

March 11, 2015

By E-Mail:

Chair Mary Jo White
Commissioner Luis Aguilar
Commissioner Daniel Gallagher
Commissioner Michael Piwowar
Commissioner Kara Stein

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20459-1090

Re: Rulemaking for Section 1504 of Dodd-Frank

Dear Chair and Commissioners:

My name is Maryati Abdullah and I am National Coordinator at Publish What You Pay – Indonesia (PWYP – Indonesia). In April 2014, mine was one of 544 civil society organizations from 40 countries that wrote to you and urged the release of a strong rule for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. I want to take this opportunity to address the nature of natural resource governance in Indonesia, highlight how PWYP – Indonesia and other civil society organizations like mine have already used payment disclosure data to make companies and government officials involved in our extractives sector more accountable, and demonstrate why a rule that requires project-by-project (by contract, license, or lease) reporting is needed.

Indonesia is rich in natural resources, possessing oil, gas, bauxite, silver, and gold. We are the world's second largest tin producer, and rank among the top five producers of both copper and nickel. Extractives play an outsized role in our economy: in 2014, oil, gas, and minerals were responsible for a third of all government revenue, and accounted for more than 50 percent of all non-tax revenue.

Unfortunately, Indonesia's natural resource endowment has failed to translate into meaningful development gains for many of our citizens; more than 40 percent of Indonesians still live on less than \$2 a day. The Publish What You Pay – Indonesia coalition was founded in 2007 with the goal of promoting good governance in our country's extractives sector, making financial flows more transparent, and holding all actors involved in the sector accountable to ordinary citizens. To that end, our 38 member organizations conduct research, do advocacy work, and promote local capacity-building initiatives.

Indonesia took a big step in 2009 toward making a more transparent and accountable extractives sector by announcing its intention to implement the Extractive Industry Transparency Initiative (EITI). Our first EITI report was released in 2013 and covered

payments made in 2009. A second report was released in 2014 and included information on payments made in 2010 and 2011. What makes Indonesia's EITI reports so valuable to civil society organizations like mine is the level of detail in the data; EITI Indonesia requires oil and gas companies to report the payments they make to the government that arise from each of their production sharing contracts. This aligns with the reporting standard embodied in both the EU Accounting and Transparency Directives and the SEC's August 2012 rule for Section 1504, which requires companies to disclose payments that arise from a contract, license, lease, concession, or similar legal agreement that forms the basis for payment liabilities with a government.

US-listed oil and gas companies operating in Indonesia that report in line with this standard include BP, Chevron, CNOOC, ConocoPhillips, ExxonMobil, PetroChina, and Total. While EITI Indonesia does not yet require project level disclosure in the mining sector, the reality is that many mining companies operating in my country have just a single project in a region, making their payment disclosures *de facto* project level. Of course, we cannot count on the availability of *de facto* project level data indefinitely, so civil society organizations, citizens, and local governments are lobbying hard for an EITI project level reporting requirement in the mining sector, just as we did successfully for the oil and gas sector.

To understand the importance of project level reporting in the Indonesian context, look at the structure of revenue sharing arrangements enshrined in my country's law. Indonesia's resource revenue is primarily collected by the central government, and then a predetermined percentage is re-distributed to lower levels of government. The goal is to make sure that citizens living closest to extraction projects reap some of the rewards.

By law, local governments are to receive 15 percent of oil revenue generated by local projects, 30 percent of gas revenue, and 80 percent of mineral royalties. Taking just the oil revenue redistribution framework into consideration should demonstrate why access to project level payment information is essential. Of the 15 percent of oil revenue that is to be redistributed to lower levels of government, 3 percent goes to the producing province, 6 percent goes to the producing district, and 6 percent goes to the districts adjacent to the producing district (as compensation for pollution and other adverse consequences of resource extraction). A province is an administrative unit directly below the central government, and a district is an administrative unit below a province.

The American Petroleum Institute proposes to report at the first tier below the central government. In my country, that would mean that companies would report how much they paid for access to resources in each province. Clearly, such a reporting scheme would prove completely unsatisfactory in Indonesia, as it would leave citizens in producing and adjacent *districts* with no way to know whether their *district* governments received the money they were owed. In other words, if citizens of a producing district do not know how much revenue was generated from the projects within their district, they have no way to calculate 6 percent and verify that it was delivered.

Historically, due to a lack of publicly-available data on financial flows in the extractives sector, the transfer of revenue has gone largely unmonitored by citizens in resource-rich areas. That ends with the availability of EITI project level data, as district governments and citizens inhabiting resource-rich areas can now calculate the share of extractives revenue they are owed, and confirm that it is delivered.

