

Indonesia

Soewito Suhardiman Eddymurthy Kardono (SSEK)

Ira Eddymurthy & David Gaida

LOCAL HUMAN RIGHTS ENVIRONMENT

In 2000 Indonesia's original 1945 Constitution was amended to include provisions for human rights (Chapter XA of the 2nd Amendment of the Constitution). Prior to 2001, the Constitution only provided that citizens have equal status before the law (Article 27) and the right to live and work in human dignity (Article 27(2)). The Constitution was, and still is, governed broadly by the five guiding state principles of *Pancasila*, which among other ideals, promote social justice and religious freedom, albeit only among five state-sanctioned religions. A central feature of the 1945 Constitution and all its amendments is that the responsibility for upholding and protecting human rights is the state's, and there is no mention of that responsibility applying to companies.

The 2000 amendment provided for an expanded list of rights and differentiated between the rights that are held by Indonesian citizens and rights that are held by all people in Indonesia. These rights include freedom of religion (beyond the original five state-sanctioned religions); freedom of movement (Article 28E(1)); the right to protection from discriminatory treatment (Article 28I(2)); and the right to private property without arbitrary interference (Article 28H(4)). Freedom of expression and opinion (Article 28E(3)) is also guaranteed, though this freedom remains subject to prevailing law. The 3rd amendment of 2001 further established a Constitutional Court with the authority to determine the constitutionality of legislation.

Despite being codified in the Constitution, freedom of expression continues to lack legal certainty. Two controversial categories of articles of the Indonesian Criminal Code articulate that freedom of expression can be restrained or prohibited if they express hostility or contempt toward the government ('hate-sowing' articles, 154-156) or if they defame the head of state or display materials which may be offensive to such officials ('*Lese Majeste*' articles, 134-137, 207, 208). These provisions were originally entered into force by the Dutch Colonial Government of Indonesia in 1918 and were used by former President Suharto to suppress criticism of his regime from 1967 through 1998. In 2006 and 2007, the recently established Constitutional Court reviewed both the hate-sowing provisions and the *Lese Majeste* provisions and ruled that neither provided legal certainty and therefore were in violation of the 1945 Constitution (Decision No. 013-022/PUU-IV/2006, Decision No. 6/PUU-V/2007).

However, by 2008, the Constitutional Court upheld the same Indonesian

Criminal Code provisions that it had previously declared unconstitutional, by noting that the Constitution also safeguards one's honour and dignity (Decision No. 14/PUU-VI/2008). The Constitutional Court's position on freedom of expression was maintained in April 2010 when the Court heard a judicial review request to repeal a 1965 blasphemy law, which seemed to contravene the Constitutional human right to freedom of expression and religion. The Court upheld the 1965 law, which carries a maximum punishment of five years in prison for beliefs that deviate from the (now six) state-sanctioned faiths. The Indonesian government has previously used the 1965 law for counter-terrorism purposes.

Indonesia adheres to most international human rights conventions and is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) as of 23 February 2006, in addition to the following:

- The Convention on Corruption (ratified on 21 March 2006);
- The Convention against Torture (CAT) (ratified on 28 October 1998);
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (ratified on 13 September 1984); and
- The Convention on the Rights of the Child (CROC) (ratified on 5 September 1990).

Indonesia signed the International Convention on the Protection of the Rights of all Migrant Workers on 22 September 2004 but has not ratified this treaty. Indonesia has also not ratified the Rome Statute of the International Criminal Court.

The Human Rights Law (Law No. 39 of 1999) establishes a wide range of rights and obligations placed on both the state and individuals. These rights include the protection of the needs of indigenous people by balancing cultural land rights with development (Article 6), the right to just conditions at work, the right to fair compensation and the right to form and join trade unions (Articles 36-42). Women's rights are also codified under Articles 45-51.

In reference to Indonesia's international commitments, Article 7(1) of the Human Rights Law also guarantees the right to use international legal means, including international laws ratified by Indonesia, in response to human rights violations. Article 7(2) of the Human Rights Law provides that any international human rights law that is ratified by Indonesia is legally binding in Indonesia.

