March 16, 2020

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Dodd-Frank 1504 Revised Rule-Making, File No. S7-24-19

Dear Secretary Countryman:

Thank you for this opportunity to respond to the latest iteration of the Dodd-Frank 1504 rule and to provide information on how the decision that you will make in Washington, DC will greatly impact the lives of Indonesians. I am writing to you on behalf of Publish What You Pay Indonesia (PWYP - Indonesia), a coalition of 35 civil society organizations that push for greater transparency and accountability in extractive resource governance. I am eager to tell you about how Indonesian civil society organizations like mine are already using payments to governments data and to demonstrate why project-by-project disclosure of contract, licensure, and leasing is necessary.

ABOUT INDONESIA

Indonesia is rich in oil, gas, bauxite, silver, and gold. We also rank among the world's top five producers of tin, copper, coal, and nickel. Extractive resources make an important contribution to Indonesian economy, with oil and gas revenues contributing 7% and mining revenues contributing 3% of state revenue in 2016.

This resource wealth has yet to translate into better outcomes for the vast majority of Indonesia. Instead our country ranks sixth in the world for wealth inequality, and our four richest men have more wealth than the poorest 100 million people. In order to make sure that mineral resource wealth is better distributed and used to serve all Indonesians, civil society must be able to see with full transparency what payments governments are receiving on Indonesians' behalf.

Over the last two decades, our country's oil production has declined substantially and we have become a net importer of oil. From 2012 to 2016, we experienced a 61 percent decrease in extractive sector revenue. While our mining sector is expanding, the examples of oil and declining resource revenue show us how precious and finite our resources are-- we have but one chance to use them wisely; if they are squandered away through corruption, their potential is forever lost to us.

Corruption has historically been a problem in Indonesia, especially in our energy sector. In 2014, Rudi Rubiandini, a former deputy energy minister then in charge of the country's oil and gas regulator, was arrested for having taken multiple bribes in exchange for providing preferential treatment in a tender process. Our president subsequently promised to reform the oil and gas sector, but as of yet, legislation to do so has not passed through parliament. While it is important that our own country makes reforms in this area, we also need payments to governments data from US-listed companies to help us bridge the data gap.

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US-LISTED COMPANIES IN INDONESIA

US-listed companies operating in Indonesia that report inline with the EITI standard include BP, Chevron, CNOOC, ConocoPhillips, ExxonMobil, PetroChina, and Total. Of these, BP, Chevron (through its Canadian subsidiary), CNOOC and Total all disclose payments to governments as a result of dual-listings in jurisdictions with mandatory disclosure requirements.

The largest international oil producer in Indonesia, Chevron Canada, and largest international gas producer, BP, disclose their payments to Indonesian government entities. However, the second largest producers in the country for both commodities, ExxonMobil and ConocoPhillips, do not. ExxonMobil and ConocoPhillips are both US-headquartered companies, and as such are not currently required to release a PtG report.

By not reporting their payments to governments, US companies serve to obfuscate the data that other companies disclose. Even if European- and Canadian- listed companies report their payments, because US-listed companies do not, citizens do not have a complete picture of how much money their central, provincial, district, or village authority received in total, and so they cannot hold them accountable for or demand services representative of the full amount that they may have received.

EITI INDONESIA

Indonesia joined the Extractive Industries Transparency Initiative in 2009, and has made steady progress on disclosing resource sector payments ever since. These reports are extremely valuable to civil society because our country requires oil and gas companies to report payments to governments for each of their production sharing contracts. It is important to remember, however, that participation is voluntary.

Project-Level Disclosure

The 2019 EITI Standard details the definition of "project" that all EITI countries will use for reporting on fiscal years ending on or after 31 December 2018. This definition is based on the contract or other legal agreement between a government and company in line with the European Union's extractives transparency law (Chapter 10 of the EU Accounting Directive). This alignment with the project definition in the EU mandatory disclosure law will facilitate harmonization across payment disclosure.

Indonesia's oil and gas sector is largely governed by production-sharing contracts, meaning that the government receives in-kind payments of natural resources, in addition to money. The oil and gas received can be used domestically or sold on the international market, and the government share varies according to project contract terms. Therefore, Indonesians must have access to full and accurate project-level data to ensure that each company is paying what is due and to monitor the government's management of in-kind payments.

Indonesia EITI's most recent reports have provided payment data disaggregated by operator and by block for relevant payments levied at the project level, including production entitlements, royalties and signature and production bonuses.

Timeliness of Data

While the level of data available through our EITI reporting is certainly useful, its efficacy is diminished by its tardiness. Specifically, Indonesia's most recent EITI report is for the year 2017, and was not published until December 2019. Payments to governments data, such as that required for Canadian and European companies, supply such data much more quickly, which makes it more useful in holding officials to account and recovering lost assets. Our hope is that the SEC will issue a revised rule that requires payments to governments data to be disclosed no less than 150 days after the close of a fiscal year, which is in line with the timelines used in Europe and Canada, rather than the 2019 proposed timeline, which could extend disclosure requirements to as long as 456 days in some cases.

