



SATYA
BUMI

WALHI
SULAWESI TENGGARA

WALHI
Sulawesi Selatan

WALHI
SULAWESI TENGAH

NEO-EXTRACTIVISM IN INDONESIA'S NICKEL EPICENTER:

The Fragility of Mining Governance
and Realizing Ecological Justice
and Protection of Human Rights
on the Celebes Land



Authors:

Sayyidatihayya Afra
Andi Rahman R
Muhammad Al Amin
Sunardi Katili
Andi Muttaqien



Policy Paper

Civil Society Critical Notes on Nickel Mining Policy and Governance

October 2023

Drafting Team:

Satya Bumi

Walhi Sulawesi Selatan

Walhi Sulawesi Tengah

Walhi Sulawesi Tenggara

Translator:

Siti Rochmah Aga Desyana

Illustrations and cover art: Fitrah Yusri & Eghi Irfansyah

Design and Layout: Eghi Irfansyah & Amri Yusaq

FOREWORD

The Indonesian government is taking advantage of the momentum of the nickel boom by creating a nickel policy ecosystem to speed up and accelerate the development of the Indonesian electric vehicle market as well as offering partnerships and assurance to foreign investors. A series of policies were presented by the government to facilitate investors in carrying out nickel downstreaming as a state priority program. Various benefits and incentives are promised to attract investors to invest in Indonesia. However, protection of human rights and the environment has not been referred to as an investment corridor. The right to regulate as an expression of state sovereignty does not stabilize environmental and human rights protection yet, often causing civilians to experience negative impacts from increasingly massive extractive activities.

The risk of environmental damage and human rights violations in the nickel value chain is reflected in Sulawesi, one of the largest nickel reserve producing areas in Indonesia. Deforestation cases and human rights violations in Sulawesi, due to nickel neo-extractivism, revealed a gap between investment, human rights, and the environment that regulators and investors must pay attention to.

It is important to note that, ambition that is not coincided by efforts to develop strong mining governance will bear serious consequences, causing deforestation and ecological damage as well as human rights violations. The government's capacity to balance the protection of investors interest with respect for human rights and environmental protection is urgently needed. Governance gaps will actually hinder the government's efforts to combat climate change by strengthening Indonesia's role as the epicenter of the electric vehicle value chain.

Based on the statement above, Satya Bumi, Walhi Sulawesi Selatan, Sulawesi Tenggara, and Sulawesi Tengah prepared a study on nickel mining governance, including a study of regulations, truth discovered in nickel extractive locations, as well as the impact of deforestation and ecological damage, and human rights violations resulting from nickel mining.

We would like to thank the entire team who helped prepare this policy paper. We would also like to express our thanks to Brown Brothers Energy and Environment, Mighty Earth, and Limited Liability Company for their assistance in the form of data input, spatial analysis, and maps of the nickel industry in Indonesia. We hope that this study will provide benefits and provide input for the government in managing natural resources sustainably and from a human rights perspective.

Writer Team

TABLE OF CONTENT

| | |
|---|-----|
| FOREWORD..... | iii |
| Table of Content | iv |
| List of Figures and Tables | v |
| A. Introduction..... | 1 |
| B. Purpose and Methods in Preparing the Policy Paper | 2 |
| C. Regulatory Capture and the Corruption of Nickel Mining Governance..... | 3 |
| a) Law Number 3 of 2020 concerning Minerals and Coal (UU Minerba) | 3 |
| b) Law Number 6 of 2023 concerning Job Creation (UUCK)..... | 4 |
| D. Ecological Damage and Human Rights Violations Due to Nickel Extractive Activities in Sulawesi | 7 |
| a) Deforestation and environmental damage | 7 |
| 1) Deforestation in Sulawesi | 7 |
| 2) Risk of biodiversity loss and forests with high carbon stocks..... | 16 |
| I. PT Vale (Soroako Bloc) | 17 |
| II. Bintang Delapan Mineral | 17 |
| III. Aneka Tambang | 18 |
| 3) Nickel Refining and Large Destructive Power and Marine Pollution Risk..... | 19 |
| b) Human Rights Impact | 21 |
| 1) South Sulawesi in the Grip of PT Vale | 23 |
| 2) PT. Gunbuster Nickel Industry impoverishes the people of Central Sulawesi..... | 25 |
| 3) Human Rights Impact of Nickel Mining in Southeast Sulawesi..... | 25 |
| E. Fragile Mining Governance Policies Leads to Nickel Neo-extractivism Practices in Sulawesi | 26 |
| F. Stakeholders Identification..... | 33 |
| a) The government | 33 |
| b) The people's parliament | 34 |
| c) National independent agencies..... | 34 |
| d) Business actors (investors and companies)..... | 34 |
| e) Global actors | 35 |
| G. Conclusions and Policy Recommendations..... | 35 |

LIST OF FIGURES AND TABLES

| | |
|--|----|
| Table 1: Nickel demand projections in 2030 based on three IEA scenarios (in thousands of metric tons)..... | 1 |
| Table 2: Condition of legal regulations in Indonesia and legal politics that have been captured by industrial interests..... | 6 |
| Table 3: Shows mining expansion (brown) and slowly consumed forest (green)..... | 11 |
| Table 4: The IUP concession area column is analyzed by the author of the 2021 Year-End Notes of Walhi Sulawesi Region. The deforestation area column for Southeast Sulawesi and Central Sulawesi is analyzed from Tempo's investigative report "Tentacles of the Nickel Mines"..... | 13 |
| Table 5: Three ways to measure total deforestation carried out by nickel mines in Indonesia | 14 |
| Table 6: Of the 10 nickel mines with the highest deforestation rates in Indonesia for which data is available, half were established (and may have cleared forest land) before the year indicated by MODI 2023 as the year of the most recent permit grant or permit amendment. | 15 |
| Table 7: Illustrates the three nickel concessions with the highest deforestation rates in Indonesia that overlap with forests with high carbon stocks, and Key Areas of Biodiversity. | 16 |
| Table 8: HPAL waste disposal methods | 20 |
| Table 9: Map of Customary Territories and Forest Area Based on the Customary Territory Registration System..... | 22 |
| Table 10: Identifying the Impact of Violations of Farmers' Rights in Loeha Raya, South Sulawesi.23 | |
| Table 11: Identification of Human Rights Impacts Due to Extractive Activities in North Morowali Regency..... | 25 |
| Table 12: Identification of Other Impacts Due to Extractive Activities in the Pomalaa Block | 26 |
| Table 13: Identification of impacts caused by extractive activities in the Pomalaa Block.. | 26 |
| Table 14: Nickel concessions that are given the privilege of not enforcing Law Number 41 of 1999 concerning Forestry are contained in the Attachment to Presidential Decree No. 3 of 2023 concerning Amendments to Presidential Decree Number 41 of 2004 concerning Licensing or Agreements in the Mining Sector in Forest Areas. | 28 |
| Table 15: Regulation concerning the acceleration to electric vehicles. | 29 |
| Table 16: Risk of Fragile Mining Governance..... | 31 |

| | |
|--|----|
| Figure 1: Total nickel content in various parts of the world. Indonesia has 21 million metric tons of nickel reserves in the world. | 1 |
| Figure 2: Purpose of Preparing Policy Paper | 2 |
| Figure 3: Method & Flow in Preparing the Policy Paper..... | 3 |
| Figure 4 : Graphic showing IRMA critical requirements..... | 6 |
| Figure 5: Annual nickel deforestation 2000-2022 (Auriga Nusantara) | 8 |
| Figure 6: Number of IUPs issued by the Indonesian Government per year | 8 |
| Figure 7: Comparison of Landscape Changes Due to Deforestation | 9 |
| Figure 8 : Map of Pomalaa Area. Analysed by Walhi Southeast Sulawesi 2023..... | 12 |
| Figure 9: Map of Southeast Sulawesi Provincial Spatial Plan 2023. | 12 |
| Figure 10: Location of PT Vale (Soroako) minerals that overlap with key biodiversity areas according to IUCN..... | 17 |
| Figure 11 : Location of PT Vale (Soroako) minerals that store carbon stocks. | 17 |
| Figure 12: Location of Bintang Delapan Mineral containing High Carbon Stock (HCS) Forests in 2021 | 18 |
| Figure 13: Some of the Major Areas of Biodiversity cover most of the Bintang Delapan nickel mineral concession area..... | 18 |
| Figure 14: High Carbon Stock Forest inside Antam's nickel mining concession in 2021 | 19 |
| Figure 15: Antam's Logging of Protected Forest – as detected by satellite (GLAD) | 19 |
| Figure 16: The impact of extractive activities that affect the human rights | 22 |
| Figure 17 and 18: Appearance of dust in the homes of PT Vale nickel mining victims..... | 24 |
| Figure 19: Violation of Six of the Nine Planetary Boundaries..... | 31 |

A. INTRODUCTION

Global demand for nickel as a transition mineral for electric vehicles is projected to be continuously high in the next few decades. This surge was triggered by global demand and the desire of the global community to prevent climate change through a low-carbon energy transition. The International Energy Agency (IEA) estimates that demand for these transition minerals will quadruple by 2040 to meet the targets of the Paris Climate Agreement. The demands of the global market then encourages an increase in mining activities in nickel-rich areas, including Indonesia. The IEA then issued a prediction for nickel demands in 2030, consisting of electric vehicle batteries, stainless steel and other uses, would remain high.

| Emission Reduction Scenario According to | EV Battery on | | | | | All Stainless Steel | Other Uses | Total |
|--|-------------------|---------------|----------------|----------|----------|---------------------|------------|---------|
| | Passenger Vehicle | Truck and Bus | 2 and 3 Wheels | Other EV | Total EV | | | |
| Pledge | 730 | 200 | 40 | 1.7 | 971.7 | 192 | 36 | 1,199.7 |
| Established Policies | 530 | 160 | 30 | 1.2 | 721.2 | 176 | 36 | 933.2 |
| Zero Emissions 2050 | 1,330 | 450 | 80 | 9.4 | 1,869.4 | 192 | 40 | 2,101.4 |

Table 1: Nickel demand projections in 2030 based on three IEA scenarios (in thousands of metric tons).¹

Currently, Indonesia is the world's largest nickel producer. Standard & Poor's (S&P) projects that Indonesia will be able to control 44 percent of the world nickel market by 2027.² If you look at the diagram below, the top five nickel producing countries consist of Indonesia, the Philippines, New Caledonia, Russia and Australia.

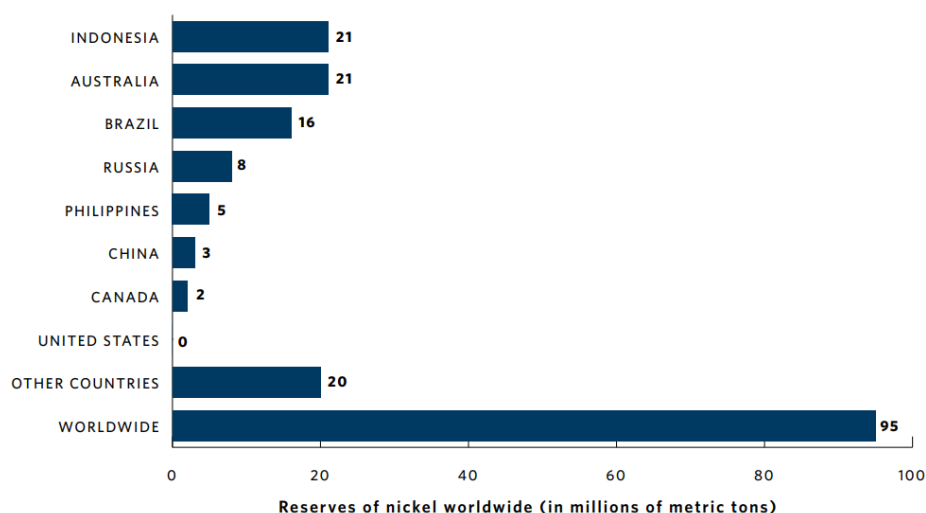


Figure 1: Total nickel content in various parts of the world. Indonesia has 21 million metric tons of nickel reserves in the world.

¹ International Energy Administration (IEA), Sept 2021, "Global supply chains of EV batteries", <https://iea.blob.core.windows.net/assets/4eb8c252-76b1-4710-8f5e-867e751c8dda/GlobalSupplyChainsofEVbatteries.pdf>

² https://www.kompas.id/baca/riset/2023/08/28/boom-nikel-indonesia-akankah-terus-berlanjut?open_from=Search_Result_Page, accessed on 4 September 2023

Indonesia is a major contributor to global nickel supply in 2021, mainly due to the expansion of the domestic nickel industry and the development of domestic High Pressure Acid Leaching (HPAL) projects.³ This reflects the Indonesian government's ambition to become a key player in the global electric vehicle value chain and offer partnerships and assurance to foreign investors. Every work is done in the name of economic strength and development.

In the next section, these conditions will be strengthened by arguments that describe the practice of regulatory capture. This practice is commonly used as an effort to support industrialization practices and separate public interest.

B. PURPOSE AND METHODS IN PREPARING THE POLICY PAPER

This Policy Paper is intended to observe the relationship between the impact of the global nickel supply chain on the increasingly massive expansion of nickel mines in Sulawesi. It will specifically; 1) examine the socio-environmental and human rights impacts resulting from the implementation of the neo-extractivist model of nickel mining in Indonesia, especially Sulawesi as one of the largest nickel producing islands; 2) identify various mining regulations and governance that supports the development of neo-extractivist politics in Indonesia; 3) provide policy recommendations to minimize the impact of nickel mining extractive activities.