The Human Rights Law strengthened and expanded the powers of the National Commission on Human Rights (Komnas HAM), an institution that is funded by, but independent from, the central government. Komnas HAM has the authority to investigate gross rights violations and can now issue subpoenas in the course of its investigations.

The Human Rights Court Law (Law No. 26 of 2000) established an *ad hoc* Human Rights Court with the authority to hear cases involving gross violations of human rights. All of the rulings of the Human Rights Court are subject to appeal to the High and Supreme Courts. Cases brought to the Human Rights Court are first investigated by Komnas HAM, which in turn makes a recommendation to the Attorney General who decides whether to

pursue and bring the case to court. The Human Rights Court can impose a wide range of compensation, restitution and rehabilitation orders as well as prison terms and the death penalty.

Similar to the 1945 Constitution and its amendment in 2000, the Human Rights Law places the responsibility for upholding human rights with the state and does not specifically mention corporations. It does, however, cite that a human rights violation can be committed by individuals (including those acting as representatives of a corporation) and 'groups of individuals' which may or may not be interpreted as corporations. The Human Rights Law also does not equate an individual with a corporation and it is unclear whether such an interpretation could be applied under the law.

In September 2004 Law No. 27/2004 was passed to establish a Truth and Reconciliation Commission to hear cases of human rights violations that occurred prior to the enactment of the Human Rights Court Law of 2000. This Commission was established to deal with the controversial events and alleged human rights abuses of 1965-67 in Indonesia. In 2006, the Constitutional Court ruled that the Truth and Reconciliation Commission did not comply with the 1945 Constitution and was abolished (Decision No. 006/PUU-IV/2006).

Beyond constitutional requirements and Indonesia's human rights laws, there is a wide range of domestic legislation that expressly contains human rights-related corporate social and environmental provisions that apply to companies. The New Investment Law (Law No. 25 of 2007) requires that investors implement good governance and corporate social responsibility initiatives. Investors that exploit non-renewable natural resources are now required to allocate funds for the site recovery process.

The new Company Law (Law No. 40 of 2007) also requires social and environmental responsibility for companies in natural resource industries. These corporate activities must be reported in the annual report and budgeted as a cost. In practice, the provision of corporate social responsibility (CSR) (as defined by Article 74 of the Company Law) has yet to be augmented by supporting government regulations. Business groups filed a judicial review request to the Constitutional Court regarding Article 74 but the Court upheld the CSR provisions in April 2009 (Decision No. 53/PUU-VI/2008).

The Environmental Protection and Management Law (Law No. 32 of 2009) expressly contains civil and criminal liability for companies that breach its provisions, and now requires an environmental licence as a prerequisite for a business licence. Holders of environmental licences in the natural resource sector are also obliged to provide funds for the site recovery process (Article 55).

Mining activity was previously regulated under a 'Contract of Work' system which would typically call for mining companies to contribute to local welfare by building roads, schools or other forms of community development, although this was not mandatory and varied from project to project. The New Mining Law (Law No. 4 of 2009) now specifically requires CSR and calls for a standard percentage of a company's profits

to be contributed to community welfare, although the amount of the percentage was not clarified. Companies have argued that this provision amounts to a tax and that corporate social and environmental initiatives should be voluntary. As of June 2010 the government of Indonesia has yet to announce its final decision.

Labour laws in Indonesia continue to be balanced between competitiveness and workers' rights. The government raises the minimum wage almost every year and downsizing remains difficult, as the obligatory compensation is substantial. However, investment laws still promote and provide incentives for labour-intensive industries. Social security in Indonesia is governed by the state run Jamsostek programme, with which all companies with 10 or more employees are required to register. As this is an opt-in system, enforcement of this programme remains difficult even though non-compliance with Jamsostek can entail prison terms up to one year and fines up to IDR 1 billion.

While there are many regulations on the books, Indonesia's difficulty remains enforcement. There are few examples of enforcing rights through the courts, in part because Indonesia's human rights legislation has only been implemented since Suharto left office in 1998.

Indonesia's weak state apparatus makes enforcing laws and court orders regarding human rights difficult, in part also due to the often-conflicting court rulings and governmental decrees between the various levels of government. Since 1999 state power has been increasingly devolved from the central government toward the district governments, which initially created confusion between the levels of government regarding their social and economic responsibilities, obligations and powers.

