Golokoe/Serise (Communal land rights claims of Goloekoe/Serise *adat* (customary) communities), 29 May 2009. Letter to district head.

PT Istindo Mitraperdana 2010. Kronologis wilayah kuasa pertambangan PT. Istindo Mitraperdana - PT Arumbai Mangabekti, Reo, Flores, NTT (Chronology of mining concession area of PT Istindo Mitraperdana - PT Arumbai Mangabekti, Reo, Flores, NTT), 6 November 2010. Unpublished document.

PT Karya Serasi Jaya 2011, *Analisis Mengenai Dampak Lingkungan Hidup (AMDAL): Rencana usaha dan/atau penambangan mangan di Kelurahan Buraen, Kec. Amarasi Selatan, Kabupaten Kupang. Kerangka acuan analysis lingkungan hidup.* (*Environmental impact analysis: plan for business and or manganese mining activities in the village of Buraen, South Amarasi sub-district, Kupang District. Terms of Reference for the Analysis of Environmental Impact*). 5 April, 2011, Jakarta.

PT SMR Utama 2011, *Prospektus - Penawaran Umum Perdana Saham* (*Prospectus - initial public share offering*). 3 October, 2011, Jakarta.

PT Sumber Jaya Asia 2008. Permohonan izin pinjam pakai: Kawasan hutan di daerah Soga (Request for a borrow and use permit: Forest reserve in the Soga area), 25 March 2008. Letter to district forestry office. Ruteng.

PT Sumber Jaya Asia 2009. Reply., 9 February 2009. Letter from PT Sumber Jaya Asia to the Manggarai district head.

Purwanto, D 2012, *Manganese mining and information flow of public revenues in Belu District, East Nusa Tenggara* Research report. Article 33, Jakarta.

PwC 2006, *mineIndonesia 2006: Review of trends in the Indonesian mining industry*. PricewaterhouseCoopers, Jakarta.

PwC 2007, *mineIndonesia 2007: Review of trends in the Indonesian mining industry*. PricewaterhouseCoopers, Jakarta.

PwC 2008, *mineIndonesia 2008: Review of trends in the Indonesian mining industry*. PricewaterhouseCoopers, Jakarta.

Republic of Indonesia 1960, *Law No. 5/1960 - Basic Agrarian Law*, Republic of Indonesia, Jakarta.

Republic of Indonesia 1967a, *Law No.11/1967 on Mining*, Republic of Indonesia, Jakarta.

Republic of Indonesia 1967b, *Law No. 1/1967 on Investment of Foreign Capital*, Republic of Indonesia, Jakarta.

Republic of Indonesia 1967c, *Law No. 5/1967 on Forestry*, Republic of Indonesia, Jakarta.

Republic of Indonesia 1999a, *Law 41/1999 on Forestry*, Republic of Indonesia, Jakarta.

Republic of Indonesia 1999b, *Law No. 22/1999 on Regional Governance*, Republic of Indonesia, Jakarta.

Republic of Indonesia 1999c, *Law No. 25/1999 on Fiscal Equalisation between the Central Government and the Regions*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2000, *Government Regulation No. 25/2000 on the Authority of the Government and the Authority of the Provinces as Autonomous Regions*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2003, *Government Regulation 45/2003 on Royalties*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2004a, *Government Regulation in-lieu-of-law 1/2004 on changes to Law 41/1999 on forestry*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2004b, *Law 19/2004 to make Government Regulation in-lieu-of-law 1/2004 regarding changes to Law 41/1999 on Forestry into Law (19/2004)*, Republic of Indonesia,, Jakarta.

Republic of Indonesia 2004c, *Law 32/2004 on Regional Government*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2004d, *Law 33/2004 on Fiscal Balance between the Central Government and Regional Governments*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2007a, *Government Regulation 38/2007 on the Division of Governance Responsibilities between the Government, Provincial Governance and District Governance*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2007b, *Law No. 40/2007 on Limited Companies*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2009a, *Law No. 4/2009 on Mineral and Coal Mining*, (Untranslated title:). Republic of Indonesia, Jakarta.