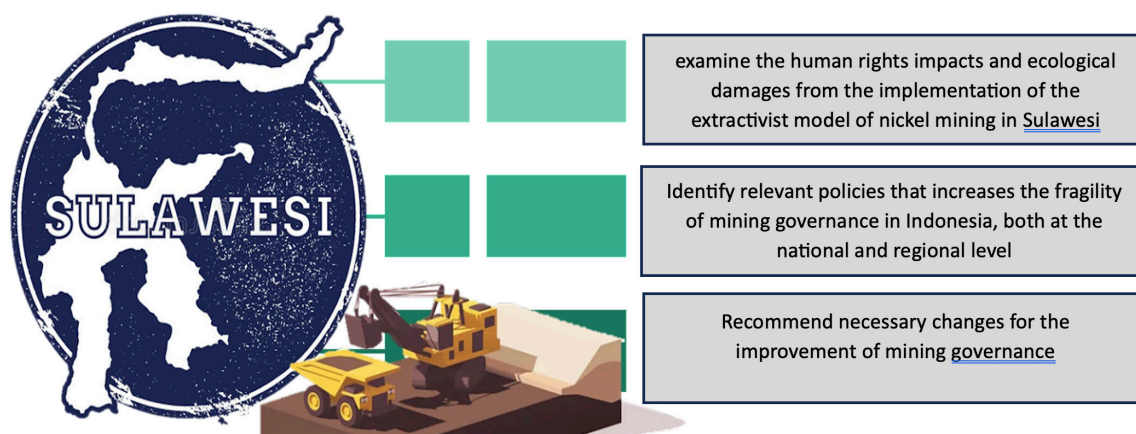


Figure 2: Purpose of Preparing Policy Paper

This policy paper was based on research reports and field observations by Walhi Southeast Sulawesi, Walhi South Sulawesi, and Walhi Central Sulawesi, all of which had identified social and environmental impacts as well as human rights violations due to increasingly expansive nickel mining activities in Sulawesi. The social and environmental impacts that have been identified are then analyzed based on a human rights perspective, including providing accentuation based on a business and human rights perspective. In addition, the social and environmental impacts that become victims' epistemic experiences are analyzed through the perspective of environmental (ecological) justice and climate justice with a gender and multispecies perspective.

³ <https://www.globaldata.com/data-insights/mining/the-top-five-nickel-producing-countries-thousand-tonnes-2021/>, accessed on 4 September 2023

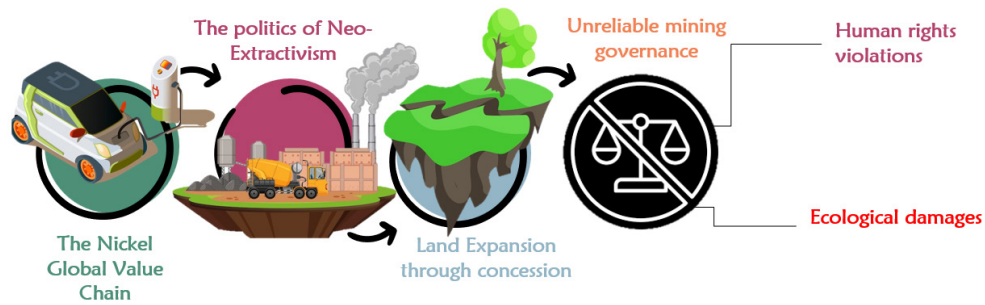


Figure 3: Method & Flow in Preparing the Policy Paper

C. REGULATORY CAPTURE AND THE CORRUPTION OF NICKEL MINING GOVERNANCE

Simultaneously in several states, developments in a number of legal fields—particularly those relating to international investment, trade, economics and finance, the environment and human rights, as well as anti-corruption—have redefined the contours (patterns) of a country's internal space. This definition relates to a state's sovereign power in regulating and allocating rights over minerals within their jurisdictions.⁴

These policies trigger the potential for corruption in the mining sector, which tends to take the form of regulatory capture. Daniel Carpenter and David A. Moss define regulatory capture as “the use of regulations that are consistently or repeatedly directed away from the public interest towards the interests of the industry regulated in the regulation.”⁵ George J. Stigler argued that naturally, industry would encourage the state to issue regulations that made their economic activities easier.⁶ Thus, state rationality in mining governance is the shield preventing the state from being held hostage by industry logic.

Simply put, it can be said that regulatory capture occurs when the regulations issued are proven to benefit the industry.⁷ In general, the national trend actually shows this, where regulations are formed in such a way as to encourage the interests of the mining industry, for example:

a) Law Number 3 of 2020 concerning Minerals and Coal (UU Minerba)

The Mining and Coal Law was revised in 2020, and one of the problematic provisions in it was that it removed the authority of regional governments in mining governance. This cuts off regional community participation in submitting objections and complaints to regional governments, because their authority has been centralized back to the Central Government. Lack of accountability, severe reduction of regional government's role, and the absence of a public forum to

4 Ana Elizabeth Bastida, *The Law and Governance of Mining and Minerals: A Global Perspective*, (Oxford: Hart Publishing, 2020), p. 3

5 Elizabeth Dávid-Barrett, *State capture and development: a conceptual framework*, *Journal of International Relations and Development*, 2023, p. 4

6 George J. Stigler, “The Theory of Economic Regulation”, *The Bell Journal of Economics and Management Science*, Vol. 2, No. 1, 1971, p. 3

7 Elizabeth Dávid-Barrett, *Op. cit.* hlm. 228

complain often leads to escalation in existing disputes. In addition, regional civil societies and communities are not given the freedom to refuse mining due to Article 162, which criminalizes people who refuse mining operations.

This law also raised concerns for its provisions that loosens reclamation obligations. Article 99 paragraph (3) of the New Mining and Coal Law provide relaxation of reclamation obligations and post-mining activities for mining entrepreneurs who have the potential to create more toxic and deadly mine holes. Article 99 paragraph (3) essentially determined that companies are only obliged to close mining holes based on the percentage determined by statutory regulations—in this case government regulations (PP)—not all mine holes resulting from mining activities. Auriga Nusantara noted that with this policy, the area of ex-mining holes that are at risk of not being reclaimed has reached 87,307 hectares (Auriga Nusantara, 2020). Based on reports from the East Kalimantan Mining Advocacy Network (Jatam), from 2011 to 2021, 40 people were victims of drowning in mine shafts in East Kalimantan that were not reclaimed (Mongabay, 2021).⁸

b) Law Number 6 of 2023 concerning Job Creation (UUCK)

The Job Creation Law—hereinafter referred to as UUCK—presented several problems within its protection; first, it cuts many environmental protections. For example, with the implementation of UUCK, mining companies that were previously fined IDR 10 billion and sentenced to 5 years in prison because they did not have Forest and Land Use Permit (Izin Pinjam Pakai Kawasan Hutan untuk Kegiatan Eksploitasi Tambang dan Non-Tambang, IPPKH), are now only subject to administrative sanctions in the form of fines – even if their activities destroyed forests (Articles 36 and 37 of UUCK). Furthermore, the Job Creation Law also removes the provision of 30% forest area in each province which was previously maintained through the Forestry Law.

UUCK also reduces the involvement of civil society in preparing the Environmental Impact Analysis (AMDAL) or Environmental Impact Assessment (EIA). Apart from not being involved in the process of preparing environmental impacts, the public also no longer has room to raise objections. Civil society (apart from affected communities) is positioned as a third party who is only given the opportunity to submit objections when the AMDAL assessment has been completed and an Environmental Feasibility Decision is issued.⁹ This condition is very unhealthy for the policy-making climate, which puts the environment at risk amidst the onslaught of the Joko Widodo Government's desire to "improve the country's economy".

UUCK also issued many problematic derivative regulations. In relation to mining, Government Regulation Number 22 of 2021 allows miners to dispose of waste into the deep sea using the Deep-Sea Tailing Placement (DSTP) method. This issue will be discussed further in section 2.3.

⁸ Dea Tri Afrida, "Indonesia: Tanah Surga Bagi Oligarki" (Indonesia: Heaven for the Oligarchs), <https://antikorupsi.org/id/indonesia-tanah-surga-bagi-oligarki>, Accessed on 11 October 2023.

⁹ Changes to the editorial are made to Article 26(3) by deleting letters b and c. Article 26(2) now reads as "Preparation of Amdal documents is carried out by involving communities directly affected by business plans and/or activities."

With some of the legal conditions above, it becomes obvious that the pattern of weakening generally occurs due to two things: 1) the continued issuance of exception provisions from previously strong safeguards; 2) The excessive broadening of government's authority without proper check-and-balance mechanism from other chambers of power; and 3) minimal supervision. In the table below, the author tries to contrast the three pillars of regulatory capture formulated by Barret and the conditions of the legal and political framework in Indonesia;¹⁰

| Regulatory capture pillar | Mechanisms conducted | Reflection in Indonesian context |
|--|--|---|
| 1) <i>Through the establishment of laws or regulations</i> | Create a control mechanism for the military, police and state intelligence | Regulations on military/police deployment on National Strategic Projects (PSN) |
| | | Ps 7 paragraph (2) number 5 Law No. 34 of 2004, "The main task of the TNI, apart from defense in times of war, is to secure vital national strategic objects" |
| | | Nickel mining in Indonesia, especially the Aneka Tambang concession, is a vital national strategic object. National vital objects are defined as major sources of state income. |
| | Create regulations authorizing State-owned Enterprises (Badan Usaha Milik Negara, BUMN) to play a role in the industrial sector (natural resources, banking, etc.) | In the Minerba Law (UU 3/2020) BUMN is given priority to obtain Special Mining Business Permit (Izin Usaha Pertambangan Khusus, IUPK). |
| | | The prioritization manifests into the ability of BUMN to obtain more than one Mining Business Permit (Izin Usaha Pertambangan, IUP) and IUPK, and the ability to transfer the permit to another party as long as the majority share (51%) is owned by the BUMN. ¹¹ |
| | Limiting parliamentary oversight of the law | The People's Parliament (Dewan Perwakilan Rakyat, DPR) is no longer involved in the process of changing the designation of forest areas. Previously, in the Forestry Law (Article 19) the DPR had a role in researching and giving approval to changes in forest areas. |
| | | After UUCK, DPR's veto authority in changes to the designation of forest areas was removed (Article 36 of UUCK). |
| | | This cuts off the DPR's supervision of the Government's work in formulating provisions for the use of forest areas. |
| | Establish rules regarding the privatization and public procurement process, to ensure the Government has a high degree of discretion at the implementation stage | UUCK gives the President the authority to form many technical regulations on the business agenda. |
| | | As per 2021, the President has issued 45 Government Regulations, and 4 Presidential Regulations (a total of 49 regulations issued by the President) some of which relate to construction, taxes, forests and spatial planning. ¹² |

¹⁰ Elizabeth Dávid-Barrett, Op. cit, hlm. 230

¹¹ Humas MK, "Irwandy Arif: UU Minerba Karpas Merah Bagi BUMN", <https://www.mkri.id/index.php?page=web.Berita&id=17452>, diakses 10 Oktober 2023

¹² RED, "Daftar 29 Peraturan UU Cipta Kerja", <https://www.hukumonline.com/berita/a/yuk-unduh-daftar-49-peraturan-pelaksana-uu-cipta-kerja-di-sini-lt6036081634e54/>

| | | |
|--|--|---|
| 2) <i>By giving large authority to the government/civil servants to form technical regulations in implementing the law</i> | Appoint oligarchs to policy-making positions | Joko Widodo's government places many business people in policy-making positions. ¹³ |
| 3) <i>Weaken or disarm the independence of institutions working for accountability: Courts, Corruption Eradication Commission, CSOs, media, etc.</i> | Design the judiciary to allow for replacement independent judges with political allies | At the end of 2022, the DPR fired Constitutional Court Judge Aswanto because he was deemed to "often cancel laws issued by the DPR". he was replaced by Guntur Hamzah who was considered not independent. ¹⁴ |
| | Replace law enforcement and prosecutors with allies | In 2019 Firli Bahuri was appointed chairman of the Corruption Eradication Commission. Many people think that Firli is someone close to high-level Indonesian politicians. This caused the prosecution of corruption cases during Firli's leadership to be very low. ¹⁵ |

Table 2: Condition of legal regulations in Indonesia and legal politics that have been captured by industrial interests

With various forms of weakening through regulatory capture in Indonesia, looking at global initiatives can be considered to fill inadequate mining governance in Indonesia. One that is widely discussed when discussing responsible mining initiatives in the world is the Initiative on Responsible Mining Assurance (IRMA). IRMA was developed in 2006 and has 40 standards to ensure mining companies work sustainably. In general, IRMA has four principles, each of which imposes responsibility for environmental protection and human rights on the business sector.¹⁶



Figure 4 : Graphic showing IRMA critical requirements

13 Ima Dini Shafira, "Pakar Sebut Pembentukan UU di Rezim Jokowi Didominasi Kepentingan Oligarki", <https://nasional.tempo.co/read/1653023/pakar-sebut-pembentukan-uu-di-rezim-jokowi-didominasi-kepentingan-oligarki>

14 Marselinus Gual, "Lantik Guntur Hamzah, konflik kepentingan Jokowi dan MK kian terlihat", <https://www.alinea.id/nasional/lantik-guntur-konflik-kepentingan-jokowi-mk-kian-terlihat-b2ftP9lxv>, diakses 10 Oktober 2023.