While the Constitution sets out the state's responsibility to protect human rights, Indonesian authorities have often seemed reluctant to protect such rights. Members of FPI, an Islamist organisation, frequently intimidate and assault individuals and groups it deems incompatible with Indonesian society with near impunity. Indonesia's first Gay and Lesbian conference, hosted by the non-governmental organisation (NGO) Gaya Nusantara in March 2010, was cancelled due to FPI intimidation and it was widely reported that the police failed to protect conference attendees from violent assaults. In addition, a high level of public distrust of the police and the judiciary and a lack of transparency within both institutions hampers enforcement. For example, police enforcing court orders to clear illegal settlements and maintain property rights in north Jakarta during April 2010 were greeted with violent opposition and riots by local residents.

The Indonesian authorities have also investigated foreign companies and their employees with regard to alleged environmental violations, which are discussed later in this chapter.

INTEREST IN GLOBAL BUSINESS AND HUMAN RIGHTS

Given Indonesia's controversial record regarding human rights, its abundant natural resources and its recent emergence as a strategic and democratic country, there is strong interest in the relationship between business and

human rights. Government and public interest has focused primarily on environmental sustainability, anti-corruption measures and the perceived inability of Indonesian courts to treat citizens equally and fairly before the law.

As Indonesia is one of the largest emitters of carbon in the world and the steward of some of the largest remaining rainforests, environmental management of forests and land is of increasing prominence. The 2007 Bali Summit on Climate Change specifically discussed the impact of the illegal logging business and domestic forestry issues. Recent laws have included environmental provisions, including the 2009 Environmental Protection and Management Law that regulates business activity. The impact on Indonesian palm oil producers of the ongoing environmental certification process provided through the Round Table on Sustainable Palm Oil is also a key driver of change.

A series of high-profile natural disasters including the 2004 South Asia Tsunami, earthquakes in several Indonesian cities, recurring floods in Jakarta and the breakage of a south Jakarta dam in March 2009 have also heightened the government's and public's interest in proper environmental management, corporate liability issues and standards of care. One prominent case involves PT Lapindo Brantas' oil and gas drilling operations in East Java that resulted in the release of hot mudflow and forced thousands of people to abandon their homes. The Indonesian Forum for the Environment (WAHLI), an Indonesian NGO, brought a case against Lapindo in February 2007. While the District Court of South Jakarta ruled in December 2007 that the mudflow was the result of a natural disaster, allegations of Lapindo's poor safety record and negligence prompted the Indonesian government to order the company to pay IDR 2.5 trillion to local residents as compensation and commit IDR 1.3 trillion toward mitigation efforts. The National Commission for Human Rights considered the government's response inadequate and labelled the incident a gross rights violation in May 2008.

Transparency International ranked Indonesia 126th out of 180 countries in 2008 on their Corruption Perceptions Index and recent investigations by the Corruption Eradication Commission (KPK) have earned significant media attention and incited public demonstrations. Anti-corruption measures remain primarily focused on Indonesian state officials and domestic companies and it is rare that foreign companies are investigated for graft by the Indonesian authorities. Foreign companies have, however, been investigated by their home country's law enforcement agencies for business activity in Indonesia.

The US Department of Justice investigated Mosanto, an agricultural company, for its alleged payments to Indonesian government officials in violation of the US Foreign Corrupt Practices Act. In January 2005, Mosanto reached a settlement with the US Department of Justice to pay penalties of \$1.5 million. Mosanto admitted to paying more than \$700,000 to Indonesian officials from 1997 to 2002 and it was also alleged that Mosanto had paid \$50,000 to a local official to repeal a government decree requiring an environmental impact statement prior to the cultivation of Mosanto's agricultural products.

The UK's Serious Fraud Office fined Innospec Ltd, a British chemical company, £8.3 million (\$12.6 million) in March 2010 after Innospec pleaded guilty to prolonging the use of harmful lead-based fuel in Indonesia by giving illegal payments totalling more than £5.6 million to Indonesian officials at the Ministry of Energy and Mineral Resources and at the state-owned oil and gas company PT Pertamina. On 7 June 2010, the KPK signed a memorandum of understanding with the UK Serious Fraud Office to enhance coordination and investigations.