Republic of Indonesia 2009b, *Law No. 28/2009 on Regional Taxes and User Charges*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2010a, *Government Regulation No. 22/2010 on Mining Areas*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2010b, *Government Regulation No. 23/2010 Regarding the Implementation of Mineral and Coal Mining Business Activities*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2010c, *Government Regulation No. 78/2010 Regarding Reclamation and Post-mining*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2012a, *Government Regulation 24/2012 Regarding Changes to Government Regulation 23/2010 Regarding the Implementation of Mineral and Coal Mining Enterprise Activities* Republic of Indonesia, Jakarta.

Republic of Indonesia 2012b, *Government Regulation 27/2012 Regarding Environmental Permits*, Republic of Indonesia, Jakarta.

Republic of Indonesia 2014, *Law 23/2014 on Regional Governance*, Republic of Indonesia, Jakarta.

Resosudarmo, B, Resosudarmo, ID, Sarosa, W & Subiman, N 2009, 'Socioeconomic conflicts in Indonesia's mining industry', in R Cronin & A Pandya (eds), *Exploiting natural resources: growth, instability, and conflict in the Middle East and Asia,* Stimson Center, Washington DC, pp. 33-46.

Reuters 2012, 'Indonesia confirms revocation of Sumber Mineral/Arc Exploration JV exploration permit', 26 January 2012, Jakarta.

Ribot, JC 2002, *Democratic decentralization of natural resources: institutionalizing popular participation*. World Resources Institute, Washington DC.

Ribot, JC 2004, *Waiting for democracy: the politics of choice in natural resource decentralization*. World Resources Institute, Washington DC.

Ribot, JC, Agrawal, A & Larson, AM 2006, 'Recentralizing while decentralizing: how national governments reappropriate forest resources', *World Development,* Vol. 34. (11)**,** pp. 1864-1886.

Ribot, JC, Chhatre, A & Lankina, T 2008, 'Introduction: Institutional choice and recognition in the formation and consolidation of local democracy', *Conservation and Society,* Vol. 6. (1)**,** pp. 1-11.

Robinson, K 1983, *Stepchildren of progress: the political economy of development in an Indonesian mining town,* State University of New York Press, New York.

Robinson, K 2016, 'Mining, land and community rights in Indonesia', in JF McCarthy & K Robinson (eds), *Land and development in Indonesia: searching for the people's sovereignty,* ISEAS, Singapore, pp. 141-165.

Robison, R & Hadiz, VR 2004, *Reorganising power in Indonesia" The politics of oligarchy in an age of markets,* RoutledgeCurzon, London.

Rosser, A & Edwin, D 2010, 'The politics of corporate social responsibility in Indonesia', *The Pacific Review,* Vol. 23. (1)**,** pp. 1-22.

Rosser, A, Roesad, K & Edwin, D 2005, 'Indonesia: the politics of inclusion', *Journal of Contemporary Asia,* Vol. 35. (1)**,** pp. 53-77.

Roth, D 2007, 'Many governors, no province. The struggle for a province in the Luwu-Tana Toraja area in South Sulawesi', in HS Nordholt & G Van Klinken (eds), *Renegotiating boundaries: local politics in post-Suharto Indonesia,* KITLV Press, Leiden, pp. 121-147.

Ruteng District Court 2009. Decision No. 214/PID.B/2009/PN.RUT, 9 November 2009. Ruteng: Ruteng District Court.

Ruteng District Court 2011. Decison No. 4/2011 (Class action by Sirilus Andara, Blasius Odo, Makarius Dewan, Gaspar Saleh, Fidelis Ander), May 2011. Ruteng.

Sahin, SB, Lewis, B & Lewis, J 2012, 'Fractured futures: Indonesian political refrom and West Timorese manganese mining', *Global Change, Peace & Security,* Vol. 24. (2)**,** pp. 289-304.

Salcito, K. 2007. *Tall tailings: Truth and Friction in the Buyat Mining Scandal.* Masters thesis.

Satria, A & Matsuda, Y 2004, 'Decentralization of fisheries management in Indonesia', *Marine Policy,* Vol. 28. (5)**,** pp. 437-450.

Sembiring, S 2009, *Jalan baru untuk tambang: Mengalirkan berkah anak bangsa, (New way for mining: passing on the blessing to the nation's children),* Kompas Gramedia, Jakarta.

Simanjuntak, F 2008, *Indonesia corruption perception index 2008 and bribery index* Measuring Corruption in Indonesia. Transparency International; USAID; Millenium Challenge Foundation, 2008, Jakarta.

