

Is Buyat Bay Contaminated?

A Political Ecology Approach on State-Mining Company Relationship in Indonesia

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Abstrak

Perdebatan tentang kasus pencemaran di Teluk Buyat beberapa tahun lalu merupakan potret sempurna dari relasi antara negara-bisnis-masyarakat dalam industry ekstraktif di Indonesia. Potret tersebut semakin menegaskan studi-studi sebelumnya tentang sosok negara predator, bahwa dalam sistem ekonomi kapitalisme, relasi antara negara dengan bisnis lebih merupakan relasi yang saling melengkapi dalam menghisap sumberdaya. Pada saat yang bersamaan masyarakat selalu ditempatkan dalam situasi yang tidak menguntungkan. Tulisan ini menggunakan pendekatan political ecology untuk membedah hubungan tersebut. Berbagai strategi diupayakan masyarakat sipil untuk melakukan perlawanan namun kekalahan di pihak masyarakat selalu tampak dari hasil bentuk pergumulan ini.

Keywords: buyat bay, political ecology, extractive industry, state-business-society relationship

"...despite the smaller portion of FDI they receive, the environmental and social impacts of primary sector industries such as oil, mining, and forestry are often highly visible and extensive" (Zarsky, 2002: 33

Introduction

Newmont Minahasa Raya (NMR), a joint venture company owned 80% by US-based Newmont Mining Corporation and 20% by Tajung Serapung Indonesia, which started its production in March 1996 at the time when authoritarian regime ruled in Indonesia. Their mining area covers some 527,448 hectares in Minahasa and Bolaang Mongondow Districts in North Sulawesi Province, Indonesia. After nearly eight years extraction of gold by open-pit and STD method, the company stopped their operation in August, 31 2004 or five years after Indonesia entering democratic political system.

During eight years of excavation ore-bodies, process the ores to produce gold-ore, and dispose its tailing into seabed, many reports from mass media and scientific research asserted degradation of environmental quality and dreadful condition of local people health as well as their subsistence-based livelihood, particularly who lived surrounding the mining area (WALHI, 2004a; JATAM, 2000a; Kurmurur and Lasut,

2001; Maimunah et.al, 2004). On the other side, based on reports from environmental monitoring plans and appraisal from independent consultant, NMR claimed their mining processes are totally safe for land and marine life and not jeopardized any local peoples. They said the mining operation did not contravening any Indonesian mining and environmental regulations. Supported by numerous independent scientific studies, NMR believed the allegations of pollution in Buyat Bay have no basis in fact (Department of Environment Report, 2004; Ness, 2007; www.BuyatBayFact.com accessed on November 26, 2008).

Conflict between NGOs and NMR was brought to Supreme Court and continues today. Each party has launched legal and scientific statements, arguments, and opinions through public spaces (arenas) such as courtroom, mass media, literatures, scientific forums, and the internet. Each of them insists on their own position and evidences, attempting to prove that Buyat Bay was or was not contaminated. Meanwhile, Indo-

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nesian government, who ideally performs as mediator and in the same time protects social and economic rights, uphold NMR arguments. This showed the state roles in developing countries, regardless of authoritarian or democratic, was constantly standing side-by-side with mining company.

The aims of this paper are to demonstrate the power relationship between state, society and mining company in Indonesian mining industry and to explore how these power relationships influence human-environment interaction in the region. Portraying power relationships and its impacts to human-environment interaction on Buyat Bay case is essential to anticipating other cases which have similarity. In keeping with those aims, my analysis will try to answering two questions: How is the power relationship between the state, society, and NMR in the case of Buyat Bay influenced by discourse and power struggle? How do local people and NGOs develop their own discourses to counter those of state and company discourses? This research paper is based on documentation-internet research. I collected literatures, media articles, Environmental Impact Assessment (EIA) report, and other reports from government NMR, NGOs as main sources.

Theoretical Framework

In order to grasp the impacts of the power relationship between the state, NMR, and society on human-environment interactions in Buyat Bay, I will be utilizing political ecology approach. In doing so, I shall traces back the roles of state in mining industries in Indonesia and the ingenuity of local people (and NGOs) struggles to redeem their environment and natural resources. The former will deal with the state and multinational mining corporations' relationships to development practices in Indonesia and their encounters with the economic and political structures at the local and national levels to environment. The later will focus on how customs are rooted in the natural environment and played significant roles in forming human-environment interaction. This is in line with Mullins assumption which said, 'the growing economic openness of developing countries and increasing global environmental change have influenced how the environment is used at the local level' (Mullins, 2004: 164).

