Rich seam of conflict over coal discovery
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For David Quinlivan, a Perth-based 31-year veteran of the mining industry, it was the $50 billion find of a lifetime. In a remote 35,000 hectare concession in East Kutai in the Indonesian portion of resource-rich Borneo island, the exploration work by his company, Churchill Mining, had come up trumps. While expecting to find perhaps 100 million tonnes of medium grade coal, the company had found more, much more.

Almost 3 billion tonnes of cheap coal sought by Chinese and Indian power stations, in fact. The second largest undeveloped coal mining asset in Indonesia, and the seventh largest in the world.

By Mr Quinlivan’s reckoning, the 1 billion tonne reserve of coal so far certified will yield a cash operating surplus of between $750 million to $1 billion a year for 25 years.

"If you can confirm that you can upgrade some of the 2 billion tonnes of resource not included in the reserve, it's quite easy to see that you might be able to push the life of it beyond 50 years," the chief executive of Churchill says. "And that's without doing any further exploration at all."

But the announcement by Churchill to the London Stock Exchange's Alternative Investment Market - the specialised bourse for smaller companies - of the promising initial discovery in March 2008 did not, as expected, triumphantly herald the onset of planning and financing the massive project to extract the coal.

Indeed, as it now stands, Churchill owns precisely nothing in East Kutai. The result, says Quinlivan, of an audacious campaign of "asset stripping" and "manipulation" orchestrated by Nusantara Group, an Indonesian firm owned by one of country’s most prominent men, Prabowo Subianto.

It's a claim Nusantara denies, and others caution Quinlivan's characterisation masks a saga that is not so straightforward.

Even so, Churchill Mining's troubles highlight the difficulties foreign companies can have with Indonesia's mining laws that vest extraordinary power with the country’s bupatis, or regency chiefs, who head the country's 399 regencies, the third tier of Indonesian government roughly equivalent to shires or local councils in Australia.

In essence, these bupatis - many who rise to power through money politics - have the power to issue, and revoke, licences over hugely lucrative concessions.

Certainly, as resource nationalism rises in Indonesia along with commodity prices, Churchill has been opposed by a powerful, and colourful, triumvirate of figures.

Prabowo is the former commander of Indonesia’s feared special forces unit Kopassus during the violent last years of the Suharto dictatorship and a man still banned from entering the US. Charismatic and a fervent economic nationalist, he is believed to be preparing a second tilt at the Indonesian presidency in 2014.

Salim scion

A major shareholder in Prabowo's coal interests is Anthony Salim, fifth on Indonesia's rich list and a scion of the Salim Group, a sprawling conglomerate. Then there is Hotman Paris Hutapea, the legendary Ferrari-driving corporate lawyer who briefly represented the Australian drug smuggler Schapelle Corby in 2005.

Mr Hutapea, who handles Nusantara's legal work, famously remarked when he took on the Corby case: "As a lawyer, I am not clean ... but for this case I am temporarily clean."

The nub of the dispute lies with the four mining licences which an Indonesian company, PT Ridlatama, acquired in 2007, an asset that Churchill purchased a 75 per cent interest in, then funded the extensive exploration work.

Ridlatama’s concession substantially overlapped the area once controlled by Nusantara but, says Quinlivan, not only had Nusantara failed to renew its licences, Prabowo was happy to let them lapse, and even attended a meeting with Ridlatama executives where they flagged their interest.
Sugiono, the director of several of the subsidiary Nusantara coal companies involved in East Kutai, denied the meeting took place.

Indeed, in an interview with the BusinessDay, he insisted Nusantara had held mining licences continuously over the massive coal deposit since "mid 2000" and had never heard of any dispute regarding overlapping concessions. When it was pointed out to him that the dispute is extensively documented after probes by the police, East Kutai regency, State Audit Agency and two ministries and two court hearings, Sugiono failed to be moved. "I have no comment. I just say we never have such issue," he said. "Otherwise, how can we undertake our activities there now?"

Quinlivan’s contention that Nusantara failed to renew its licences is backed by an analysis paper by a civil servant in East Kutai’s mining department, Djaja Putra, in February 2007, just before Ridlatama was granted the concessions.

It declared the area “open to other companies” because Nusantara had not applied to renew its licences a month before they expired, as required by law.

Contradiction

But just days after Churchill went public by announcing its promising find on the London Stock Exchange, the same civil servant then issued a completely contradictory finding. Nusantara, he said, could reclaim and extend its licences because it had, indeed, applied for the extension in a timely fashion.