Simpson, BR 2008, *Economists with guns: authoritarian development and US-Indonesian relations, 1960-1968,* Stanford University Press, Stanford, CA.

Soda, E 2014, 'Aroma beruang merah di program hilirisasi', ('Aroma of the 'red bear' in the processing program'), *Tambang - Indonesia Energy and Mining Magazine,* April 2014.

Spiegel, SJ 2012, 'Governance institutions, resource rights regimes, and the informal mining sector: regulatory complexities in Indonesia', *World Development,* Vol. 40. (1)**,** pp. 189-205.

Suara Pembaruan 2010, 'Sempat ditahan tim khusus mabes Polri, mangan milik PT SMR dilepas' ('Detained by the special team from police headquarters, PT SMR's manganese released'), *Suara Pembaruan*, 28 December, 2010, Kupang.

Suardi, S. 2017. Mining and equitable development. *Inside Indonesia* [Online], 130. 19 October 2017. [Accessed 27 December 2018].

Sullivan, B 2014, 'The export ban as finally introduced - a grand compromise with much residual uncertainty', *Coal Asia Magazine*, January-February 2014.

Supreme Court of Indonesia 2012. Decision No. 2229 K/Pdt/2011 Simson Bulla v's Soleman Nesimnasi and Samuel Nesimnasi, Date decided: 30 April, 2012. Jakarta: Supreme Court of Indonesia. https://putusan.mahkamahagung.go.id/putusan/02697ccadc8d2dd7319e255f9fac694e.

T Mendrofa SH & Partners 2010. Defendant's response (to class action brought by Sirilus Andara et al), , 25 November 2010. Ruteng.

Tarong, S, Raas, R, Saperudin, E, Mau, U, Roga, Y, Imba, F, Diadon, O & Japa, E 2009a, 19 December, 2009. *RE: Letter to Manggarai District Legislature.*

Tarong, S, Roas, R, Saferudin, E, Nau, U, Roga, Y, Fransiskus, I, Diadon, O & Japa, E 2009b. Pernyataan sikap para korban ketidakadilan di Kabupaten Manggarai, Nusa Tenggara Timur (NTT) (Position statement of victims of injustice in Manggarai District, Nusa Tenggara Timur), 23 December 2009. Ruteng, Manggarai.

Teschner, BA 2012, 'Small-scale mining in Ghana: The government and the galamsey', *Resources Policy*, Vol. 37. pp. 308-314.

Thorburn, C 2002, 'Regime change - prospects for community-based resource management in post-New Order Indonesia', *Society & Natural Resources*, Vol. 15. (7)**,** pp. 617-628.

Timor Express 2008a, 'Pengangkutan mangan dinilai ilegal - PIAR desak Kapolda usut tuntas' ('Transporation of manganese regarded as illegal - PIAR urges provincial police chief to investigate thoroughly'), *Timor Express*, 14 November, 2008, Kupang.

Timor Express 2008b, 'Tambang marmer dijadikan objek agro wisata' ('Marble mining to become agriciltural tourism object'), *Timor Express*, 17 October 2008, Kupang.

Timor Express 2009a, 'Mangan sumbang PAD terbesar di TTU' ('Manganese the biggest contribution to PAD in TTU'), *Timor Express*, 28 August 2009, Kupang.

Timor Express 2009b, 'Oleh Pol PP dan Distamben TTS 17 ton mangan ilegal diamankan di Soe' ('17 tonnes of illegal manganese detained by TTS Police and mining officials in Soe'), *Timor Express*, 30 November, 2009, Kupang.

Timor Express 2010a, 'Dinilai jadi pemicu masalah tambang: NTT belum punya peta WP' ('Regarded as a cause of mining problems: NTT doesn't yet have a map of Mining Areas (WP)'), *Timor Express*, 25 September, 2010, Kupang.

Timor Express 2010b, 'Distamben bekukan SK 1993' ('Mining office freezes executive decree 1993'), *Timor Express*, 7 January, 2010, Kupang.

Timor Express 2010c, 'Kadistamben bakal dijemput paksa bila tidak tepati jadwal pemeriksaan' ('Mining chief to be brought in if he doesn't keep his interview appointment'), *Timor Express*, 22 September, 2010, Kupang.

Timor Express 2010d, 'Kadistamben tak penuhi panggilan' ('Mining chief doesn't comply with summons'), *Timor Express*, 24 September, 2010, Kupang.