Political ecology approach can be used to understand the complex relationship between nature and society. In doing so, Watt said, "the analyst should observe who have access and control over resource and how they exercise its, and furthermore, what are the implications of this form for

environmental health and sustainable livelihood" (Watts, 2000: 257). The utilizing of political ecology in multidisciplinary studies is well known since three decades ago. As mentioned in Nygren article, "many analysts are using political ecology approach for certain purposes, one of them is to analyze the historical circumstances leading to local patterns or resource use and control" (Nygren, 2000: 14). For similar reason, I will employ this approach to understand how Indonesian politic – in authoritarian as well as democratic – era is shaping the state and mining company relationship.

Economist in developing countries believes foreign direct investment is main source for financing their development agenda. By this, they can generate wealth, stimulate employment, and fill the purse of government (Zarsky, 2002: 31). Many of government officials, politicians, or even scholars in Indonesia, agree with this mainstream economist assumptions. In order to attract foreign direct investment flows in the primary sector industries, they create good environment for investment. They prepare structural and infrastructure privileges, such as tight regulation on labor and industrial relationships, good quality and access on road, regulation on land acquisition for development purposes, good electricity and water usage, and the most important is low standard of mining and environment regulations.

The low standard of mining and environmental regulations in host country (developing state) is become an advantage for mining MNC to make profits. The absence of global norms in mining regulations makes MNC often implementing their own policy, in Zarzky (2002:36) term as "self-regulate". "Self regulate" means they can set their own standards or simply follow local practice in the different countries in which they operate. A good example for this term in gold mining industries is contrast between the presence of regulations on the practice of submarine tailing disposal (STD) in developed countries and their absence in developing countries. Under Clean Water Act (CWA) in United States and Metal Mining Liquid Effluent Regulations (MMLER) in Canada, coastal metal mine operations are not permitted to discharge tailings to submarine (Dixon, 2002: 1; Coumans: 2002: 1). Meanwhile, without regulation on the practice of STD in most developing counties, including Indonesia, MNCs are left to regulate themselves.

Differing from most mainstream economists that I have mentioned above, a small part of scholars and activists, predominantly coming from opposite school of thought, believes MNCs are part

of a development strategy which created negative externalities, such as widens the gaps between the rich and poor people, damages the environment, and destroys local cultures (Zarsky, 2002:31). Inspired by this idea, they organize social movements to impose control over multinational corporations and irresponsible states, most especially with concern for the environmental and cultural externalities. Their demands typically associate with socio-political, economic, cultural identity right and ecological justices.

In contemporary world politics, the accumulation of power by different actors is mostly through the possession of knowledge and technology. Mullins gives a good example for this, she said:

"The state, through the appropriation of mass media and telecommunication systems, not only has been able to control the discursive means (knowledge and ideas), but also possesses the ability to track down and control access of other actors to the environment through the use of satellite image. Non-governmental organizations, by gaining access to mass media and the internet, are also able to express their environmental agendas and interests to the public." (Mullins, 2004: 164).

The example mention above is "symmetric techniques" of accumulating powers, but in many cases, the mode of accumulating powers can be happen through "asymmetric techniques". The state often uses modern institutions such as regulation, military, political parties, scientific languages, universities, or mass media to accumulate their powers. Meanwhile, NGOs and local communities often exercise non-modern institution, such as custom, local religion, and local knowledge to accumulate their power or to counter state and company discourse.

NMR: a brief history

In 1986, NMR signed a contract of work (Kontrak Karya/KK) to mine for gold with the Government of Indonesia. The NMR mine covers some 527,448 hectares in Minahasa and Bolaang Mongondow Districts in North Sulawesi, Indonesia. Before NMR, Ratatotok villagers farmed on fertile hills and Buyat Bay villagers fished from rich-natural sea resource. But since NMR began mining in March 1996, the people's subsistence-based lifestyle has been changed.

According to the Environmental Impact Assessment (EIA) submitted by NMR to the government of Indonesia in 1994, no consultation or agreement was made with the local community in written contract, and they did not include a proper plan for environmental management. The EIA

document only provides interviews with a small amount of respondents, head of households and housewives, and a questionnaire in four villages (EIA, 1994).

By the time when NMR signed contract of work with the government Suharto and his authoritarian regime had gained its peak of power and control over Indonesian politic and economy. Influenced by the idea of power in Javanese philosophy, General Suharto built his regime, called New Order, in hierarchy structure and placing his authority on the top of pyramid.

During the New Order (1967-1998), Indonesia is best describes as a "patrimonial state". In this system, *desa* (village) as lowest unit of government must be obey the higher hierarchical unit of government called *kecamatan* (sub-district), *kabupaten* (district), *provinsi* (province), and central government which is the site of policy making. The central government, supported by military, played a central role in deciding what is best for citizens and how to achieve it. During the New Order, no options were apparent. Considering the political circumstances in this period, all contract of work in mining industry, including the contract with NMR, undoubtedly signed without any proper consultation or agreement with the local community and they did not include a proper plan for environmental management.