Ensuring that local governments and communities are properly compensated for the oil, gas, and mining activity in their backyards is just one way that project level data will be used

in Indonesia. Although EITI project level payment data has been available in my country for just a short amount of time, there have already been a number of ways that Publish What You Pay – Indonesia and its allies have made use of EITI Indonesia’s payment disclosure data:

- The Swandiri Institute, in collaboration with PWYP – Indonesia, used GIS technology and EITI data on mining licenses to compare the territory on which companies were legally permitted to operate, with where they were actually operating in practice. Not only did our work expose companies that were illegally operating in off-limit conservation zones, but it also identified a company operating outside its licensed territory – a transgression estimated to have cost Indonesia’s West Kalimantan province over \$1.5 million in lost land rent. Our research findings were sent to the Corruption Eradication Commission (a government agency), and played a role in convincing the Commission to initiate a campaign to improve the quality of governance in Indonesia’s mining sector.
- Indonesia’s oil and gas sector is governed largely by production sharing contracts. This means that the government receives in-kind payments of the natural resource itself, as well as money. The in-kind oil or gas payments can then be put to use domestically, or sold on the international market. The share of oil or gas going to the government varies according to the different contract terms negotiated for each separate project. Therefore, access to full and accurate project-level data is crucial in my country, in order to monitor in-kind payments effectively and ensure each company is paying its dues.

PWYP – Indonesia and local partner organization LPAD assessed project-level data on in-kind payments made by companies in resource-rich Riau province, and found that EITI Indonesia’s numbers were significantly different than those provided by Indonesia’s Ministry of Energy and Mineral Resources (ESDM). Each relied upon a different source of data; EITI Indonesia reconciled data provided by extractives companies and the Executive Agency for Upstream Oil and Gas Business Development (BPMIGAS), while ESDM data came from a mechanism that measures oil and gas extraction in real-time.

Again, confirmation that Indonesia is receiving the in-kind compensation it is due hinges on the availability of accurate project-level data. Clearly there is a disconnect between the data reported by EITI and the ESDM that needs further investigation. Without access to project-level EITI data to use as a comparator, watchdog civil society organizations like PWYP – Indonesia and LPAD would have remained unaware of the problem, and lacked an impetus to initiate an investigation.

- SOMASI, working with Publish What You Pay – Indonesia, collected project-level payment data and other information relating to mining operations under way in two resource-rich districts, Lombok Barat and Sumbawa Barat. The goal was to assess how effectively the district governments had employed their natural resource wealth to advance human development. Some data was derived from our country’s EITI reports, while other information, such as corporate responsibility payment data, was obtained from other sources. The data enabled us to piece together a comprehensive picture of the revenue collected from extractives companies, and assess whether the Lombok Barat and Sumbawa Barat districts had achieved better socio-economic development outcomes than their peers. Finding that they had not, we recommended to local government authorities a number of modifications to revenue management, including additional spending on the provision of public services.

- We have had access to project level data for less than two years, but have already made great strides with the information. However, transformative change does not happen overnight. Creating an environment that demands and expects strong accountability by government officials takes time, information, and active participation of citizens. Therefore, PWYP – Indonesia and partners have conducted several successful efforts at educating the public about the availability and impact of project-level data. In our country's resource-rich Papua region, we developed and circulated newsletters to civil society networks, journalists, students, and local government leaders containing a host of information from our EITI reports. Information included project-level payment data, the names of companies with production sharing contracts in the area, and information about transfers of revenue from the national to local governments. We also developed local television and radio programming that brought together policy makers, local civil society organizations, and company representatives to talk about EITI Indonesia, and answer audience questions. These initiatives have raised public awareness of the availability of payment information and its impact on improving the governance of our natural resources – one that will only strengthen as additional data becomes available in subsequent reports.

As the leader of Publish What You Pay – Indonesia, I am uniquely positioned to attest to the value of project level payment data. Although we have only had access to project level data for a very short time, my organization, and others like mine, have already used it extensively. We are fortunate in Indonesia, as project level payment disclosure in the oil and gas sector is mandated by our country's EITI framework, and EITI mining data is in most cases *de facto* project-level. Most countries, including fellow EITI members, are not so lucky. Even so, Section 1504 is much-needed in Indonesia: first, it is important to remember that participation in EITI is *voluntary*. And second, while most EITI mining sector data happens to be *de facto* project level, this remains the case only as long as companies operate a single project in a region (and, thus, have only one project to report on). In closing, while the American Petroleum Institute would have you believe that its reporting proposal is good enough, I assure you that it is not. I thank the Securities and Exchange Commission for the opportunity to provide written comments, and urge the prompt release of a Section 1504 rule that requires project level reporting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maryati Abdullah', with a large, sweeping flourish extending to the left and a horizontal line underneath.

Maryati Abdullah
National Coordinator
Publish What You Pay – Indonesia