

<http://jakartaglobe.id/business/devil-is-in-the-detail-with-freeport-agreement-experts-ngos/>



**Jakarta.** Nongovernmental organizations and experts have raised concerns over the undiscussed details in a recent agreement between the Indonesian government and United States mining giant Freeport-McMoRan that could potentially cause a new dispute.

The government and Freeport-McMoRan agreed on Tuesday (29/08) on divestment, smelter construction and taxes and royalty payments, allowing the miner to continue its operations at the Grasberg copper and gold mine in Papua.

Publish What You Pay Indonesia coordinator Maryati Abdullah said the government needs to pay more attention to the details in the agreement because divestment and a smelter have been

mentioned in the previous contract. She added that by raising its stake in the company, the government could ultimately be responsible for building the smelter.

"There are critical points [in the agreement], such as the mechanism to set the price, divestment process and the timeline," Maryati said in a statement on Wednesday.

She also raised other critical points, such as the mechanism for issuing a special mining business license (IUPK), and the taxes that apply under the scheme.

"[It] needs more detail and clearer clauses on fiscal conditions that are deemed an effort to stabilize and guarantee higher state revenue from the current contract of work scheme," she said.

Maryati noted that commodity price volatility and fiscal regulations must also be considered.

### **Nail-Down or Prevailing?**

Changing Freeport's contract to an IUPK opens an opportunity to apply a different tax scheme to the company, whether it's a nail-down scheme – in which the tax rate will not change for the duration of the contract – or the prevailing tax rate.

"I think the devil is in the detail," said Yustinus Prastowo, executive director of the Center for Indonesia Taxation Analysis (CITA).

"I say we should not be caught up in concepts. It is not about prevailing versus nail-down. [...] Think about how a business wants certainty and predictability," he said.

Yustinus lauded Finance Minister Sri Mulyani Indrawati's idea, which focuses on state revenue

collection. He said a company is willing to pay more for certainty, rather than lower but unpredictable costs.

"The most important thing in the clause is that [state revenue collection] should be higher compared to the revenue collected under the contract of work," he said.

Yustinus added that the government may as well put a clause in the new agreement that opens a chance to renegotiate the tax rate to respond to commodity prices at the time.

### **Compliance and Penalty**

Fabby Tumiwa, executive director of the Institute for Essential Services Reform (IESR), said the government should include a compliance and penalty mechanism in case Freeport fails to build the smelter by 2022, or if it is late in its 51-percent divestment.

"Because the two agreements on divestment and smelter construction have yet to realize until now," Fabby added.

Aryanto Nugroho, advocacy manager at Publish What You Pay Indonesia, meanwhile took a tougher stance.

"The government should not offer unlimited tolerance to Freeport amid a stagnating commitment, such as by granting export permits without checking the progress in smelter construction," he said.

Publish What You Pay Indonesia is affiliated with the global campaign under a similar name, which call for extractive companies to publish their payments to governments. Besides the pending discussion on the details of the agreement, the NGO also warned of bigger losses in terms of environmental damage.

The organization cited a finding by the Supreme Audit Agency (BPK) that Freeport Indonesia, among others, used protected forests, conducted unauthorized underground mining and disposed of waste into rivers, estuaries and the sea between 2013 and 2015.

The BPK calculated that Freeport Indonesia potentially caused Rp 185.6 trillion (\$13.9 billion) in environmental damage.