The constitutional legitimacy of Indonesian people's right to freedom of expression continues to be tested with a controversial 2008 anti-pornography law which levies heavy penalties regarding pornography. Critics argue that pornography in the legislation has been defined so broadly that it could effectively criminalise many of Indonesia's diverse religious and cultural performances.

Freedom of expression is also contested by the new Electronic Information and Transactions Law (ITE Law) (Law No. 11/2008), which forms the basis for e-commerce in Indonesia but also contains provisions criminalising internet-based defamation. The ITE Law specifies that individuals can be detained for up to 50 days prior to trial for alleged defamation and carries a maximum punishment of six years imprisonment and fines of up to IDR 1 billion upon conviction. Critics argue that the severity of the punishment and the ambiguity of its applicability result in increased self-censorship and leave the law open to abuse for political purposes.

One of the first individuals prosecuted under the ITE Law was Prita Mulsari. In August 2008 Prita was misdiagnosed on the basis of a flawed platelet test by Omni International Hospital, which also denied Prita access to her medical records. Prita wrote an email to her friends complaining about Omni's treatment and her email subsequently appeared on the social networking site Facebook. In May 2009, Prita was arrested for defamation under the ITE Law and placed in pre-trial detention for three weeks, being released the day before her trial. Concurrently, Prita became a national icon in Indonesia as a symbol of the perceived inability of the Indonesian legal system to treat individuals equally and fairly before the law. A 'Coins for Prita' public campaign raised over \$65,000 in response to the initial court order that Prita pay \$21,600 in fines for defaming Omni. Prita was finally acquitted of all criminal charges on 29 December 2009. Despite Prita's experience and public outrage, the Constitutional Court upheld the ITE Law provisions (Decision No. 2/PUU-VII/2009) although its applicability remains ambiguous.

The responsibility for enforcing human rights and CSR is diffused across various government ministries and levels of government. The wide array of permits, licences and regulations fall under the jurisdiction of the relevant Ministry issuing such decrees, and regional and district government heads have the ability to impose to varying degrees of CSR and human rights requirements. However, Indonesian governmental implementation remains weak: the SETARA Institute, a non-profit thinktank, reported that the government executed only 58 per cent of their programmes stipulated in the

2004-2009 Human Rights Action Plan.

While Komnas HAM has a national mandate, it can only investigate gross rights violations and has no law enforcement mandate. Since 27 December 2002, the KPK does have prosecutorial authority and a national mandate to enforce anti-corruption measures. The KPK can authorise wiretaps, impose travel bans, and freeze assets during the course of its investigations.

Indonesia's Department of Foreign Affairs (Deplu) supports human rights initiatives globally and since 2006 has served on the UN Human Rights Council. As the largest Muslim-majority country and the third largest democracy in the world, Indonesia views its foreign policy role in support of tolerance and dialogue between cultures, religions and political systems. Deplu supported the establishment of the Organisation of Islamic Conferences' Independent Permanent Commission on Human Rights (announced in 2010) and the establishment of ASEAN's Intergovernmental Commission on Human Rights (AICHR) in 2009 with delegates drawn from all 10 member states. Like many ASEAN initiatives, however, it lacks a mandate or the capacity to impose punishment for non-compliance.

Domestically, the Indonesian government continues to promote human rights with legislation if not always in its implementation. On 30 April 2010 the Freedom of Information Law took effect (passed in 2008) that mandates that all documents in government agencies, or agencies that receive state funding, must be made available to the public. A national information commission was established to oversee the implementation; however, few provinces have established their own corresponding commissions. State-owned enterprises are also exempt from this law and there is a controversial and vague article regarding possible criminalisation of the misuse of public information.

While it is rare that government officials address past human rights violations, the government recently apologised for the death of Marsinah, an employee of a watch manufacturer in East Java who went missing in 1993 during a workers strike and was later found raped and murdered. While critics have alleged state security forces were complicit in the incident, the government did not accept direct responsibility but reiterated an ongoing commitment to labour and human rights.