Shortly after getting its licences back, Nusantara complained to the police that Ridlatama’s licences were obtained fraudulently.

The matter was then picked up by Indonesia’s State Audit Agency (BPK), which found "indications" of irregularities because there were two licences over the same area.

The BPK asked East Kutai’s auditor, Achmad Surya, to investigate. While he conducted his probe and the police continued a separate investigation, East Kutai’s bupati become the governor of East Kalimantan. His deputy, Isran Noor, took over the job in February 2009, just as Indonesia’s new mining laws took effect. What followed was a dizzying, chaotic and now highly contested flurry of activity at the offices of the East Kutai regency.

As Quinlivan observes: "It’s just becoming a cluster at this point in time."

Documents obtained by BusinessDay show, within a year, the East Kutai regency issued a coveted 20-year production licence to Ridlatama; gave exploration licences to Nusantara over largely the same area; wrote to the London Stock Exchange alleging Ridlatama’s licences were counterfeits; revoked and then reissued Ridlatama’s licences; and, finally, upgraded Nusantara’s licences to production status.

Then, in March 2010, there was some good news for Ridlatama and Churchill. Achmad, the East Kutai auditor, delivered his report to Isran, finding that Ridlatama’s licences were, indeed, genuine and urging sanctions against two civil servants for their conduct.

The bupati’s response?

"I fired him because he produced a fake report," Isran says. "I'm sure it was Ridlatama people who produced the document and he signed it ... I don’t know if he received money."

Achmad denies the allegation emphatically. “All the [Ridlatama] documents were original. They were all legal,” he says, adding that Nusantara’s licences couldn’t be produced by anyone while he was conducting his investigation.

"Somehow, Nusantara’s licences on the area were extended. How come? It's such a wrong practice."

In an interview in his Jakarta apartment, Isran maintained Ridlatama’s documents were fakes, and his signature on them forged.

Asked about his relationship with Prabowo, he concedes: "He’s my friend", although adding he never received any financial reward from the former military strongman for favouring his business interests.

Twist

Even as Achmad’s audit seemed to give hope to Ridlatama, there was another twist.
Ridlatama’s licences may have been faked in Isran’s view, but he decided to revoke them for a second time. This was based on a recommendation from the Ministry of Forestry that Ridlatama had illegally cleared trees in its concession to the distress of the local indigenous community, members of the dayak tribes who live off the fast diminishing rainforests in Kalimantan. Under Indonesian mining licence terms, such conduct is banned.

But Ajang Linjau, the local dayak chief, says it was in fact the dayaks themselves who had cut down the trees to build a communal building and a church, which they were permitted to do.

While it was true Ridlatama helped transport the logs, "it’s mandatory [under the terms of the licence] for the company to help the community," Linjau says.

The dayak chief’s representations were sent to the Ministry of Forestry. But the revocation of Ridlatama’s licences stand. Two appeals to administrative courts have failed.

The managing partner of Kiroyan Partners, Noke Kiroyan, a Jakarta-based business consultancy who has worked with Churchill, says the case is “not as black and white as you may think”.

“There are lots of irregularities with issuing of the [mining permits] to Ridlatama," he says. "Why are there these irregularities? Well, I will leave that to the imagination.”

Certainly, Churchill announced last month it had lodged an "unlawful act claim" against a Ridlatama executive.

Churchill says the action relates to breaches of its investor agreement and does not undermine the force of its argument that its licences were always legitimate.

As for Nusantara, Kiroyan says “if you have the opportunity to get into an asset that you previously rejected and you subsequently had the opportunity to get back in, would you say no?”

Kiroyan says the new mining law gives bupatis more power, although he adds the central government is now in the process of auditing all licences and requires them to be registered with the department of energy and mineral resources.

**Good business**

While the hold over mining licences remains inherently tenuous, Kiroyan says foreign investors who have found the right Indonesian partners and researched the bupati and community are doing good business.

Quinlivan won’t be giving up the fight easily and says Churchill’s travails expose something very disturbing about how the Indonesian system can work.

"This issue of certainty of title. That's one of the key things that any international investor wants ... not where you can have the system manipulated in the manner that it has been here."

He will take the matter all the way through the Indonesian court system, and then to binding international arbitration, as is permissible under the investment treaties between Indonesia and Britain.

"I believe we will prevail. There is no doubt in my mind about that."

*With Karuni Rompies*