15 Avit Hidayat, "Firli Bahuri cs Dianggap Melemahkan KPK", <https://koran.tempo.co/read/nasional/451343/firli-bahuri-cs-dianggap-melemahkan-kpk>

16 See; IRMA, <https://responsiblemining.net/>

Essentially, IRMA emphasizes several standards that are often skipped by the Indonesian Government. IRMA requires all mining companies obtaining IRMA certification to carry out meaningful dialogue between parties; respect international human rights standards; provide provision of a grievance mechanism; and minimize involvement of the Police and/or military. However unfortunately, the Indonesian government has yet to view the usefulness of IRMA instrument in improving mining governance in Indonesia.

Based on the illustration above, the legal conditions for protection in Indonesia are currently very weak. Regulatory capture that uses business logic suppresses environmental and human rights protection in mining governance. These changes consequently limit public accountability mechanisms for activities that have an environmental impact, while empowering the government to further exercise control. These conditions furthers risks civil society and communities impacted because it relies on the government to pay more attention to society's interests and to have credible monitoring and information mechanisms in its policy making. Whereas, the records have shown that public interest is often put aside, especially if public accountability and the public's ability to supervise are also weakened by the lack of available information.¹⁷

D. ECOLOGICAL DAMAGE AND HUMAN RIGHTS VIOLATIONS DUE TO NICKEL EXTRACTIVE ACTIVITIES IN SULAWESI

a) Deforestation and environmental damage

1) Deforestation in Sulawesi

Increasing nickel production to respond to global demand and actualize national strategic projects has the potential to cause increasingly massive deforestation and environmental damage in Indonesia, especially in Sulawesi as the main and largest producing area for nickel reserves. Meanwhile, the deforestation rate in Sulawesi was already quite high previously. Using Google Earth Engine (GEE) data and a combination of Landsat 4,5,7, 8, Sentinel 2 and Global Forest Change data which are processed into NDVI, EVI, EVI2 and SRVI, it can be estimated that from 2001 to 2019 deforestation in Sulawesi reached an area of 2.049.586 hectares. The largest deforestation occurred in 2015 covering an area of 226.260 hectares, in 2016 covering an area of 190.667 hectares and in 2019 reaching an area of 159.891 hectares. The largest deforestation occurred in Central Sulawesi Province with an area reaching 722.624.05 hectares, followed by Southeast Sulawesi Province in second place, which reached an area of 512.465.40 hectares and in third place, South Sulawesi Province which reached a deforestation area of 333.364.55 hectares.¹⁸

17 Pandangan Kritis Terhadap UU No. 11 tahun 202 tentang Cipta Kerja: Masa Depan Ekonomi dan Lingkungan Hidup, Yayasan Madani Berkelanjutan 2021

18 <https://komi.id/dalam-18-tahun-terakhir-sulawesi-tengah-kehilangan-hutan-seluas-559-96115-hektar/>, accessed on 11 September 2023

Massive nickel mining activities will further increase the rate of deforestation. The expansion of nickel mining threatens the condition of natural forests within mining concessions. The bar chart processed by Auriga below shows that 2012 was the year with the highest amount of deforestation.¹⁹

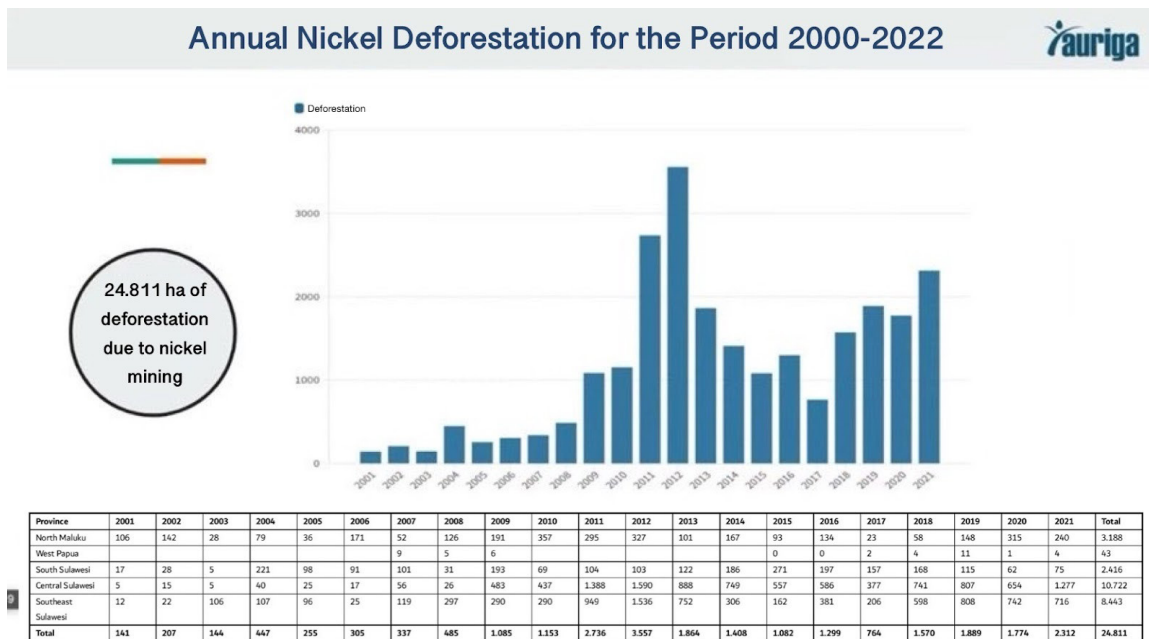


Figure 5: Annual nickel deforestation 2000-2022 (Auriga Nusantara)

This drastic increase in deforestation is assumed due to that year the Government granted permits and/or Contracts of Work for 69 nickel concessions.

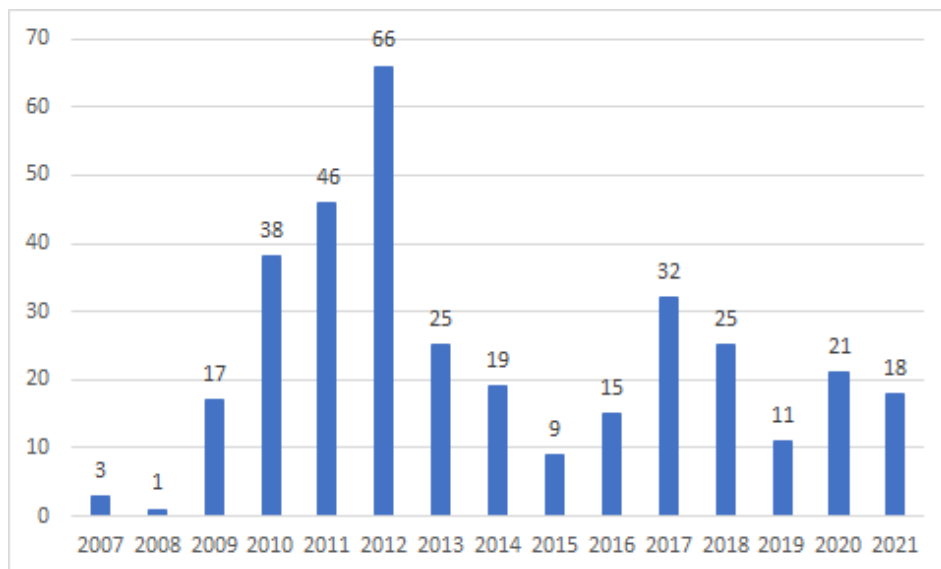


Figure 6: Number of IUPs issued by the Indonesian Government per year

(Source: Geoportal ESDM 2021)

¹⁹ <https://www.kompas.id/baca/humaniora/2023/07/13/ekspansi-pertambangan-nikel-picu-deforestasi-seluas-25000-hektar>, accessed on September 11 2023

Henceforth it should be noted that in 2012 the Government first issued derivative regulations regarding export bans in the Directorate General of Mineral and Coal Law No. 4 of 2009 concerning Minerals and Coal (UU Minerba). This provision is stated in the Ministry of Energy and Mineral Resources Regulation No. 7 of 2012 concerning Increasing the Added Value of Minerals Through Processing and Refining Activities, which was later amended by Minister of Energy and Mineral Resources Regulation No. 20 of 2013 concerning the Second Amendment to Minister of Energy and Mineral Resources Regulation No. 7 of 2012 concerning Increasing the Added Value of Minerals Through Processing and Refining Activities.

The threads connecting these three events can be seen, which further strengthen the initial thesis that the nickel industry in Indonesia is run with a neo-extractivist approach.

In Central Sulawesi, there are approximately 196 mining companies that have obtained mining exploration and production operation permits, with a total area of 469.965.81 hectares.²⁰ Changes in the landscape of the Central Sulawesi region due to permits for the mining and plantation sectors over a period of 18 years can be seen in the map below.²¹

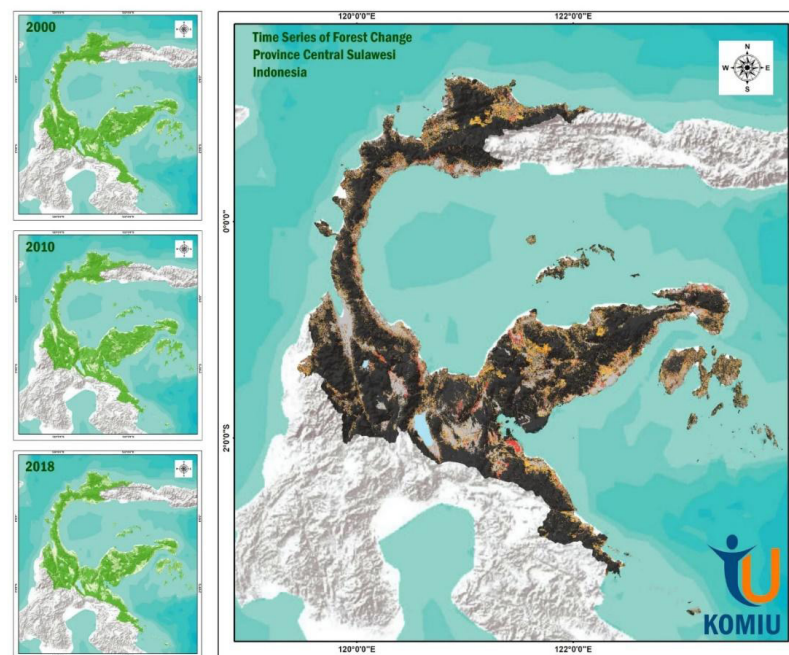


Figure 7: Comparison of Landscape Changes Due to Deforestation

Description in Figure 5: The image above shows the results of remote sensing using Landsat 7.8 satellite image data and Sentinel satellite imagery monitored from 2000 to 2018. Deforestation activity in the Central Sulawesi region occurred significantly.²²

²⁰ Op. Cit.


²¹ <https://komiu.id/dalam-18-tahun-terakhir-sulawesi-tengah-kehilangan-hutan-seluas-559-96115-hektar/>, accessed on 11 September 2023

²² <https://komiu.id/dalam-18-tahun-terakhir-sulawesi-tengah-kehilangan-hutan-seluas-559-96115-hektar/>, accessed on September 11 2023

One of the areas that has the potential to experience deforestation due to extractive activities is in North Morowali Regency, Central Sulawesi– the current smelter location of PT. Gunbuster Nickel Industry (PT. GNI), which was inaugurated by President Joko Widodo in December 2021. PT. GNI is amongst the largest smelters in North Morowali district, Central Sulawesi, with a total investment value of around IDR 42.9 trillion. PT. GNI as a whole will operate 24-line smelters with a production capacity of 1.800.000 tons of ferronickel yearly. This production capacity requires a nickel ore supply of 21.600.00 WMT annually.²³

In addition, in Tompira Village, North Morowali, there is a Nickel and Sand Mining Business License (IUP), composed of those that have or have not been operating in the village. On the border of the Laa River there are 4 Sand and Gravel IUP with a total area of 131.74 hectares. These four permits are also intended to meet the material needs of the ongoing construction of nickel refining smelter infrastructure development. In addition to sand and gravel IUP, the administrative area of Tompira Village is also controlled by 3 nickel IUPs which currently continue to operate with a total area of 3 nickel IUPs totalling at 7,931 hectares²⁴. This project received support from the North Morowali Government through the 2021-2026 RPJMD stating that North Morowali Regency has the potential for various excavated resources and has the potential to be developed. Petasia Timur District is the district that has the highest area for nickel mining resources at 11,506.49 hectares.²⁵

In Southeast Sulawesi, deforestation caused by extractive activities is seen in Konawe Regency, Southeast Sulawesi Province through the satellite image below.²⁶

| Spatial Dimentions | Temporal Dimentions |
|---|---------------------|
|  | November 2020 |

23 WALHI Sulawesi Tengah dan Komunitas Peduli Perempuan Dan Anak (KPPA), Pemanfaatan Kerang Sungai (Meti) Oleh Masyarakat Desa Tompira Dalam Kepungan Industri Ekstraktif Di Morowali Utara, n.d, pg. 6

24 WALHI Sulawesi Tengah dan Komunitas Peduli Perempuan Dan Anak (KPPA), Pemanfaatan Kerang Sungai (Meti) Oleh Masyarakat Desa Tompira Dalam Kepungan Industri Ekstraktif Di Morowali Utara, n.d, pg. 10

25 Ibid, pg. 2

26 <https://majalah.tempo.co/read/investigasi/165153/deforestasi-nikel>, accessed on September 10 2023



| | |
|--|---------------|
|  | June 2021 |
|  | November 2021 |

Table 3: Shows mining expansion (brown) and slowly consumed forest (green).