Prior to Suharto's resignation in 1998, Indonesian NGOs faced restrictions that discouraged the development of civil society, but there are now numerous NGOs active in Indonesia. WALHI is the most prominent Indonesian environmental NGO, having brought lawsuits for environmental violations against PT Freeport Indonesia and PT Lapindo Brantas. Indonesia Corruption Watch (ICW) concentrates on anti-corruption measures and the public dissemination of information while the Indonesian Legal Aid Society (YLBHI) conducts work on legal advocacy, human rights and democracy.

Most international NGOs have a presence in Indonesia. Following the 2004 South Asia Tsunami, the Indonesian government eased restrictions on access to Aceh to facilitate their relief activities. However, Amnesty International does not have a branch office in Indonesia.

There are numerous companies in Indonesia implementing CSR.

Indonesia Business Links, a multi-stakeholder initiative whose members include many multi-nationals, was established in 1999 with the aim of improving corporate governance and promoting ethical business practices.

CORPORATE AND DIRECTORS' DUTIES

The duty of limited liability corporations to Indonesian society is only that their activities not contravene the laws and regulations, public order and/or decency (Article 2 of the Company Law) of Indonesia and there is no specific duty of corporates or their directors to comply with human rights standards. Within the context of corporate governance however, there are human rights related provisions and requirements which companies must undertake and report on.

Indonesian limited liability companies are governed by a Board of Directors, supervised by the Board of Commissioners, and report to the General Meeting of the Shareholders. The Board of Directors has the general duty to manage in the interests of the company and in accordance with the purposes and objectives of the company (Article 92). The Board of Commissioners performs supervisory duties on management policy. Neither directors nor commissioners have general responsibility to society. Companies that operate based on shari'a law principles are now required to have a shari'a Supervisory Board, which, in addition to the Board of Commissioners, provides counsel and recommendations to the directors.

Directors are not required to take human rights into account while performing their duties. As a matter of due diligence, however, directors may consider the human rights-related implications of their business activities in order to properly manage reputational risk. Multi-national companies operating in Indonesia have been the subject of investigations, both by the Indonesian authorities and the company's national government, for alleged environmental violations and corrupt practices.

The standard of care required of directors is that they must carry out the management of the company in good faith and with full responsibility. Directors and commissioners are jointly and personally responsible to any parties suffering losses but this responsibility is waived if it is proven that such condition was not their fault.

There is no duty to provide human rights impact assessments for businesses. The 2009 Environmental Protection and Management Law does require that businesses having a substantial impact on their environment are required to submit an Environment Impact Assessment (AMDAL) containing an analysis of the impacts of the planned business activity, including on other activities in the same area. The AMDAL must include the recommendations and input from the local community and an environmental management and monitoring plan (Article 25).

An environmental licence, and a business licence, can be revoked if the obligations as stipulated in the AMDAL are not met. In addition, there are criminal and civil liabilities in the environmental law for actions that create a substantial negative impact on the environment or involve the use or production of hazardous or toxic materials. Crimes under the environmental

law are considered felonies and the penalties include prison terms and fines.

State-owned enterprises are required to fulfil separate duties from private limited liability companies. Beyond contributing to their own bottom line, state-owned enterprises must ‘actively participate in providing guidance and support to entrepreneurs, cooperatives and the community,’ (Article 2, 1e of Law No.19/2003). Their responsibilities are outlined further in ministerial regulations that require state-owned enterprises to promote small businesses with loans, grants for education and apprenticeships. They are also required to fund an Environmental Development Programme focusing on natural disaster relief and health improvement. Both programmes are funded directly from the state-owned enterprises’ profits: one to three per cent for the partnership programme and one per cent for the environmental programme.