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PAYMENTS TO GOVERNMENTS DATA

Due to the mandatory disclosure laws of Canada, the European Union, and Norway, since 2014, 17 oil and gas companies have reported $15.6 billion in payments to Indonesian government entities. $488.3 million in mining project payments have also been reported.

In December 2019 PWYP Indonesia and the Natural Resource Governance Institute released the report *Indonesia Oil and Gas Revenues: Using Payments to Governments Data for Accountability*.[1] This report explores some of the ways this timely source of payment data can be used as an accountability tool by civil society, media, government, Indonesia's EITI and oversight actors. Some of these uses include:

Verifying the size and recipients of oil and gas project signature bonuses

As one-off payments, signature bonuses are particularly susceptible to mismanagement or illegitimate diversion because they are high value and not always incorporated into the normal budgetary process. Payment to government data can be used to raise public awareness on the payment of signature bonuses, which government entity received these payments, and to ask questions regarding how the resulting revenue was managed.

The report found that some international oil companies are paying bonuses to the Directorate General of Oil and Gas within the Ministry of Energy and Natural Resources (ESDM), rather than to the state treasury, as is required by ESDM's own regulation, No. 30/2017. The report called on the Directorate General of Oil and Gas to clarify why it has directed the Italian oil company Eni to deposit the signature bonus payment of $1.5 million for the East Ganal PSC into a Directorate General of Oil and Gas bank account, rather than to the state treasury. Payments to government reporting helps us track this sort of suspect government activity and cases where government is not following the laws to demand accountability as to why they are not following statutory protocols.

Sub-national revenue transfers

In an effort to share our country's mineral resource revenue equitably throughout our country and that those living closest to extraction projects reap some of the rewards, we have developed one of the world's most complex systems of sub-national revenue sharing. Today, Indonesia has 34 provincial governments, 93 city authorities, 415 district governments, and 74,000 village authorities. These entities are funded through nine different types of government transfers, most of which rely on the central government.

Revenue distributed to producing local and regional governments is an important revenue source to mitigate the negative impacts of extractive activities and to fund the development priorities of citizens in the area. Payment to government data, when used together with the country's revenue sharing fund formula, can be used to estimate how much local government entities should receive as a share of the revenue generated from a project, and how much should be kept by the central government. This helps to ensure that local governments are getting the revenue they are owed and that there is no mismanagement occurring at central government and corporate level.

In the report we outline how accountability actors can use BP's payment to Indonesian government entities payment data to ask: how much of the total non-tax revenue generated from the Tangguh project in 2018 should the West Papua regional government, and producing and non-producing regencies receive?

This analysis suggests that of the $629.6 million gas production entitlement payment made by BP for the Tangguh project in 2018, $188.9 million should be retained by the central government and $440.7 million should be distributed to local government entities. Of this local government entity distribution, $289.6

[1] Alexander Malden and Fikri Zaki Muhammadi, "Indonesia's Oil and Gas Revenues: Using Payments to Governments Data for Accountability," NRGI, 18 Dec 2019, https://resourcegovernance.org/analysis-tools/publications/indonesia-oil-gas-revenues-payments.

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million should be distributed to the West Papua regional government, with $75.6 million distributed to the producing regency of Teluk Bintuni. It is critical that we continue to have access to project-level data to verify how much is owed through the revenue sharing system down to the local level. We are very concerned that the SEC is considering a project definition that would not provide us the ability to do this. The only way we can effectively ensure accountability in the country's complex revenue sharing system is with publicly-available disclosures that provide payment data by contract. That way, localities past the major subnational level can verify what they are owed and ensure that they receive the correct amounts. The current proposed rule would not provide us with sufficient information to do this and instead, we would only be able to track payments due to the highest levels of national and subnational government. This would be wholly inadequate for our purposes.

IN CLOSING

As the leader of Publish What You Pay - Indonesia, a civil society organization that uses data to hold our government and the companies operating in our country responsible for their management of our natural resources, I am uniquely positioned to express to you how important it is for the SEC to adopt a strong rule for Dodd-Frank 1504 to provide critical data to countries like mine. In order to be relevant to our efforts to demand accountability and proper resource revenue management, the rule must require publicly-available, contract-level disclosures in a timely manner. We've already made use of the data available to us and the US data could help us see the whole picture and make sure our sub-national revenue sharing schemes are working as they are intended to. I thank you again for the opportunity to provide comments, and encourage you to contact me if I can provide any further clarification on how the proposed rule would operate in the Indonesian context.

Sincerely,

Maryati Abdullah
National Coordinator

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