Kolaka Regency is also one of the regions in Southeast Sulawesi that has very active mining activities – marked by the emergence of nickel mining companies spread across various districts. One of the locations of nickel extractive activities that have the potential to change the landscape of forest areas can be found in the Pomalaa Block, in Kolaka Regency can be seen through the map below.²⁷

²⁷ WALHI Sulawesi Tengah dan Komunitas Peduli Perempuan Dan Anak (KPPA), Op. Cit, pg.25

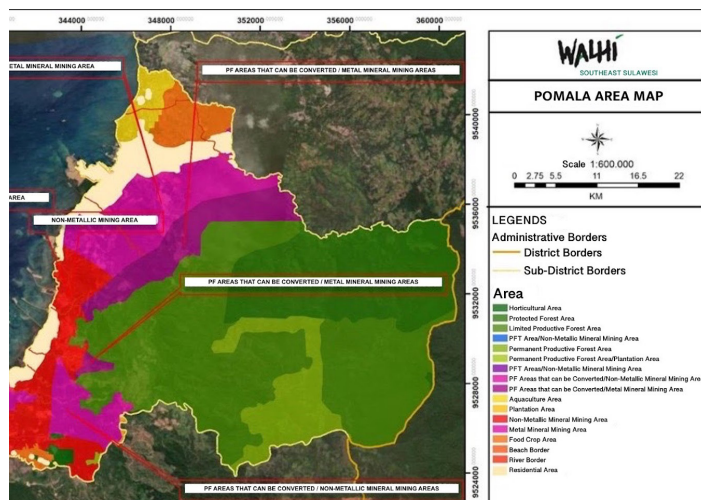


Figure 8 : Map of Pomalaa Area. Analysed by Walhi Southeast Sulawesi 2023.

Changes in Pomalaa's landscape have expanded over time until now, especially with the current government policy that grants nickel mining business licenses (IUP) to several nickel mining companies to operate. There are at least 14 IUP nickel mining companies operating in Pomalaa Block, Kolaka Regency.²⁸

Most of the 14 companies operate in areas fed by rivers. The distribution of fourteen IUPs in the Pomalaa Block can be seen on the map below.²⁹



Figure 9: Map of Southeast Sulawesi Provincial Spatial Plan 2023.

In South Sulawesi, deforestation in this region began with the issuance of a Contract of Work (CoW) for laterite nickel mining PT. International Nickel Indonesia (INCO) in 1968. The contract work was renewed in 1996 and will expire in 2025. P.T. INCO then transformed into PT. Vale Indonesia Tbk (PT. Vale). In Sulawesi, PT. Vale has a concession area of 118,017 hectares and in

28 Minerba One Data Indonesia (MODI) Ministry of Energy and Mineral Resources, 2022.

29 WALHI Sulawesi Tengah dan Komunitas Peduli Perempuan Dan Anak (KPPA), Op. Cit, pg. 33

South Sulawesi an area of 70,566 hectares. One of the company's concessions that potentially threaten the existence of the Nusantara pepper barn is in the Tanamalia Block or Lumereo-Lengkona Mountains, specifically in Loeha Village and Rante Angin Village with a total area of around 16,820.61 hectares. In that area there are also pepper plantations owned by thousands of people who have been operating for ages in Loeha Raya.³⁰

Efforts to protect the landscape of rainforest ecosystems in Southeast Sulawesi are now met with the existence of nickel mining extractive industries. Extractive nickel mining activities in Southeast Sulawesi are substantially expansive, threatening the rainforest area of Southeast Sulawesi. The total area of Southeast Sulawesi Province is 15.3 million hectares with an area coverage:³¹

- 1) Land area 3, 81 million hectares
- 2) Ocean area of 11, 49 million hectares,
- 3) Forest area approximately 2,32 million hectares or about 60% of Southeast Sulawesi's land area

| Province | Concession area (until 2021) | Deforestation (hectares) |
|--------------------|---|--|
| South Sulawesi | 94.142,91 (6 IUP) | 4.752,87 ha (2016 - 2021) |
| Southeast Sulawesi | 510.282 (252 IUP) – during 143 IUP (2023) after demonstration | 120.000 hectares (2011 - 2020) ³² |
| Central Sulawesi | 92.604 (37 IUP) | 240.000 hectares (2011 - 2020) ³³ |
| Total | 295 IUP: 690.442 hectares | |

Table 4: The IUP concession area column is analyzed by the author of the 2021 Year-End Notes of Walhi Sulawesi Region. The deforestation area column for Southeast Sulawesi and Central Sulawesi is analyzed from Tempo's investigative report "Tentacles of the Nickel Mines"

The amount of deforestation is wider than the concession area because in some cases, companies clear forests without Forest Area Borrow to Use Permits (IPPKH).

If photographed nationally, referring to information published by the Ministry of Energy and Mineral Resources, Indonesia has 330 nickel mines (Minerba One Data Indonesia-MODI 2023). The deforestation caused by these 330 mines has been measured in three different ways.

First, deforestation is measured by radar (RADD). This technology allows the detection of forest area loss every two weeks, even in cloudy sky conditions. Deforestation measured by radar has been published by Wageningen University in the Netherlands since 2019. Depicting Indonesia's current

30 WALHI Sulawesi Selatan, Loeha Raya, Lumbung Merica Nusantara: Etnografi Perkebunan dan Studi Valuasi Ekonomi Kebun Merica di Tanamalia Luwu Timur, 2023, pg. 33

31 WALHI Sulawesi Tenggara, Ancaman Espansi Pertambangan Nikel Terhadap Wilayah Kelola Rakyat Di Kecamatan Pomalaa, Kabupaten Kolaka, Sulawesi Tenggara, 2023.

32 Tempo Data 2022

33 Tempo Data 2022

330 nickel concessions, on top of areas detected by radar that have been deforested since 2019– it is discovered that nickel mines in Indonesia have cleared 9.808 hectares of forest since 2019.

Second, looking further back in time, our measurement process is of all deforestation that has occurred within the same 330 concessions since 2000. The results of this measurement show a much higher number. The University of Maryland in the United States has been using satellites to measure deforestation in Indonesia since 2000 (GLAD) and releases this dataset every year. By taking deforestation figures measured by satellite from 2000 to 2018 and adding them to deforestation figures measured by radar from 2019 to the present, it is found that 156.281 hectares of deforestation has occurred within the territories of 330 nickel concession in Indonesia since 2000 to date.

Third, since not all of these 330 mines have existed since 2000, our third measurement only looks at how much deforestation has occurred in each concession since the year, in which MODI 2023 stated as the most recent year in granting concession permits (amendment year). The calculations are limited to how much forest is logged by mining in Indonesia. Since the most recent grant of permits or permit amendment alone, may result in an underestimated amount of deforestation carried out by the mine.

This is because of the mines, many had been operating and clearing forest for years before they received the latest permits or amendment. The area of forest deforested since 2014 as an adjustment year was 78.948 hectares.

| No. | Measurement method | Measurement period | Total deforestation (hectares) |
|-----|---------------------------------|--|--------------------------------|
| 1 | Radar (RADD) | 2019 to date | 9,808 hectares |
| 2 | Radar dan satellite (GLAD+RADD) | 2000 to date | 156,281 hectares |
| 3 | Radar and satellite (GLAD+RADD) | From the latest permit amendment to date | 78,948 hectares |

Table 5: Three ways to measure total deforestation carried out by nickel mines in Indonesia

The table below stated that in 10 of the 12 nickel mines with the highest deforestation rates for which data are available, half were established before the year, which, according to MODI 2023, is the year of their most recent amendment or permit grant. (This corresponds to the starting date indicated by MODI 2014.)

| Nickel mining concession in Indonesia (and year of last permits adjustment, or latest permit grant, according to MODI 2023) | Deforestation rate since the latest permit amendment/latest permit grant - present | | Year amended/ latest permit grant according to MODI 2014 | Minimum number of years each mine operations started dwarfed by MODI 2023 |
|---|--|--------------------|--|---|
| | Ranking | Deforestation area | | |
| Vale Indonesia – Soroako Bloc (2014) | 1 | 14,837 | 2010 | 4 |
| Bintang Delapan Mineral (2010) – Morowali | 2 | 2,991 | 2010 | 0 |

| | | | | |
|--|----|-------|---------------|---------|
| Aneka Tambang – North Konawe (2010) | 3 | 2,773 | 2010 | 0 |
| Vale Indonesia – Pomalaa Bloc (2014) | 4 | 2,630 | 2010 | 4 |
| Vale Indonesia – Bahodopi (2014) | 5 | 2,602 | 2010 | 4 |
| Bukit Makmur Istindo Nikeltama (2012) – Petasia | 6 | 1,912 | 2012 | 0 |
| Multi Dinar Karya (2011) – Tojo Una Una | 7 | 1,720 | Not Specified | Unknown |
| Wana Kencana Mineral (2016) – Halmahera | 8 | 1,441 | 2010 | 6 |
| Pertambangan Bumi (2009) – South Konawe | 9 | 1,343 | 2009 | 0 |
| Weda Bay Nickel (2019) – Halmahera | 10 | 1,323 | 2010 | 9 |
| Lawaki Tiar Raya (2013) – North Kolaka | 11 | 1,299 | 2013 | 0 |
| Ceria Nugraha Indotama (2012) – Lapao-Pao Bloc, Kolaka | 12 | 1,214 | Unavailable | Unknown |

Table 6: Of the 10 nickel mines with the highest deforestation rates in Indonesia for which data is available, half were established (and may have cleared forest land) before the year indicated by MODI 2023 as the year of the most recent permit grant or permit amendment.

Source: MODI 2014 and MODI 2023

Note: “Not Specified” indicates that MODI 2014 does not states concession permit start dates. tanggal mulai izin konsesi. “Not Available” indicates that the concession is not listed in MODI 2014.

The table above shows that of the ten nickel mines with the highest deforestation rates in Indonesia for which data are available, half already exist (and may have cleared forest land) before the years indicated by MODI 2023 as the year of the most recent permit grant or amendment. However, we have decided to limit deforestation measurements based on each nickel concession in the year in which MODI 2023 has observed the latest amendment or permit grant, because with a sufficiently high degree of confidence, we know that from the most recently recorded amendment or permit grant year to date, the legal boundaries of concessions will most likely not change.

We also know that, within the same time frame, each concessionaire has assumed legal control over his or her land area, and that any deforestation that occurs within that land area is likely to be carried out by the concessionaire himself for mining purposes. In other words, even though we know that about half of these concessions have cleared forest land long before the last period of amendment or permit grants, we still decided -- out of extreme caution -- to measure deforestation that began only in the year in which each concession underwent its most recent amendment or permit grant, even though this method most likely results in underestimating the amount of deforestation that has occurred.

Of the twelve mining concessions above, eight of them are known to be concessions located in Central Sulawesi, Southeast Sulawesi, and South Sulawesi. The total deforestation carried out by only 8 nickel concessions is 33,321 hectares—for the three provinces. For this reason, Sulawesi Island is of main concern due to its very high deforestation rate caused by nickel mining.

2) Risk of biodiversity loss and forests with high carbon stocks

The author managed to collect satellite images of some of the highest-ranking companies causing deforestation in the Sulawesi region, namely PT Vale, Bintang Delapan Mineral, and Aneka Tambang. All three are listed as concession holders who endanger the sustainability of natural forests and do business on land with a high level of biodiversity (key biodiversity area – KBA). All three companies operate in forest areas with high carbon stock (HCS) – where HCS has the amount of carbon under the canopy and soil. HCS plays a very important role in maintaining carbon which if disturbed then the carbon that was previously stored can be released into the atmosphere and increase greenhouse temperatures. HCS includes old forests (still intact) and also young forests that are regenerating, which if allowed to regenerate then the function of the forest can be restored.³⁴ Therefore, business activities above HCS are at great risk to climate change. The table below shows three concessions that ranked in the top three for removing tree cover – including high-carbon tree cover and high biodiversity land cover.

| Name of nickel mining concession with the highest deforestation rate in Indonesia | A | | B | C | D | |
|---|---|----------|------------------------------------|---|--------------------|-------------|
| | Loss of tree cover from permit readjustment - now | | % High Carbon Forest ³⁵ | Hectares categorized as main area of Biodiversity | Productive forests | |
| | Ranking | Hectares | | | Hectars remained | % remaining |
| Vale Indonesia – Soroako Bloc | 1 | 14,837 | 51.0 | 34,124 | 14,859 | 87.1 |
| Bintang Delapan Mineral | 2 | 2,991 | 85.1 | 17,105 | 18,635 | 87.9 |
| Aneka Tambang – North Konawe | 3 | 2,773 | 60.6 | | 4,838 | 89.6 |

Table 7: illustrates the three nickel concessions with the highest deforestation rates in Indonesia that overlap with forests with high carbon stocks, and Key Areas of Biodiversity.