In practice it is rare for companies and their representatives to face litigation in respect of their CSR duties but Indonesian authorities have investigated companies for alleged environmental violations. In 2004 six executives of Newmont Mining Corporation were arrested for the alleged pollution of Buyat Bay in North Sulawesi by a gold mine operated by Newmont’s subsidiary, PT Newmont Minahasa Raya. Local residents also filed a civil claim for \$543 million in damages against PT Newmont for alleged heavy metals poisoning. This claim was dismissed by the South Jakarta District Court in January 2005 and based on a settlement agreement between PT Newmont and local residents. In March 2005 the Ministry of Environment filed a civil lawsuit for \$133 million in compensation for the pollution. In February 2006 this suit was withdrawn after an agreement was reached with PT Newmont to pay \$30 million over 10 years into a foundation to fund environmental monitoring and community programmes in close proximity to the mine site. The criminal charges against five of Newmont’s executives were dropped but the government continued to pursue criminal charges against President Director Richard Ness and sought a three-year jail term and a \$55,000 fine. Following a 21-month criminal trial, Ness was cleared of all charges in April 2007.

CORPORATE REPORTING

The Company Law of 2007 regarding limited liability companies requires that the Board of Directors submit an annual report to the General Meeting of the Shareholders (GMS) that has first been reviewed by the Board of Commissioners. The annual report must now include a social and environmental responsibility implementation report. There is no other requirement to report specific human rights information under Indonesian law and there are no requirements for shareholder associations or stock exchanges to report on human rights. There is no requirement to have the social and environmental responsibility implementation report within the annual report verified by a third party.

While mandatory reporting requirements for specific human rights issues do not exist, there is considerable scope for companies to engage in voluntary reporting. The Company Law provides that shareholders can have

their limited liability safeguard revoked if it is proven they are involved in unlawful acts conducted by the company. It is also stipulated in the new Mining Law that communities directly affected by mines have the right to pursue legal action with respect to losses and to obtain compensation as a consequence of the error of the mining exploitation activities (Article 145). A company's environmental licence may also be subject to periodic audit by external third parties (Article 48). As such, it may be considered prudent due diligence for companies to maintain voluntary and transparent reporting of such issues in order to mitigate possible litigation risks and to demonstrate fair and reasonable standards of care.

The CSR reporting requirements of the Company Law came into effect in 2007 and we are not aware of any proposals for altering the mandatory reporting requirements in the near future. Given the inclusion of CSR requirements across a broad array of recent legislation and the lack of regulations detailing such provisions, companies in Indonesia may expect more comprehensive and strict reporting requirements in the not too distant future.

Since 2005 the National Centre for Sustainability Reporting, a multi-stakeholder Indonesian organisation, hosts annual Indonesian sustainability reporting awards and intends to develop Indonesia-specific reporting guidelines based on the Global Reporting Initiative's guidelines by the end of 2010.

DERIVATIVE ACTIONS

Directors may be discharged at any time based on a resolution of the GMS, and the Board of Commissioners may suspend a director at any time provided that a GMS is held within 30 days to resolve the matter.

As regulated by the Company Law, shareholders representing at least one-tenth of voting rights may file a claim directly against the Board of Directors for their mistakes or negligence (Article 97(6)). However, each shareholder can file a claim in the district court against the company, requesting that detrimental actions be stopped, consequences of actions be resolved, and steps taken to ensure such action does not happen again (Article 61).

In practice, any shareholder can litigate against the company or a director for incurring losses that are deemed unfair and unreasonable. The ability of shareholders to successfully use the courts to enforce directors' duties in part reflects the ongoing challenges facing the Indonesian judicial system in terms of transparency and timeliness.

INSTITUTIONAL INVESTORS

Institutional investors in Indonesia are not required to take human rights into account. However, international perceptions of a company's operations in Indonesia can influence foreign institutional investors. Freeport-McMoran was excluded from Norway's government pension fund in 2006 for 'severe environmental damage' resulting from its Indonesian operations.

There are few signatories to the UN Principles for Responsible Investing in South East Asia and this trend is particularly acute in Indonesia. As of June

2010, only one Indonesian organisation was a signatory to the UN PRI (Kehati, an environmental NGO) and there were no Indonesian corporate signatories.

We are not aware of any proposals for changes in the near future regarding institutional investor's duties and human rights.

SHAREHOLDER ENGAGEMENT

Shareholders, either by themselves or represented through a power of attorney, are entitled to attend the GMS and exercise their voting rights in proportion to their total share ownership. Unless otherwise stipulated in the articles of association, the GMS may be held with 50 per cent of shares with voting rights present.