Timor Express 2010e, 'Keberadaan PT SMR ubah kehidupan masyarakat (advertorial)' ('The presence of PT SMR changes the lives of the community'), *Timor Express*, 1 September, 2010, Kupang.

Timor Express 2010f, 'Muat mangan tanpa dokumen - kapal asing ditahan polda NTT' ('Loading manganese without documents - foreign ship detained by NTT police'), *Timor Express*, 13 July, 2010, Kupang.

Timor Express 2010g, 'Perusahaan lain harus belajar ke PT SMR: Uji petik Tim Legislasli DPRD NTT ke PT Soe Makmur Resources (Advertorial)' ('Other companies must learn at PT SMR: test by the NTT legislature's Legislative Team to PT Soe Makmur Resources'), *Timor Express*, 3 September, 2010, Kupang.

Timor Express 2010h, 'PT Arumbai diminta angkat kaki - Pemkab Matim didesak bela hak rakyat' ('PT Arumbai asked to leave - district government urged to defend the people's rights '), *Timor Express*,, 24 November 2010, Kupang.

Timor Express 2010i, 'Seluruh karyawan tambang mundur - buntut aksi ke PT Arumbai' ('All mining employees stand down - aftermath of action towards PT Arumbai'), *Timor Express*, 23 November 2010, Kupang.

Timor Express 2011a, '3000 ton mangan hanya simpan dekat brigif 21/Komodo' ('3000 tonnes of manganese was only being stored near Brigif 21/Komodo base Keberadaan'), *Timor Express*, 14 May, 2011, Kupang.

Timor Express 2011b, 'Hendak dikirim ke Surabaya tanpa dokumen - 3000 ton mangan milik primkopad ditahan' ('To be sent to Surabaya without documents - 3000 tonnes of manganese belonging to army cooperative detained'), *Timor Express*, 13 May, 2011, Kupang.

Tote, Y 2009. Keputusan Bupati Manggarai Timur No. HK/95/2009 tentang persetujuan perubahan kuasa pertambangan eksploitasi HK/116/2004 menjadi izin usaha pertambangan operasi produksi kepada PT. Istindo Mitra Perdana (Decision of the East Manggarai District Head regarding approval for the conversion of Exploitation Mining Authority (KP) HK/116/2004 to Mining Enterprise Permit (IUP) Operation/Production for PT Istindo Mitra Perdana), 12 October 2009. Borong, East Manggarai.

Transparency International 2011, *Corruption Perceptions Index 2011*. Transparency International, Berlin.

Tschakert, P 2009, 'Recognizing and nurturing artisanal mining as a viable livelihood', *Resources Policy*, Vol. 34. pp. 24-31.

Tsing, AL 2011, *Friction: an ethnography of global connection*, Princeton University Press, Princeton, NJ.

United States Embassy 2001, *Indonesia mining sector update*. US State Department, February 2001, Jakarta.

USAID 2011, *Property rights and artisanal mining - clarifying and strengthening rights: options for policymakers* USAID Issue Brief. USAID, Washington DC.

Usboko, M 2010, 'Mengintip perkawinan kepentingan di TTU' ('Glimpsing the marriage of interests in North Central Timor'), *NTT Online News*, 10 August, 2010, Kupang.

van der Eng, P 2014, 'Mining and Indonesia's Economy: Institutions and Value Adding, 1870-2010. Working Paper 2014-5.'. Centre for Economic Institutions, Institute of Economic Research, Hitotsubashi University, Japan. Available at https://ideas.repec.org/p/hit/hitcei/2014-5.html.

van der Eng, P 2016, 'After 200 years, why is Indonesia's cadastral system still incomplete?'. Discussion Paper 2016-03, Centre for Economic History - Australian National University Discussion Paper Series. Available at https://www.cbe.anu.edu.au/researchpapers/ceh/WP201603.pdf.

Various authors. 2006-07. Multiple entries. *Molo People's Struggle - blog-spot* [Online]. Available from: http://molosstruggle.blogspot.com/feeds/posts/default and http://rakyatmollo.blogspot.com [Accessed 2011].

Victory News 2012a, 'Batuk darah serang pengumpul mangan SMR' ('Bloody cough attacking SMR manganese labourers'), *Victory News*, 20 November, 2011, Kupang.