³⁴ For further information regarding HCS, you can visit the website: <https://highcarbonstock.org/>

³⁵ This section is taken from an indicative map that still needs to integrate HCS assessment. However, it can still be seen through imaging where there are young forests with medium to low density to high density forests.

I. PT Vale (Soroako Bloc)

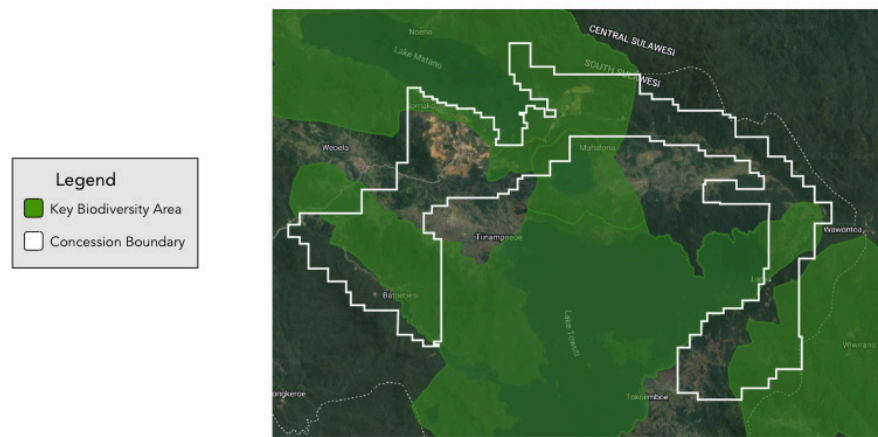


Figure 10: Location of PT Vale (Soroako) minerals that overlap with key biodiversity areas according to IUCN.³⁶

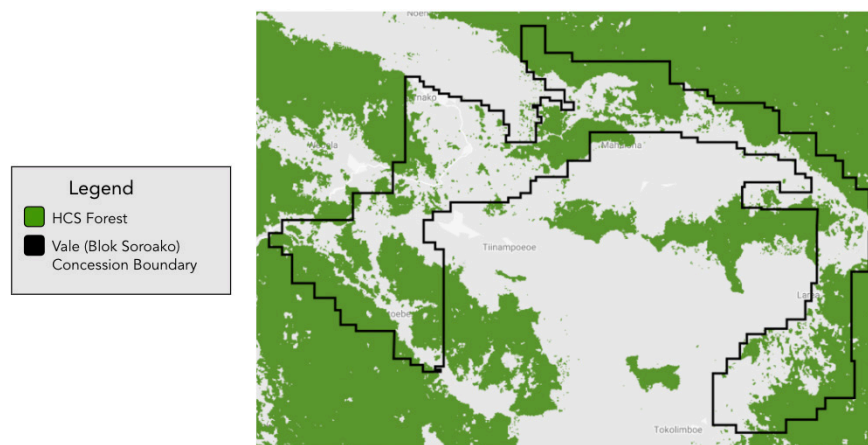


Figure 11 : Location of PT Vale (Soroako) minerals that store carbon stocks. ³⁷

II. Bintang Delapan Mineral

The map interpreted below: is located on the eastern side of Central Sulawesi, within the Indonesian Industrial Estate Morowali (which it partially owns). The Bintang Delapan license was issued (or last amended) in 2010. Figure 12 shows that in 2021, 85 percent of the area can be said to be High Carbon Stock forests. This, coupled with the fact that Bintang Delapan is the second fastest deforesting nickel mine in Indonesia, suggests that the company will continue to increase carbon emissions from deforestation along with clearing natural or regenerating forests.

³⁶ BirdLife International (2023) World Database of Key Biodiversity Areas. Developed by the KBA Partnership: BirdLife International, International Union for the Conservation of Nature, American Bird Conservancy,
³⁷ Citation: Lang, N., Schindler, K., & Wegner, J. D. (2021). High carbon stock mapping at large scale with optical satellite imagery and spaceborne LIDAR. arXiv preprint arXiv:2107.07431.

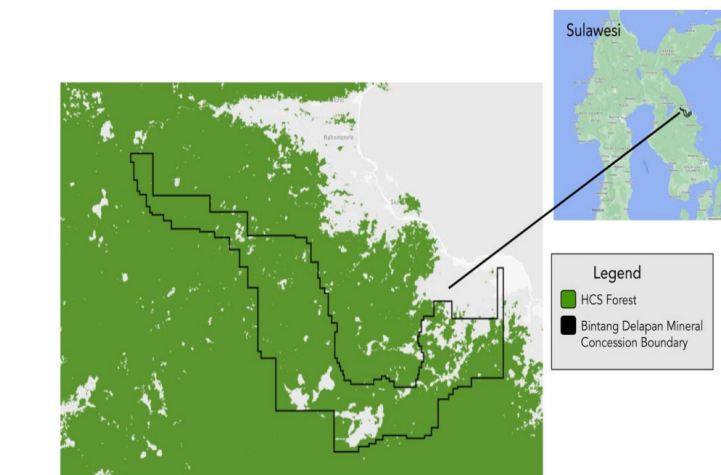


Figure 12: Location of Bintang Delapan Mineral containing High Carbon Stock (HCS) Forests in 2021

The Map interpreted below: The Bintang Delapan are almost entirely located within an area classified by the International Union for Conservation of Nature (IUCN) as a "Major Area of Biodiversity" with an overlapping area of 17,105 hectares (see Figure)

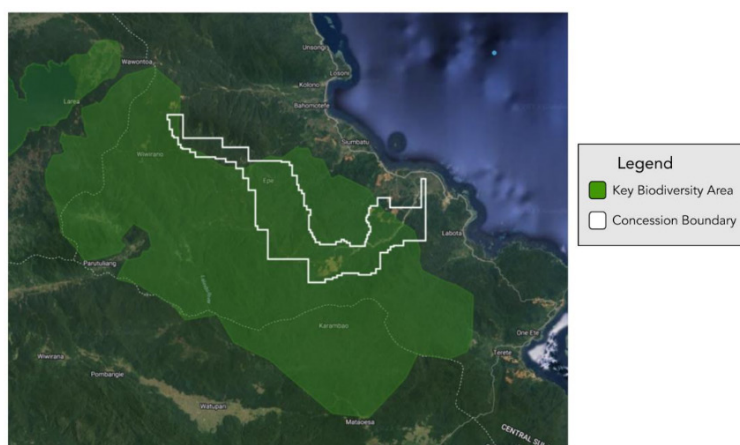


Figure 13: Some of the Major Areas of Biodiversity cover most of the Bintang Delapan nickel mineral concession area

III. **Aneka Tambang**

The map interpreted below: the picture below is the largest nickel mining block owned by the state-owned mining company, Aneka Tambang. The block was granted in 2010 and is located on the west coast of Southeast Sulawesi province. The figure below shows that in 2021, more than 60 percent of concessions were classified as High Carbon Stock forests. This, coupled with the fact that Aneka Tambang is the nickel mine with the third fastest deforestation rate in Indonesia, shows the potential for Aneka Tambang to continue to increase deforestation-related carbon emissions in the future.

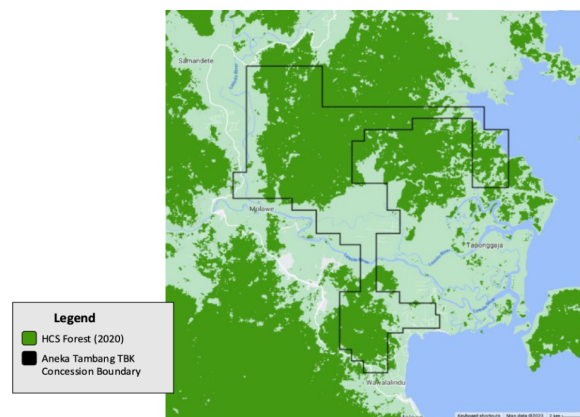


Figure 14: High Carbon Stock Forest inside Antam's nickel mining concession in 2021

The map interpreted below: Satellite detection of Aneka Tambang clearing of Protected Forest between 2001 and 2021 is shown in Figure 6 below. Until 2021, 962 hectares of protected forest in the Aneka Tambang block has been opened. As discussed in Section 2 (above), two nickel blocks owned by Aneka Tambang were authorized to cut down Protected Forest by the DPR at the beginning of this century (Down to Earth 2004). Whether the concessions mapped below constitute one of the two blocks remains undetermined.

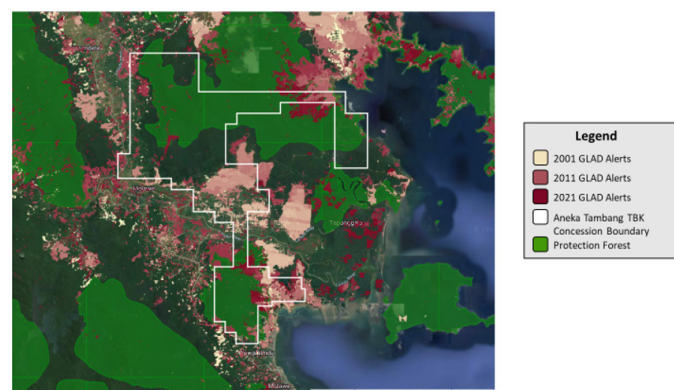


Figure 15: Antam's Logging of Protected Forest – as detected by satellite (GLAD)

3) Nickel Refining and Large Destructive Power and Marine Pollution Risk

Nickel processing facilities are often located close to nickel extraction sites, so energy-intensive that they require reliable power generation. Existing and planned nickel extraction and smelting projects rely on burning large amounts of coal, diesel and fuel oil, resulting in a significant emissions footprint. In Sulawesi, for example, a boom in nickel mining and smelting has tripled electricity demand in the region. New coal-fired power plants are being planned to meet that demand. Thus, some of the biggest socio-ecological impacts of nickel

mining and smelting arise from the energy equipment required to maintain nickel content and most nickel mines and processing facilities are associated with significant air, water, and soil pollution.³⁸

In addition, something that requires serious concern is the matter of waste disposal. There seems to be no safe way to dispose of the highly toxic tailings produced by HPAL smelters, at least in Eastern Indonesia. Although there are four methods to remove toxic tailings, there are drawbacks to these four methods

| Method of Disposal | The process of tailings disposal through this method | Drawbacks of this tailing disposal method | |
|------------------------------------|--|--|---|
| | | Long version | Short version |
| Deep Sea Tailings Placement (DSTP) | Tailings are discharged through a drain pipe located more than 100 meters below sea level. The waste is then supposed to flow into deeper waters because of the density of the water | The experience of China's Ramu nickel production in PNG shows that despite its location close to deep-sea trenches, DSTP does not guarantee clean disposal. The main problem is the "sliding" or rising of highly polluted water from subsurface sewers that rise back to sea level. Currently, it has been legalized through PP 22/2021 Article 390. Despite Indonesia's international commitment to reject DSTP. | It can be done albeit highly risky. It is currently legal. |
| Dry stacking | Tailings are placed in large open spaces, in dry conditions. | Dry stacking can be done in the Australian desert, but it cannot be done in equatorial regions where rainfall rates are high. | Cannot be done in Indonesia. |
| Tailing dam | Natural valleys whose expanses are filled with tailings, which are restrained from lateral movement by the construction of dams or barriers. | In wet climates, water accumulation puts pressure on tailings dams. Sulawesi and Maluku are also areas with high tectonic activity, and dams may not be fully earthquake-resistant. The collapse of the Vale tailings dam in Brazil in 2019 caused 270 fatalities. A dam holding Indonesia's Weda Bay Industrial Estate waste collapsed and allegedly spilled into the sea on January 30, 2022 (BHRR 2023: 15). | Can be done but very risky |
| Backfilling | The tailings are backfilled into the emptied mine pit. | Tailings from the HPAL process exceeded mined material by a ratio of 1.4 to 1.0. Therefore, mines whose ore goes into the HPAL plant will not have space to accommodate tailings coming out of the factory. Leaching into the surrounding water surface is also a big risk. | It can only be done if the logistics can be managed, and it is still quite risky. |

Table 8: HPAL waste disposal methods

³⁸ Daniel Macmillen Voskoboynik and JD Farrugia, The Nickel Nexus: Mapping the Frontiers of Carbon Neutrality, JHU-UPF Public Policy Center, 2022, pg.3.