Shareholders are entitled to speak at the GMS and put forward proposals for consideration. There is no specific restriction on the nature of such proposals and they could include human rights-related initiatives. We are also not aware of any proposals for altering shareholder engagement on human rights.

There is no restriction on NGOs being permitted to be involved in the affairs of the company. The 2009 Environmental Law does state that community involvement in planned natural-resource business activities is required and defines community as both the affected parties in proximity to the business and 'environmental observers' (Article 26) which can be interpreted as NGOs. The law expressly grants both the affected parties and environmental observers the right to raise objection to AMDAL compliance. Article 92 also specifically notes that environmental groups have the right to file lawsuits against a company in the interest of environmental preservation. Such lawsuit must be limited, however, to requiring the company to take future action and cannot contain demands for compensation.

STOCK EXCHANGE INDICES

We are not aware of any CSR stock exchange indices in Indonesia.

REGULATORY ENFORCEMENT

As indicated, enforcement remains one of Indonesia's main challenges.

LIABILITY OF LOCALLY INCORPORATED MULTINATIONAL PARENT COMPANIES FOR FOREIGN SUBSIDIARIES

Indonesian law specifies that a subject before the law can be either an individual or a legal entity and companies can therefore be subjects under both criminal and civil law. Indonesian companies can be criminally liable under the Penal Code of Indonesia, as well as the Environmental Management Law. Companies and their employees can also face civil liability as Article 1367 of the Indonesian Civil Code states that 'a person is not only responsible for the damages by his own deed, but also for damages caused by the deeds of persons under his responsibility. Employers and those who appoint other persons to represent their affairs are responsible for any damage caused by their employees.'

In practice, foreign multinational parent companies are generally not liable for locally incorporated Indonesian entities under Indonesian law. The local entity is liable for itself and its shareholders are liable for the amount they invest as shareholders.

However, there are two examples of litigation brought against parent companies in courts in the United States for their subsidiary's business operations in Indonesia, both of which were brought to court under the Alien Tort Claims Act (ATCA) and the Torture Victim Protection Act (TVPA) of the United States.

Freeport-McMoran Inc has operated the Grasberg copper and gold mine site in Irian Jaya since 1969. In 1996, an Indonesian citizen and leader of the Amungme Tribal Council of Irian Jaya, Tom Beanal, filed a class action suit against Freeport-McMoran Inc and Freeport McMoran Copper & Gold Inc in the Eastern District of Louisiana, alleging breaches of international environmental law, cultural genocide, and the collusion of Freeport's security forces with the Indonesian government to commit a wide range of human rights abuses. After a series of dismissals and appeals, the class action suit was ultimately dismissed with prejudice in November 1999 with the court noting that environmental policies of the US cannot displace environmental policies of other governments.

In June 2001 a group of Indonesian citizens filed a claim at the District Court of Columbia under the ACTA and TVPA against Exxon Mobil Corporation and PT Arun LNG, an Indonesian incorporated entity, in connection with their LNG facilities in Aceh. The plaintiffs alleged that Exxon had special security arrangements with the Indonesian military in the context of the ongoing 30-year separatist struggle between Acehense separatists and the Indonesian military, the latter of which was alleged to have conducted human rights violations. As such, Exxon was alleged to be complicit in such violations. In October 2005 the Court dismissed the ATCA and TVPA claims, noting that their adjudication on the matter would be an intrusion into Indonesia's sovereign affairs. The plaintiffs however had concurrent state law claims which the US Supreme Court declined to hear in June 2008. In September 2009, a district court agreed to Exxon's request to dismiss the state law claims finding that the plaintiffs did not have standing to bring the case in a US court because they are non-resident aliens.

Beyond the above, multinationals in Indonesia should be aware of their home government's foreign corrupt practices legislation, which may extend beyond their national jurisdiction. As indicated previously, both US and UK companies have been investigated and fined by their respective governments for corrupt practices in Indonesia.

CLASS ACTIONS

Class actions in Indonesia are rare but permitted. They are increasingly being used by civil society groups and citizens in Indonesia's still nascent democracy. The increased interest in class actions prompted the Supreme Court to issue Regulation No. 1 on Class Action Procedure in April 2002 to design an orderly class action judicial procedure.