Victory News 2012b, 'Kebingungan SMR yang membingungkan' ('SMR's confusion is what's confusing'), *Victory News*, 9 November 2012, Kupang.

Victory News 2012c, 'Pemkab tanyakan royalti mangan ke ditjen minerba' ('District government enquires about manganese royalties to the director general of mining'), *Victory News*, 11 June 2012, Kupang.

Victory News 2012d, 'Polisi tahan mangan ilegal' ('Police impound illegal manganese'), *Victory News*, 18 June, 2012, Kupang.

Victory News 2012e, 'Polres serahkan mangan ilegal kepada JPU' ('District police hand over illegal manganese to the public prosecutor'), *Victory News*, 13 June, 2012, Kupang.

Victory News 2012f, 'Royalti mangan hilang IDR 800 juta' ('IDR 800 million in manganese royalties disappears'), *Victory News*, 9 June 2012, Kupang.

Victory News 2012g, 'Saudara ditahan polisi - warga ancam pindah ke Belu' ('Relatives detained by police - citizens threaten to move to Belu'), *Victory News*, 25 August, 2012, Kupang.

Victory News 2012h, 'Selain royalti, pemkab juga dapat iuran tetap' ('Apart from royalties, district governments also receive land rents'), *Victory News*, 14 June 2012, Kupang.

Victory News 2012i, 'SMR belum penuhi syarat tambang' ('SMR not yet meeting mining conditions'), *Victory News*, 8 November 2012, Kupang.

Victory News 2012j, 'Tambang mangan di Oekopa harus segera dihentikan' ('Manganese mining in Oekopa must be stopped immediately'), *Victory News*, Kupang.

Victory News 2012k, 'Tolak tambang dengan ritual adat' ('Rejecting mining with customary ritual'), *Victory News*, 11 September 2012, Kupang.

von Luebke, C 2009, 'The political economy of local governance: findings from an Indonesian field study', *Bulletin of Indonesian Economic Studies,* Vol. 45. (2)**,** pp. 201-230.

Warren, C & McCarthy, JF (eds.) 2009. *Community, environment and local governance in Indonesia: locating the commonweal* London: Routledge.

Welker, MA. 2006. *Global calitalism and the "caring corporation": Mining and the corporate social responsibility movement in Indonesia and Denver.* Doctoral thesis, University of Michigan.

Welker, MA 2009, 'Corporate security begins in the community: Mining, the corporate social responsibility industry and environmental advocacy in Indonesia', *Cultural Anthropology,* Vol. 24. (1)**,** pp. 142-179.

West Manggarai District Government Mining and Energy Office 2010, '*Data izin pertambangan yang masih belaku di Kabupaten Manggarai Barat, NTT - keadaan sampai dengan bulan Oktober 2010*', (Data on active mining business permits in West Manggarai, NTT - as at October 2010), West Manggarai District Government Mining and Energy Office, Labuan Bajo, West Manggarai District.

Whellams, M. 2007. *The Role of CSR in Development: A Case Study Involving the Mining Industry in South America.* Unpublished thesis - Masters of International Development Studies, St Mary's University.

Wolfe, A & Williams, A 2015, *Constructing a diagnostic framework on corruption risks in mining sector licensing*. International Mining for Development Centre, June 2015, Perth.

Wollenberg, E, Moeliono, M, Limberg, G, Iwan, R, Rhee, S & Sudana, M 2006, 'Between state and society: local governance of forests in Malinau, Indonesia', *Forest Policy and Economics,* Vol. 8. (4)**,** pp. 421-433.

World Bank 1997, *World Development Report 1997 - The State in a Changing World*. The World Bank, Oxford University Press, New York.

World Bank 2005, *Attracting new mining investment* Indonesia Policy Briefs Series. World Bank, Jakarta.

Yabiku NTT 2010, *Perempuan dan mangan Timor Barat Nusa Tenggara Timur (NTT): Hasil studi tentang perempuan dan mangan dalam aspek sosial, ekonomi dan lingkungan di wilayah Kabupaten TTU, Belu, TTS dan Kupang NTT* (*Women and manganese in West Timor, NTT: Results of a study of women and manganese from the social,*

economic and environmental aspects in the districts of North Central Timor, Belu, South Central Timor and Kupang). Yabiku NTT, Yabiku, 2010, Kupang.