As mentioned in Part C above, after the Job Creation Law was promulgated by the Government of Indonesia through PP 22/2021 it provides permission for additional entrepreneurs to dispose of mining refining waste into the sea (DSTP). The problem arises because DSTP is not environmentally friendly at all. Economically, DSTP is the waste disposal process that reduces production costs the most. But environmentally, the costs that nature must incur to improve itself due to DSTP cannot be calculated with nickel profit figures. HPAL smelters that are waiting for the MoEF to issue DSTP permits (with a depth of 230 - 230 m)³⁹. Two other HPAL smelters are under construction. The Morowali Sea has 76% of the world's coral reefs, 37% of coral reef fish, and the world's largest mangrove forest.⁴⁰

After the promulgation of PP 22/2021, PT Amman Mineral Nusa Tenggara's gold mine was granted a DSTP permit by KHLK as of March 2022. This permit was granted to dump 58.4 million tons of tailings per year into the sea of Sumbawa, West Nusa Tenggara, Indonesia.⁴¹ Even after only six months since the permit was granted it has already severely impacted the fishermen. Fish swimming patterns change, causing fishermen to suffer losses.⁴²

Ecological Action and People's Emancipation (AEER) together with the Rosa Luxemburg Institute released a study that provides a picture of the environmental hazards that lurk DSTP. No studies can guarantee the non-upwelling of nickel hazardous waste into shallow seas. 15% of nickel waste pollutants will be released into shallow seas; DSTP causes hyper sedimentation; causing it to be prone to plume sharing, where small particles of waste carried by currents move for kilometers and enter the fish food chain, because marine life has a vertical migration lifestyle, it is very likely to kill marine life that migrates from shallow to deep sea.⁴³ This condition further shows the weakness of nickel mining governance due to the absence of a protection perspective for Indonesian marine life. Even though the east sea is named the Coral Triangle.⁴⁴

b) Human Rights Impact

Indigenous peoples/local communities in extractive sites are those most vulnerable to nickel mining activities. Conflict is common in the border areas of nickel mines and residential areas.⁴⁵ Based on the Customary Territory Registration System, there are 158 maps of customary territories with a total area of 1.6 million hectares spread across 5 (five) provinces and 27 regencies/cities in the Sulawesi region, as listed in the table below:⁴⁶

39 n Morowali, Obi, and Weda Bay. see: AEER and Rosa Luxemburg, 2020, [HYPERLINK "https://www.aeer.or.id/2023/06/23/rangkaian-pasok-nikel-baterai-di-indonesia-dan-persoalan-sosial-ekologi/"](https://www.aeer.or.id/2023/06/23/rangkaian-pasok-nikel-baterai-di-indonesia-dan-persoalan-sosial-ekologi/) <https://www.aeer.or.id/2023/06/23/rangkaian-pasok-nikel-baterai-di-indonesia-dan-persoalan-sosial-ekologi/>.

40 Dirhamsyah, et. al, State of the Coral Triangle: Indonesia, Mandaluyong: Asia Development Bank, 2014.

41 Muhamad Fajar Riyandanu, "Dituding Buang Limbah Ratusan Ribuan Ton ke Laut, Ini Respons Amman" This article is posted on Katadata.co.id titled "Dituding Buang Limbah Ratusan Ribuan Ton ke Laut, Ini Respons Amman" , <https://katadata.co.id/ameidyonasution/berita/636d1d289d06f/dituding-buang-limbah-ratusan-ribu-ton-ke-laut-ini-respons-amman> author: Muhamad Fajar Riyandanu Editor: Ameidyo Daud Nasution", <https://katadata.co.id/ameidyonasution/berita/636d1d289d06f/dituding-buang-limbah-ratusan-ribu-ton-ke-laut-ini-respons-amman>.

42 Fachrur Rozie, "Pembuangan Limbah ke Laut Bikin Nelayan Sumbawa Barat Susah Cari Ikan", <https://www.liputan6.com/news/read/5163095/pembuangan-limbah-ke-laut-bikin-nelayan-sumbawa-barat-susah-cari-ikan?page=2>.

43 AEER dan Rosa Luxemburg, *ibid*, pg. 37 - 43.

44 ADB, Coral Triangle Initiative, dan gef, "State of The Coral Triangle: Indonesia", 2014, <https://www.adb.org/sites/default/files/publication/42409/state-coral-triangle-indonesia.pdf>

45 Walhi Region Sulawesi, "Catatan Akhir Tahun 2021: Red Alert Ekspansi Nikel di Indonesia", https://www.walhi.or.id/uploads/blogs/Foto%20Rilis/Catatan%20Akhir%20Tahun%20Region%20Sulawesi_%20Red%20Alert%20Ekspansi%20Tambang%20Nikel%20di%20Sulawesi.pdf

46 <https://www.celebesta.com/2021/08/20/update-pengakuan-wilayah-adat-region-sulawesi/>, accessed on September 24 2023

| Region | Data related to indigenous peoples |
|--------------------|--|
| Central Sulawesi | There are 66 customary territories maps with an area of 632.377 hectares spread across North Morowali, Sigi, and Tojo Una-Una regencies. Of the total area of customary territories recorded in the Customary Territory Registration System, 514.548 hectares have customary forest potential. Meanwhile, 7.797 hectares of them have been determined through district/city law products. |
| South Sulawesi | There are 82 customary territories maps with an area of 820.493 hectares spread across Bulukumba, Enrekang, Luwu, North Luwu, Sinjai, and North Toraja regencies. Of the total area of customary territory, 613,948 hectares of potential customary forests and 4.637 hectares have been determined through district law products. |
| West Sulawesi | There are 5 customary territories maps with an area of 88,449 hectares, and 60.940 hectares of which are potential customary forests in Mamasa Regency. |
| Southeast Sulawesi | There are 4 customary territories maps with an area of 67.469 hectares, and 29.355 hectares of them have customary forest potential |
| North Sulawesi | There is 1 customary territories map with an area of 3.506 hectares and 634 hectares of which are potential customary forests |

Table 9: Map of Customary Territories and Forest Area Based on the Customary Territory Registration System

There are at least seven human rights that are often violated by nickel mining companies, including: rights to land and resources (including the right to property), the right to a clean environment, the right to life, the right to culture, forced displacement, consultation and participation in decision making, and discrimination against women.

The impact of extractive activities that will affect the human rights of indigenous peoples and local communities can be seen in the figure below.⁴⁷

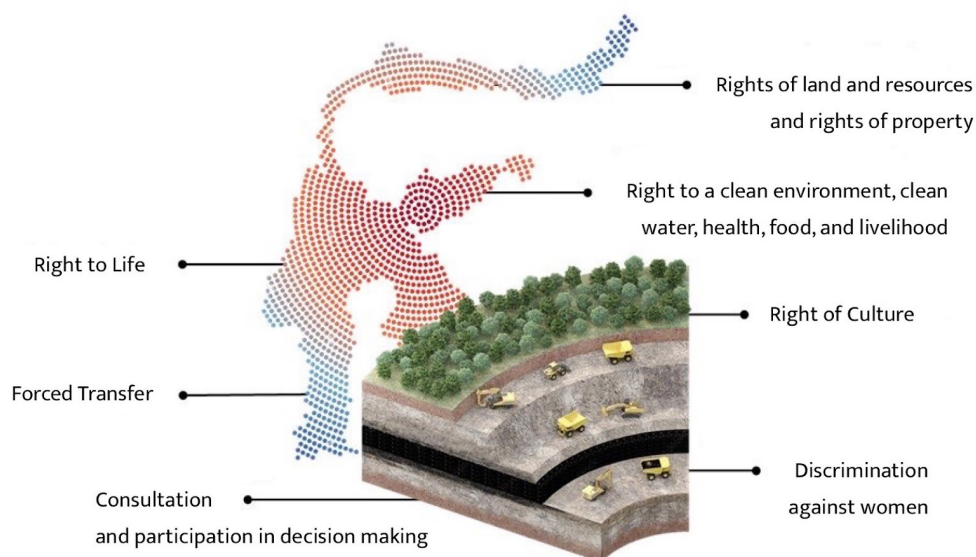


Figure 16 : The impact of extractive activities that affect the human rights

⁴⁷ WALHI Sulawesi Selatan, Loeha Raya, Lumbung Merica Nusantara: Etnografi Perkebunan dan Studi Valuasi Ekonomi Kebun Merica di Tanamalia Luwu Timur, 2023, pg. 8-14

1) South Sulawesi in the Grip of PT Vale

In South Sulawesi, the existence of PT. Vale has affected the rights of communities around concession areas. In addition to potentially threatening the existence of rainforests, the company's operations also have the potential to threaten the survival of thousands of farmers in Loeha Raya. Further implications, mining will have a devastating impact on the economic, social, and cultural rights of pepper farming communities. In every potential abuse of rights due to women's corporate operations, both individuals and collectives, including women farmers will feel a different and distinctive impact because of their womanhood.⁴⁸

Walhi South Sulawesi identified the human rights violations of pepper farmers in Loeha Raya as follows:⁴⁹

| Potentially-infringed rights | Elaboration of the aforementioned rights |
|------------------------------|--|
| Right to Land | The total area of land used as a pepper plantation by the community is around 4,239.8 hectares with the calculation that for each hectare of land, 1,850 to 2,000 pepper trees have been planted. |
| Right to work | Farmers are people who have a special dependence and attachment to land. Losing land means farmers will lose their jobs and thus their ability to; achieve a decent standard of living; have a safe, peaceful and dignified place to live and; develop an agricultural-based culture. |
| Right to Decent Living | The 4,239.8 hectare pepper plantation area owned by the Loeha Raya community can produce approximately 24,544 tons of pepper each year. Pepper yield is estimated at 1.4 trillion. Based on the calculation results, the Total Economic Value (TEV) of the Loeha Raya Pepper Plantation in the Lumereo-Lengkona Mountains, Tanamalia Block, reached IDR. 10,793,379,462,000 or 10.7 trillion rupiah |
| Right of the farm workers | Loss of employment and right to a decent income |

Table 10: Identifying the Impact of Violations of Farmers' Rights in Loeha Raya, South Sulawesi.

Further impacts caused by PT. Vale's increasingly expansive operations are that female farmers have the potential to lose their land, which will result in the potential loss of a decent income, both as farmers and as farm workers. loss of income will consequently affect the right to adequate education for children, the right to children and families, and the right to food. This situation will also impact the farmer family's resilience to face natural disasters due to climate change. Losing access to land will ultimately impact the enjoyment of other rights because

⁴⁸ WALHI Sulawesi Selatan, op.cit., pg.36-38

⁴⁹ This table was analysed from the Walhi South Sulawesi publication "Lumbung Merica Nusantara Di Tengah Perluasan Pertambangan Nikel: Etnografi Perkebunan & Valuasi Ekonomi Kawasan Tanamalia, Luwu Timur, Sulawesi Selatan", 2023, <https://walhisulsel.or.id/4133-laporan-hasil-riset-lumbung-merica-nusantara-di-tengah-perluasan-pertambangan-nikel-etnografi-perkebunan-valuasi-ekonomi-kawasan-tanamalia-luwu-timur-sulawesi-selatan/>

women farmers end up trapped in debt thus reducing their income significantly. This situation ultimately has the potential to lead to a trend in increasing rates of domestic violence, including violence against children.⁵⁰

Apart from that, women farmers are also significantly impacted by the lack of access to water because they often must fetch water from water sources that are located far away, thus adding to the double burden on women farmers. The presence of officers on plantations also increases the risk of rights violation; officers' presence is more than likely to induce feelings of intimidation, fear, anxiety and worry when they work on the plantations. Female farmers are also at risk of being the target of violence, especially those who champion land rights through protests due to the repressive actions of the authorities.⁵¹ Thus, the expansion of PT Vale will have the potential to perpetuate the feminization of poverty because female farmers' access to land is affected by mining expansion. This situation will have implications for the pepper supply chain which involves female farmer workers, female collectors, female traders and women's groups who depend directly or indirectly on the pepper supply chain.⁵²

The burden of women is reflected on Hasniah's family; her house is directly across the Nickel Ore stockpile, and there is only about 15 meters distance between her door and the operation. The dense activity of trucks carrying nickel ore from the jetty to the stockpile pollutes the air of the surrounding community. This, coupled with factory activities that produce dust, smoke and pungent odors have become Hasniah's daily diet.



Figure 17 and 18: Appearance of dust in the homes of PT Vale nickel mining victims

With dust filling her house, Hasniah now suffers from disease all over her body. According to the results of the doctor's examination, Hasniah suffers from cholesterol, gout, high blood pressure, a dry cough with phlegm and shortness of breath. Apart from her, her siblings and grandchildren were also victims of air pollution.

50 WALHI Sulawesi Selatan, op.cit, p. 6

51 Ibid, p. 6

52 Ibid, pp. 36-38

The mining exploration plan of PT. Vale also does not provide farmers who own the land proper information, thus preventing them from fully and meaningfully participating in the use of their plantation land.⁵³ In fact, this situation shows that protection of farmers' rights is inadequate in the management of agriculture and natural resources in Indonesia.

2) PT. Gunbuster Nickel Industry impoverishes the people of Central Sulawesi

North Morowali Regency, Central Sulawesi, is the exploitation area of PT. Gunbuster Nickel Industry (PT. GNI). It is not an exaggerated claim to say that the business effectively impoverishes and starves the population by depriving the civilians of their sources of livelihood. WALHI Central Sulawesi and the Women and Children Care Community (KPPA) has identified potential rights that would be harmed due to the impact of the company's extractive operations, which can be seen at the table below;⁵⁴

| Potentially-infringed rights | Elaboration of the aforementioned rights |
|------------------------------|---|
| Right to work | Utilize the river to catch shellfish and shrimp |
| Right to food | Obtaining Mussels and shrimp for family consumption |
| Right to Decent Livelihood | The catch is sold to collectors and processed into various derivative products On average, each fisherman has an monthly income of 3 million which is used to meet their family's needs |
| Right to cultural identity | River utilization has been carried out based on traditions passed down from generation to generation Catching is done by netting using traditional tools when the river water level is falling and diving to the bottom of the river |

Table 11: Identification of Human Rights Impacts Due to Extractive Activities in North Morowali Regency

3) Human Rights Impact of Nickel Mining in Southeast Sulawesi

Extractive activities in mining also impacted Southeast Sulawesi Province. Nickel mining in the Pomalaa Block has a negative impact on farmers and Community Management Areas (WKR) as their source of livelihood. Nickel mining activities are only hundreds of meters away from settlements and rice fields, making people live in anxiety. The rights affected by nickel extractive activities from the identification results of WALHI Southeast Sulawesi can be seen in the following table;⁵⁵

⁵³ Ibid, p. 20

⁵⁴ Ibid.