The majority of class actions to date involve allegations of negligence and improper environmental management, as few laws permit class actions. The 2009 Environmental Law allows communities to file class action suits (as did the 1997 Environmental Law) for their own interests and the interests of the communities if they suffer losses attributable to environmental pollution (Article 91). Class actions are also permitted under the 1999 Forestry Law (Law No. 41/1999, Article 71) and the 1999 Consumer Protection Law (Law No. 8/1999).

On 8 March 2010 Papua's Amungme tribe lodged a new class action lawsuit against PT Freeport, the Ministry of Energy and Natural Resources and Papua's Governor, seeking \$32.5 billion in material and non-material damages in connection with Freeport's Grasberg mine site.

SECURITIES LAW ISSUES

Companies intending to issue a listing on the Indonesian Stock Exchange are required to issue a prospectus. The prospectus (or any other securities disclosure documents) does not require any comments or reporting on human rights issues.

Indonesian capital markets are regulated by the Capital Markets and Financial Institutions Supervisory Board (Bapepam-LK), which in turn is supervised by the Ministry of Finance. Although there have been discussions about establishing an independent body, that is unlikely to take place soon.

Like other areas of Indonesia, the enforcement of capital market regulations remains difficult. Bapepam continues to focus on ensuring reliable, accurate and transparent financial reporting and the timely investigation of irregularities or non-compliance. Human rights reporting requirements are not currently at the forefront of their considerations.

Companies are liable for incorrect public disclosures and directors are personally liable. Similar to Komnas HAM, Bapepam relies on the Attorney General for prosecution. While there is continuing litigation in respect of improper financial reporting, we are not aware of any litigation regarding a company's compliance with any self-imposed CSR standards.

PRODUCT LIABILITY ISSUES

Indonesia does not require consumer products to have 'human rights compliant' labelling, nor are there any known cases of voluntary labelling on a large scale. There are new provisions in the 2009 Environmental Law that call for government institutions to ensure the procurement of environmentally sound goods and services for their own purposes (Article 43 (3a)). A separate article also calls for the government to develop a system of labels for environmentally sound products to be used by companies within Indonesia. However, both requirements have yet to be outlined in future government regulations and the practical use of environmentally compliant procurement or product labelling remains in its infancy.

A new Presidential Regulation on public procurement (No. 54 of 2010) effectively calls for the establishment of an independent National Procurement Policies Office (NPPO). While this office is intended to

investigate the misuse of state funds and to increase public spending efficiency, the NPPD could work to facilitate the new procurement articles of the 2009 Environmental law.

Beyond domestic legislation, Indonesian producers of palm oil have increasingly been identified by foreign international NGOs for the alleged detrimental environmental impact of their products and the need for palm oil products to be certified for environmental sustainability. It is alleged that the conversion of natural forests to palm oil plantations reduces their biological diversity and encourages illegal logging and deforestation. In December 2009, Greenpeace identified PT Sinar Mas, an Indonesian palm oil producer, for unsustainable forest management policies and environmental degradation. In March 2010 Cargill Inc threatened to drop PT Sinar Mas as a supplier if it failed to address allegations of illegal logging, and Unilever and Nestle dropped PT Sinar Mas as a supplier in December 2009 and May 2010 respectively.

The Round Table for Sustainable Palm Oil (RSPO) provides certification for companies that demonstrate a commitment to managing plantations in a sustainable way and that act responsibly as a steward of the environment and their employees. PT Musim Mas, PT Hindoli (Cargill) and PT London Sumatra Plantation are currently the only three Indonesian producers with RSPO certification, although it is anticipated PT Sinar Mas will seek certification. The EU is also in the process of requiring all palm oil producers to certify palm oil products and companies without certification by the end of 2010 will not be allowed to sell in EU markets.

RSPO certification is subject to independent third party audit and inspection. Non-compliance may result in the revocation of the RSPO certificate but there are no corresponding government regulations stipulating civil or criminal liability regarding voluntary self-imposed standards. However, subsequent media attention can prompt the Indonesian authorities to take action, as the Ministry of Environment recently opened an investigation into PT Sinar Mas.