Various institutions have conducted many research studies since NMR began extracting gold and diverting its tailing into Buyat Bay. Most of these studies come to conclusion that Buyat Bay is contaminated and local communities are suffering health problems. Wahana Lingkungan Hidup Indonesia/WALHI (the Indonesian Forum for the Environmental) in 2001 reported that from April to May 1999, nearly 50 fisher people suffered skin diseases (WALHI, 2001).

The case of Buyat Bay became nationally and internationally well-known when several NGOs started suing NMR in Indonesian court. Nevertheless, two-year legal battle (law-suit and civil suit) between the environmental NGO lead by WAHLI together with several non-profit local-national organizations (such as, Indonesian Mining Advocacy Network, Earth Indonesia, and Indonesian Center for Environmental Law) over the alleged pollution in Buyat Bay has reached a conclusion. The pollution charges cannot be proven.

The company and its CEO cannot be charged for contaminating the bay. For NMR, this is its second major court victory in the Buyat saga. In November 2005, in a civil case, the South Jakarta District Court ruled against the government, which

had been demanding the company pay US\$133 million in damages for polluting Buyat. Following the verdict in South Jakarta, the two parties reached an out-of-court settlement, with NMR agreeing to pay a total of \$30 million and the government is promising not to appeal the verdict (the Jakarta Post, 2007). For environmentalist groups, the mechanism of out-of-court settlement is not an answer for ecology injustice and human right violence that happened since 1994. This is a strategy for company to avoid another environment and human right charge or sue that probably force them to pay big amount of money for what they have done to environment and local people. It is also a good strategy to publicize that government is concern on environment and human right.

Unchangeable

This section I will describe how state's roles in mining industry are unchangeable. In the New Order authoritarian regime, Suharto sees himself as personification of the state. Each substantive decision that influencing state policies should be passed over his authority. He merely needs public involvement in every stage of policy making processes. This practice also implemented in mining industries. After Suharto regime fall down, public participation in policy making processes on certain sectors becomes greater in the new democratic government. Otherwise, in capital and technological bases sector, such as mining industries, it is hard to endorse public participation in policy making processes. State still develop into center figure who determine what are the best for its citizen. In this political context, state and mining company relationship is unchangeable. It was because state interest on capital inflow from mining company.

The economic and political crisis in 1997-1998 generated sporadic demonstration which demanding Suharto to step down from his presidency. Since the fall of the highly centralized, militarized, and predatory regime under Suharto in May 1998 by huge demonstration led by students, Indonesia has experienced a frequently volatile process of democratization. Meanwhile, decentralization law, democratic election and, a more neutral military institution was introduces in the democratic transition phase. However, whether or not the changing of regime, from authoritarian to democratic, was also followed by the changing of state-MNC relationship must be explored.

Through the fall of the Suharto government, the authority of the central government over regional affairs, including natural resource extraction both on and off Java Island, became weaker.

Weak institutional and regulatory frameworks that had never been allowed to develop in the years of certainty under Suharto were now incapable of controlling natural resource exploitation (Hadiz, 2004).

Under economic crisis conditions and the democratic transition phase, the government expected to look to mining exports at global market prices to generate foreign exchange and tax revenue, stabilize the exchange rate, and keep the fiscal deficit under control. However, the contract of work system, a legacy from former regime, makes it difficult to increase tax rates on existing operations. This conditions affected relationships between the state-NMR. Indonesian government still supports NMR despite the findings from many researches that show NMR mining operations to be damaging the environment and causing danger to local people.

Government is not a single entity because they were formed by many actors and interests. Sometime, one actor or department has different interest or objective with other actor or department. In NMR case, actually, there was political dynamics inside government bodies, both on national level or local level. Nevertheless, these dynamics had never been ended into the shifting of state role in industrial mining policies. This condition was reflected on conflict among minister of environment and other ministers of economic between years 2000 to 2001 and at local level there was also conflict between Independent Research Team and Governor.

In June 2000, the environmental minister, Sonny Keraf ordered NMR to conduct an environmental risk assessment and to detoxify the tailings before dumping them into the sea (Glynn, 2002). Keraf, who was also the chairman of BAPEDAL/ the Indonesian government's environmental impact control agency, acknowledged that the issuance of permits to NMR to build STD in its mining sites was not based on a thorough study. In July 2001, Keraf was replaced as a result of a new Government and cabinet shuffle. Different from the former minister, the new Indonesian Minister of Environment, HE Nabeli Makarim, never explicitly stated that his Department was rejecting or accepting STD method (WALHI, 2004b). The ambiguous statement from the Minister shows the unclear government position whether generating revenue from mining industry or saving environment.