⁵⁵ Ibid.

| Potentially-infringed rights | Elaboration of the aforementioned rights |
|------------------------------|--|
| Right to work | Rice fields were damaged due to mud floods and pollution The coastal ecosystem for seaweed cultivation is contaminated with nickel material |
| Right to clean water | The river is polluted by waste |
| Right to decent livelihood | Rice productivity has decreased, previously one harvest produced 7-10 tons of grain, due to nickel mining activities the community could only harvest 5-6 tons The productivity and quality of other grasses decreases This decline will have an impact on farmers' income |
| Right to health | The skin experiences irritants and other diseases Contaminated agricultural products pose a risk to health |

Table 12: Identification of Other Impacts Due to Extractive Activities in the Pomalaa Block

Furthermore, WALHI Southeast Sulawesi identification results show that there are other impacts caused by extractive activities as shown in the table below.⁵⁶

| Potentially-infringed rights | Elaboration of the aforementioned rights |
|------------------------------|--|
| Consumer protection rights | Consumers risk their health due to consumption of contaminated agricultural products |
| Children's rights to play | The coastline, which is usually a place for children to play, is polluted due to mud sedimentation |
| Right to mobility | Mud floods enter the highway, causing traffic jams |

Table 13: Identification of impacts caused by extractive activities in the Pomalaa Block

E. FRAGILE MINING GOVERNANCE POLICIES LEADS TO NICKEL NEO-EXTRACTIVISM PRACTICES IN SULAWESI

Increasing demand for transition minerals poses risks for various stakeholders, which actually hinders the sector's contribution to sustainable development and hinders efforts to combat climate change. Weak governance and corruption present major challenges for Indonesia, which is blessed with abundant natural resources. Indonesia faces a risk of increasing contestation between human rights and environmental protection, and the needs of the global community.⁵⁷

Paul Collier, Development economist, developed a formula for the relationship between poverty, resources and governance:⁵⁸

nature + technology – regulation = looting

nature + technology + regulation = prosperity

⁵⁶ Ibid.

⁵⁷ Michelle Michot Foss and Jacob Koelsch, Need Nickel? How Electrifying Transport And Chinese Investment Are Playing Out In The Indonesian Archipelago, Rice University's Baker Institute for Public Policy, 2022.

⁵⁸ Penelope Simons and Audrey Macklin, , The Governance Gap: Extractive Industries, Human Rights, and The Home State

As a follow-up to the revision of the Mining and Coal Law, President Joko Widodo issued Presidential Decree Number 3 of 2023 concerning Licensing or Agreements in the Mining Sector in Forest Areas, which amends Presidential Decree 4 of 2004 issued by Megawati Soekarno Putri. This Presidential Decree essentially provides 16 mining companies—7 of which are nickel mines with a concession area of 361,346 hectares—with Work Contract Agreements, Mining Business Permits (IUP), and Mining Authorizations. This *Beschikking* then provides many conveniences for nickel miners to: 1) not be subjected to the 10% quota in production and protected forests; 2) be automatically granted 7 nickel mines Borrow-to-Use Forest Area Permits and order the Ministry of the Environment to immediately issue IPPKH; 3) obtain convenience as subsidiaries of PT Aneka Tambang to be given approval and orders to release forest areas in East Halmahera; 4) expand the provision of special forest areas from the previous 356,554 to 361,346 ha.

| No. | Government Permit | Date of signing | Type of permit | Company name | Minerals | Activity permitted | Location | | Width of the licensed area (ha) |
|-----|-------------------------------------|-------------------|----------------|--------------------------|-------------------|-------------------------|--|---|---------------------------------|
| | | | | | | | Province | city | |
| 1. | 82/EK/KEP/4/1967 | 7 April 1967 | KK G-I | Freeport Indonesia Comp. | Copper, Gold, dmp | Production | Papua | Mimika | 10.000 |
| | 7 April 1967 | | | | | | | | |
| | B-392/Pres/12/1991 | 30 December 1991 | KK G-V | Freeport Indonesia Comp. | Copper, Gold, dmp | Exploration | Papua | Mimika, Paniai, Jaya Wijaya, Puncak Jaya | 202.950 |
| 2 | B-121/Pres/9/71 | 4 October 1971 | KK G-II | Karimun Granit | Granite | Production | Riau islands | Karimun | 2.761 |
| 3 | 22 September 1971 | | | | | | | | |
| | B-745/Pres/12/1995 29 December 1995 | 15 January 1996 | KK G-II | INCO Tbk. | Nickel | Production | South Sulawesi, Central Sulawesi, Southeast Sulawesi | Luwu Utara, Kolaka, Kendari, Morowali | 218.528 |
| 4. | 097B/Jl.292/U/1990 5 October 1990 | 5 October 1990 | PKP2B G-I | Indominco Mandiri | Batubara | Production | East Kalimantan | Kutai Timur, Kota Bontang | 25.121 |
| 5. | No. | 30 September 2022 | IUP | Aneka Tambang Tbk | Nickel | Production | North Maluku | Halmahera Timur | 3.648 |
| | 1103/1/IUP/PMDN/2022 | | | | | | | | |
| | No. | 30 Sep 2022 | IUP | Sumber Daya Arindo | Nickel | Production | North Maluku | Halmahera timur | 14.421 |
| | 1104/1/IUP/PMDN/ 2022 | | | | | | | | |
| | No. | 30 Sep 2022 | IUP | Nusa Karya Arindo | Nickel | Production | North Maluku | Halmahera timur | 20.763 |
| 6. | 1103/1/IUP/PMDN/ 2022 | | | | | | | | |
| | B-43/Pres/11/1986 | | | | | | | | |
| | 6 November 1986 | 2 Des 1986 | KK G-IV | Natarang Mining | Gold dmp | Construction | Lampung | Lampung Selatan, Tanggamus, Lampung Barat | 12.790 |
| 7. | B.143/Pres/3/1997 17 Maret 1997 | 28 April 1997 | KK G-VI | Nusa Halmahera Minerals | Gold dmp | Production Construction | North Maluku | Halahera Utara, Halmahera Barat | 29.622 |
| 8. | B-53/Pres/1/ 1988 19 January 1998 | 19 Februari 1998 | KK G-VII | Pelsart Tambang Kencana | Gold dmp | Exploration | South Kalimantan | Kotabaru, Banjar, Tanah Laut | 201.000 |
| 9. | 850/A/1/1997 | 20 November 1997 | PKP2B G-III | Interec Sacra Raya | Batubara | feasibility study | East Kalimantan and South Kalimantan | Pasir, Tabalong | 15.650 |
| 10. | B-53/Pres/1/1988 | 19 January 1998 | KK G-VII | Weda Bay Nickel | Nickel | Exploration (detail) | North Maluku | Halmahera Tengah | 76.280 |
| 11 | 19 January 1998 | | | | | | | | |
| | B-53/Pres/1/1988 | 19 January 1998 | KK G-VII | Gag Nickel | Nickel | Exploration (detail) | Papua | Sorong | 13.136 |
| 12 | B-53/Pres/1/1988 | 19 January 1998 | KK G-VII | Sorikmas Mining | Gold dmp | Exploration (detail) | North Sumatra | Mandailing Natal | 66.200 |
| 13. | 19 January 1998 | | | | | | | | |
| | 1170/20.01/UPG/1999 | 7 Sep 1999 | KP | Aneka Tambang Tbk (B) | Nickel | Exploration (detail) | Southeast Sulawesi | Kendari | 14.570 |

Table 14: Nickel concessions that are given the privilege of not enforcing Law Number 41 of 1999 concerning Forestry are contained in the Attachment to Presidential Decree No. 3 of 2023 concerning Amendments to Presidential Decree Number 41 of 2004 concerning Licensing or Agreements in the Mining Sector in Forest Areas.

Indonesian mining law is then regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining. The rules marked the start of a new phase of state intervention. The law introduced a new licensing system and instructed companies to use domestic mining services rather than foreign mining services. In addition, the aim of this law is to shift Indonesian mineral production away from mere extraction activities by attracting investment into the metal manufacturing sector. This legislative product then provides more opportunities for Indonesia's economic elite to own mining concessions.⁵⁹

Furthermore, regulations were established through Government Regulation Number 23 of 2010, which requires mining companies to process and purify the minerals they mine as added value to their products before exporting. This regulation requires companies holding work contracts or mining permits to be given a five-year grace period to prepare investments in processing facilities. This major shift in policy led to major changes in the movement of foreign investors in the domestic market.⁶⁰

The government have also drafted various regulations to accelerate the use of electric vehicles.⁶¹

| Regulation Title | Substance |
|---|---|
| Presidential Decree Number 55 of 2019 concerning Acceleration of the Battery-Based Electric Motor Vehicle Program for Road Transportation | Regulates the requirement to use domestic component levels (TKDN). |
| PP Number 73 of 2019, which was amended by PP No. 74/2021 | One of the important points contained in the PP is the 0 percent Luxury Goods Sales Tax (PPnBM) on Battery-Based Electric Motorized Vehicles. |
| Presidential Instruction Number 7 of 2022 | Use of battery-based electric motorized vehicles as operational service vehicles and/or individual service vehicles for central and regional government agencies. It contains directions for accelerating the development of electric vehicles, including for ministers and regional heads. |

Table 15: Regulation concerning the acceleration to electric vehicles.

The creation of a policy ecosystem to accelerate the electric motorized vehicle program further strengthens foreign dominance, especially the Tsingshan Group from China which currently operates the largest nickel syndicate in the world, including nickel ore mining, nickel refining, refining, ferronickel production, raw steel production, logistics, port management, trade, and transportation. This syndicate of nickel companies—which is the most important element of the electric vehicle supply chain—is managed by Tsingshan. Tsingshan's vertically integrated operations illustrate how a company's historical presence in a country with high regulatory uncertainty can paradoxically provide a starting point for relatively stable downstream expansion. A broadly integrated supply chain not only equips Tsingshan with the flexibility necessary to manage uncertainty, but also gives them significant leverage in dealing with governments looking to expand end-to-end development in the same way.⁶²

59 Angela Tritto, *How Indonesia Used Chinese Industrial Investments to Turn Nickel into the New Gold*, Carnegie Endowment for International Peace, 2023, p. 5

60 Ibid, p. 6

61 <https://www.kompas.id/baca/ekonomi/2022/10/15/regulasi-percepatan-penggunaan-kendaraan-listrik-sudahkah-efektif>, accessed on 24 September 2023

62 In 2017, the company acquired Wenzhou-based Ruipu Energy to handle production of advanced lithium-ion battery technology. In September 2018, Tsingshan joined GEM, Brunp Recycling, and Hanwa in signing another joint venture agreement for the company. construction of a factory to produce nickel sulfate crystals from nickel laterite in Indonesia. Later, the group

Efforts to encourage the downstream mining sector were then further strengthened through Law Number 11 of 2020 concerning Job Creation. This law is assumed to be a modality for restoring the economy, especially in the mining sector. However, it must be acknowledged that the environmental implications of the law regarding the simplification of business licensing and land acquisition have the potential to cause norm conflicts because they intersect with forestry and environmental sector legislation. The fundamental changes mandated by this law have undermined the standard environmental protection norms contained in Law no. 41 of 1999 concerning Forestry and Law no. 32 of 2009 concerning Environmental Protection and Management.⁶³ One of the provisions in this legislative product—Articles 110 A and 110 B—actually gives companies that have exploited these natural resources time to complete their permits until November 2 2023.⁶⁴

If you look at the existing policy ecosystem, there is the potential for policies that have been set by the Indonesian Government to fail to manage governance risks, including mining governance. The diversity of mineral governance risks at the national and local government levels that need to be responded to through the creation of a strong policy ecosystem, can be seen in the table below:⁶⁵

| Governance Risk at Levels | Description |
|--|--|
| Local government Governance risks for local stakeholders | More exploration and mining for transition minerals could encroach on conservation areas and the territories of indigenous peoples and land-connected areas. |
| | Pressure to approve mining projects can limit time for community consultation and impact assessments |
| | Mining methods that use a lot of water can cause water scarcity and can have negative impacts on communities, especially women and girls. |
| | Rising commodity prices can trigger an increase in unregulated or illegal artisanal and small-scale mining. |
| | Local government capacity constraints can hinder effective planning for achieving sustainable development |

signed a joint venture with Guangzhou Automotive Corporation Group and Guangxin Holding Group to invest in a new vertically integrated company for battery production. Even further downstream, Tsingshan signed a 5.5 billion yuan (US\$850.73 million) deal with Xuzhou Construction Machinery Group Co. Ltd. in January 2021 to invest in new energy vehicle projects. Overall, Tsingshan estimates nickel equivalent production of 600,000 tons in 2021, 850,000 tons in 2022, and 1.1 million tons in 2023. See, Angela Tritto, loc.cit

63 The Constitutional Court decided that the Job Creation Law was conditionally unconstitutional, the government issued a Government Regulation in Lieu of Law or Perppu Number 2 of 2022 concerning Job Creation which is substantially the same as the Job Creation Law, the substance of the regulated norms still ignores environmental aspects.