The inter-governmental conflict of interest at national level also happens at local level. Although, the inter-governmental conflict at local

level was rarely covered by mass media but one to another have similarity. For example, a report by the Independent Research Team formed by the Provincial Government of North Sulawesi concluded that the NMR's tailings disposal system in Buyat Bay was improper. One of the recommendations of this team was that waste in the form of these fine particles should not be disposed of on the seabed (Glynn, 2002). However, NMR never followed provincial government recommendation.

The local people and NGOs counter-discourse

Governments support with NMR causes local people voice was not represented in every government decision to attempt Buyat Bay case. Government and company discourses were also influencing public opinion on the impact of submarine tailing disposal. In order to counter their discourse, what strategies that local people and NGOs should carried? In Buyat case, at least there were three asymmetric strategies to counter government and company discourse. Firstly, they were connecting the decline of their customs value and the environmental changes. Secondly, they were doing demonstration and occupying NMR office to have publicity of their struggle. Third, they were using technology and scientific approach to build realistic arguments for public.

Sea pollution has severely impacted the local people whose lives depend on fishing around Buyat Bay. Since the seabed, which is the marine productive area for fish, has been covered by tailings, both fish species and numbers have deteriorated. Fishermen are not able to catch fish around the bay or in the open sea because they do not enough money to buy motorized boats.

In WALHI report, also quoted by Glynn (2002), provides a good description about the local people livelihood before and after NMR began operations.

"In July 1996, only four months after NMR began mining operations, fish production in Buyat Bay had plummeted by 70% and fishermen's incomes had dropped by 50%. Before NMR began its operations, 59 species of fish were found in the Buyat Bay waters and the fishermen could earn US\$51 - 76 per month per family. After 1997, only 13 species were found and the fishermen's income dropped to US\$10 dollars per month per family. Now, fishermen receive less money, yet must row their boats further and further out to sea" (WALHI, 2004a)."

A long time before NMR started mining in this area local people had lived and used natural resource in very sustainable and responsible way. As

a subsistence-based society they consumed fish and other natural resource for their life and brought small part of these resources to market. Their custom such as doing a ritual in every certain month as expression for plentiful sea resource that God has given to them showed the interconnection between custom and environment. But, now, NMR has destroyed their resources and the people do not have any other source of livelihood. Many of them tried to migrate to other area to find another jobs. The meaning of ritual celebration that they use to do was getting evaporate or at least not same anymore.

Demonstrations and occupying NMR office are also method or form of community resistant against the mining. On July 2, 1998, there was demonstration against NMR. It was reported approximately 300 people occupied the NMR office for seven hours. They demanded that all of NMR's labor and environmental obligations as written in the contract of work be fulfilled (Glynn, 2002; JATAM, 2000b).

Local people and NGOs developed technology and scientific based discourse to counter company's discourse. For example they are using scientific research and video documentation. Co-operating with reputable toxicology expert, Prof. Rizal Max Rompas, from Sam Ratulangi University (UNSRAT), North Sulawesi in 1999, they used the report to attack company scientific research on Buyat Bay. The conclusion from Rompas research confirmed high amounts of several toxic compounds in seawater at Buyat Bay which gone over the tolerable threshold allowed by the government law, PP No 20/1990 (Glynn, 2002; Rompas, 1999). Hence, the mining activities of PT. Newmont Minahasa Raya in Minahasa District and Bolaan Mongondow need to be reviewed.

WALHI's underwater video documentation, starting at a depth of 10 meters, also discovered that NMR's tailings had spread, and were deposited throughout nearly all of Buyat Bay (Glynn, 2002). This visualized evidence, a video documentation, which showed serious impacts, ranging from damaged sea grass to dying or dead coral reefs is effective form of counter-discourse as well as a tool for campaign their movement.

Conclusion

From discussion above, it showed that Indonesia's state role in environmental dispute caused by large mining activities was influenced by capital power (multinational corporations). It also argued that Indonesian government is facing a dilemma both on generating revenue from natu-

ral resource or saving the environment. In the case of Buyat Bay, the changing of human-environmental interactions was influenced by state-NMR relationship. As a result of economic crises, ultimately, the Indonesian government supports NMR although many research showed STD mining processes may cause environment stress. Local people, whose depend on fishing at the bay, find their natural resources become limited. This condition pushes them to change their livelihood such as migrating to the city to find another job.

From the case of Buyat Bay, local people and NGOs develop discourses to counter government and NMR discourse through local knowledge, scientific language and social actions such as demonstration. From their local knowledge, by connecting one environmental change to other change, they do understand that large mining activity can cause their natural resource and livelihood to be destroyed. The environmental changes also reduce the meaning of their ritual practices.

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