64 <https://www.kompas.id/baca/humaniora/2023/01/28/sisi-lingkungan-hidup-tetap-diabaikan-dalam-perppu-cipta-kerja>, accessed on 18 September 2023

65 Kathryn Sturman, et.al., op.cit., p. 12

| | |
|---|--|
| National Governance risks for the country | Robust public geological data has not been developed which could hinder competition in the development of transition minerals. |
| | Regulation may lag behind the development of transition mineral markets, resulting in governance gaps. |
| | Accelerated contracts and permits can increase the risk of corruption. |
| | The substance of local policies and state participation can trigger special treatment and corruption |
| | Unclear tax arrangements throughout the mineral value chain that are in transition can result in a loss of government revenue. |
| | Price volatility can result in unpredictable revenue streams and macroeconomic planning challenges. |
| | Export-oriented mining policies may fail to realize the potential benefits and added value of minerals. |
| | Rushed procurement of low-carbon energy and transport infrastructure could open new channels for corruption. |

Table 16: Risk of Fragile Mining Governance

Constraints on climate change and land use have been pushed back for decades as extractive industries have destroyed forests and fossil fuel emissions that cause global warming have increased significantly since pre-industrial times. Biosphere integrity warns that the pillars of the biosphere are being damaged by humans consuming too much biomass, destroying too much habitat, and deforesting too much land.⁶⁶ Six of the nine current planetary boundaries that have been breached can be seen in the diagram below. The length of the slice represents the current state.⁶⁷

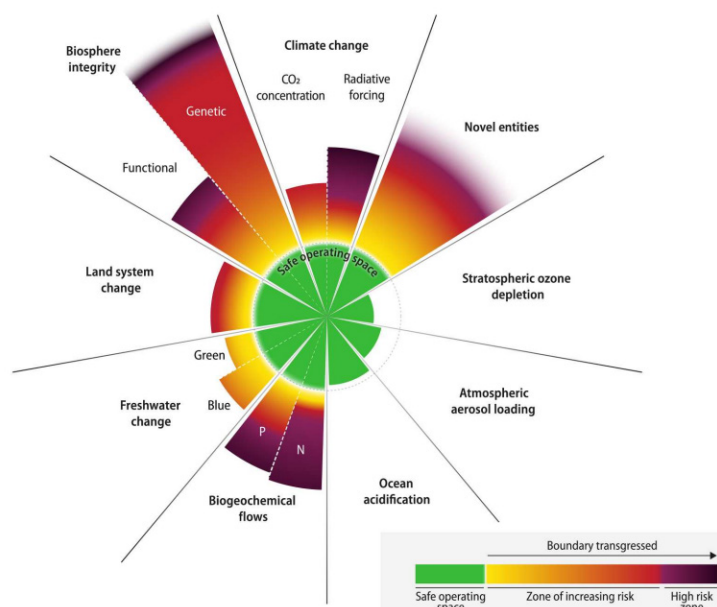


Figure 19: Violation of Six of the Nine Planetary Boundaries

⁶⁶ Julia Conley, Six Out of Nine Planetary Boundaries Already Crossed, Study Warns, <https://www.commondreams.org/news/six-planetary-boundaries-crossed>, accessed on 24 september 2024

⁶⁷ Six of the nine limits have been breached. In addition, ocean acidification is approaching its planetary limits. The green zone is the safe operating space (below the limit). Yellow to red represent increasing risk zones. Purple indicates high-risk zones where interglacial earth system conditions are violated. See, Katherine Richardson, op.cit., p. 4

The planetary boundaries framework should inspire governance and policy strategies at all levels⁶⁸ to implement human rights due diligence and environmental due diligence for all companies investing in Indonesia. The implementation of the obligation to carry out human rights due diligence and environmental due diligence is an expression of the right to regulate to protect human rights affected by corporate operations, products and services, including extractive industries.

Companies must be required to carry out environmental due diligence to identify, prevent and calculate how they deal with adverse impacts on the environment, including climate change. This is in response to the fact that climate change and human rights are essentially interrelated because climate change threatens the effective enjoyment of various human rights including the rights to life, water and sanitation, food, health, housing, self-determination, culture and development.

Reflecting on the various problems described above, it is also necessary to refer to how states and businesses should act based on what are called the United Guiding Principles on Business and Human Rights (UNGPs) issued by the UN Human Rights Council in 2011.⁶⁹ This international instrument is a new breakthrough in placing corporations as actors who bear responsibility for human rights. There are three main pillars regulated in the UNGPs, namely:⁷⁰

1. State obligations to protect human rights;
2. Corporate responsibility to respect human rights;
3. Expanding access to recovery for victims of human rights violations.

The first pillar, namely the state's obligation to protect human rights, emphasizes the importance of steps that States must take in terms of effective policies, laws and regulations to prevent, investigate, punish and redress human rights violations. Other important operational indicators according to the UN Guiding Principles of States' duties to protect human rights, include the need to build policy coherence, both horizontally and vertically. The second pillar is the Company's responsibility to respect human rights. In carrying out their responsibilities, companies must know and be able to demonstrate that they respect human rights by, namely (1) making a policy commitment that supports the responsibility to respect human rights; (2) carrying out human rights due diligence continuously to identify, prevent, mitigate and quantify human rights impacts; (3) implementing processes that enable remediation for impacts that reduce human rights for their business activities and contributions. Furthermore, the third pillar of the UN Guiding Principles emphasizes the need for victims to have greater access to effective remedies, both judicial and non-judicial, including state-based and non-state mechanisms.⁷¹

68 Ibid

69 Indonesia supports UN Resolution No.17/4 in June 2011. There are 31 principles formulated by the UNGPs related to these three pillars, consisting of 10 principles of obligations for the government, 1 for companies, and 7 for access to recovery.

70 The Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, UN Doc. A/HRC/17/31, 21 March 2011.

71 Alex Newton, *The Business of Human Rights: Best Practice and the UN Guiding Principles*, (Oxon: Routledge, 2019), p. 7

Despite the many achievements and records regarding the use of the content of UNGPs principles, its implementation in Indonesia is still weak. Even the regulations that have emerged recently are contrary to the spirit of the UNGPs.⁷² One part that can be encouraged is the implementation of the second pillar of the UNGPs, which calls for the obligation of business groups to respect human rights. Business actors have a responsibility to respect human rights and, as far as possible, prevent negative consequences from their business activities on respect for human rights. In the mining context, there are several things that must be done, for example business actors must open themselves up and consider human rights in their business process policies; Business actors must also look at UNGPs beyond obligations, this means that if the laws or regulations in the country where they operate are lower than the regulations or standards that the company/business has had, then the company needs to continue to implement the highest standards that it has. Finally, as a business entity, in its business governance and its relationship with the supply chain, companies operating in Indonesia need to consider the international commitments outlined in IRMA, which has provided high standards regarding mining. This is important, because if we refer to the Responsible Mining Foundation (RMI) data, most mining companies have not been able to demonstrate their effectiveness in overcoming economic, environmental, social and governance problems (RMI 2020).⁷³

F. STAKEHOLDERS IDENTIFICATION

Based on the various facts and data presented above, we see that there are at least four key actors who have shared responsibility for improving mining governance in Indonesia. They are: the Indonesian government, the Indonesian House of Representatives, independent state institutions, business actors and the international world.

a) The government

The government bears the great responsibility to change the extractivist mindset in Indonesia. The government must stop aiming for economic improvement by destroying the environment and threatening human rights. If the Indonesian government truly feels it has an obligation to stop the rate of global warming as it promised in the Paris Agreement, then stopping all activities with environmental damage is the right way to go. This includes designing strong mining governance, both at the national and regional levels by adopting an energy transition strategy that is fair, sustainable and based on human rights.

⁷² On September 26 2023, Presidential Regulation of the Republic of Indonesia Number 60 of 2023 concerning Business Strategy and Human Rights (Stranas B&HAM) was issued. Regarding Business and Human Rights policies in Indonesia. Previously, Komnas HAM had established a National Action Plan for Business and Human Rights through Komnas HAM Regulation No. 1 of 2017. Then, several actions related to business and human rights were included in the 2015-2019 RANHAM through Presidential Decree no. 33 of 2018.

⁷³ The policies and practices of 38 large-scale mining companies in the world, including Indonesia, can be measured through corporate responses to local workers, sustainability of community life, worker complaints, community complaints, air quality, water quality, waste management and emergency preparedness. See, Responsible Mining Foundation, RMI Report 2020: Summary, (Nyon: Responsible Mining Foundation, 2020), p. 3

In developing mining governance, The government—together with the House of Representatives (DPR RI)—must include plans to identify and mitigate human rights risks, environmental risks and corruption at all stages of the global nickel value chain, through instruments in the areas of licensing and contracts, procurement, due diligence human and environmental rights, and other policies needed to regulate investment in the nickel extractive sector in Sulawesi. In other words, the government must exercise the authority to regulate investment while still providing protection for investors' rights, but at the same time the need to respect the rights of farmers, local communities and environmental protection remains articulated in investment instruments.

b) The people's parliament

The House of Representatives must again monitor all mining dynamics in Indonesia. This includes preparing a nickel mining road map. The DPR must play an active role in improving mining governance in Indonesia. One of them is using the authority it has: making laws that reduce the pace of the climate crisis, monitoring the government, stopping the use of the state budget to inject funds – directly and indirectly – into nickel mining.

c) National independent agencies

The Independent bodies should be responsible in carrying out regular monitoring of the nickel mining situation and issue recommendations that can restore environmental damage and human rights violations that have occurred in nickel industrial areas.

d) Business actors (investors and companies)

Investors are to involve affected communities, especially farmers, women, and other vulnerable groups to build trust and social license for transitional mineral projects. This involvement should start early and be carried out continuously throughout the investment cycle by creating space, access, and mechanisms for participation and consultation with the affected parties. Simultaneously, due to the intersection between extractive activities in Sulawesi with indigenous communities, the government must strengthen investors' commitment to implementing Free Prior Informed Consent (FPIC) procedures.

Business actors—especially international ones—must understand that manufacturing environmental protection in their country by destroying other countries does not help improve the current climate crisis.

e) Global actors

Based on the Paris Agreement, global actors have a responsibility to encourage southern countries to achieve development that does not damage the environment.

G. CONCLUSIONS AND POLICY RECOMMENDATIONS

The new developmentalism paradigm adopted by President Joko Widodo's government appears to be clearly articulated through a development strategy with a neo-extractivist approach which leads to a lot of ecological damage and human rights violations. These extractive activities continue to accelerate the rate of rainforest deforestation in Sulawesi which threatens biodiversity. Deforestation that occurs in Sulawesi will have implications for strengthening environmental polycrisis, which is characterized by climate change, increasing pollution and air pollution and loss of biodiversity. Further implications of environmental polycrisis are social crises which include increasing economic inequality, poverty and social conflict due to loss of access to land, work and decent income. Increasingly expansive nickel investment deepens risks and exacerbates the vulnerability of farmers and communities, especially women living around locations affected by nickel extractive activities.

The impact on human rights and the environment continues to worsen due to fragile mining governance. The fragility of mining governance can be seen from the dominance of corporations that have taken over the mining governance space. This situation will have implications for discrimination and systematic violations of farmers' rights which tend to continue to increase along with the confiscation of resources, especially land rights. Often the setting of development agendas in the energy and mineral resources sector, including the use of nickel as an energy transition mineral, has had a negative impact on the rights and environment of farmers.

Meanwhile, the economic benefits of this development are only enjoyed by other parties, giving rise to environmental injustice and energy injustice. The government has an obligation to protect the rights of farmers affected by corporate actions that have the potential to harm farmers' rights, especially access to land affected by extractive activities. Extractive companies are also responsible for increasing incidents of human rights violations and environmental degradation. At this point, the government must provide space for the reinterpretation of natural resource governance through an approach based on human rights and environmental protection.

Based on the matters described above, the Indonesian Government and the DPR RI as policy makers must:

1. Aligning the paradigm of "state control" with "as much as possible for the prosperity of the people" as stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. So that the prosperity of the people becomes a consideration for the state. This is useful for ensuring that no individual is impoverished as a result of state control of Indonesia's natural resources.
2. Develop a blueprint for nickel mining governance that does not damage the environment and threaten human life;
3. Issue a moratorium on nickel mining permits until a blueprint for responsible nickel mining governance is issued;
4. Revise the Mining Law, Job Creation Law, and UUPA to restore provisions that strengthen environmental protection and human rights in mining governance;
5. Revoke the exception provisions for forestry provisions as stated in Presidential Decree No. 3 of 2023 concerning Amendments to Presidential Decree No. 41 of 2004 concerning Licensing or Agreements in the Mining Sector in Forest Areas.
6. Request the Government to revoke the DSTP provisions in PP 22 of 2021 solely to protect Indonesia's underwater biodiversity;
7. Opens the latest list of all nickel mines that have received Borrow-Use Permits. The Job Creation Law through the provisions of Articles 110A and 110B opens up the possibility for miners working without permits in forest areas to settle fines before November 2023. As a form of transparency both in the process and in the interest of community participation, ideally the Ministry of Environment and Forestry and ESDM will jointly disclose data on fines and payments. granting a Borrow-to-Use Forest Area Permit (IPPKH) before November 2023.



Policy Paper
Civil Society Critical Notes on Nickel Mining Policy and Governance

October 2023

Drafting Team:
Satya Bumi
Walhi Sulawesi Selatan
Walhi Sulawesi Tengah
Walhi Sulawesi Tenggara

