Mining and environmental protection in Indonesia: regulatory pitfalls

Kartikasari, F.I.

V Measuring the effectiveness of the 'Clean and Clear' policy for dealing with unlawful mining licences and their environmental impact

5.1 Introduction

As explained in Chapter II, thousands of mining licences were issued through unlawful procedures, from when the decentralisation policy was first implemented in Indonesia in 2000, up until 2009. Many of these mining licences were issued by regional governments, without regard for laws and regulations, resulting in negative environmental impacts. Unfortunately, as discussed in Chapter III, Law 4/2009 on Mineral and Coal (Mining Law 4/2009) did not respond to the existence of the problematic mining licences, leaving a lack of clarity around how to solve the problems they had caused.

In 2011 the Ministry of Energy and Mineral Resources instigated the 'Clean and Clear' policy (or C&C) with the objective of verifying the legality of the existing mineral and coal mining licences. Through C&C, the mining licences were assessed based on criteria set by the central government. Licences that met the criteria were given C&C status and companies that held C&C licenses could be registered and continue their mining activities. Companies which did not meet the criteria were subject to certain actions (depending on the criteria not met), starting with provision of the required documents up until the date of revocation of the licence. This policy, which lasted until 2017, received both positive and negative responses. On one hand, the policy was considered helpful for managing the existing mining licences, because it allowed data on mining licences throughout Indonesia to be collected, thereby eliminating any overlaps between the mining licences. However, some argued that the policy only legalised mining licences, whilst the process of issuing the licences had in fact violated the laws and regulations.

This chapter discusses C&C and its implementation, in order to examine the extent to which C&C resolved the problem of thousands of unlawfully issued mining licences and their impact on the environment. To discuss the policy and the dynamics of its implementation, this chapter is divided into six sections. The next section explains the background to C&C and its objectives. The third section discusses the literature on illegality practices in Indonesia and the Timber Legality Verification System (*Sistem Verifikasi dan Legalitas Kayu*, or SVLK) policy as a reference for assessing C&C and its implementation. The fourth section analyses the regulation which was the basis for implementing C&C: Minister of Energy and Mineral Resources

(*Energi dan Sumber Daya Mineral* or ESDM) Regulation 43/2015 on Evaluation Procedures for the Issuance of Mineral and Coal Mining Business Licences. The fifth section explains the dynamics of implementing C&C in general, then focusses on the implementation of C&C in South Sumatra Province. The last section is the conclusion.

5.2 Understanding the Clean and Clear policy

As explained in the previous chapters, after the decentralisation policy was implemented, the regional government issued thousands of mining licences. The central government could not control the rampant issuance of these mining licenses, and it did not even have access to complete mining concession data for the regions. After Mining Law 4/2009 required the government to manage mining areas in line with the mining policies stipulated in the mining law, the government needed data on mining licences throughout Indonesia, in order to find out which areas had been licenced for mining (Abdullah, 2017a: 4). It was very important for the government to have data on mining licences, especially for metal minerals and coal, because unlike the previous mining law, where mining companies examined the potential for mining materials in an area, Mining Law 4/2009 required the government to determine mining areas by itself, which could then be auctioned off for use before any mining licences were issued.

In 2011, the Ministry of Energy and Mineral Resources organised a programme called 'Reconciliation', which was intended for the collection of data on mineral and coal mining licences that had been issued by regional governments (Abdullah, 2017a: 4). Reconciliation set out to collect documents relating to Mining Business Licences (*Izin Usaha Pertambangan*, or IUP) and to confirm the IUP data, together with regional governments (Abdullah, 2017a: 4). In addition, reconciliation aimed to ensure that mining licences that were in effect prior to the Mining Law 4/2009, namely the Mining Authorisation (*Kuasa Pertambangan*, or KP) had been converted into IUP (Abdullah, 2017a: 4). As explained in Chapter III, based on Government Regulation 23/2010 each KP must be converted to the IUP form, no later than three months from the enactment of Government Regulation 23/2010. To this end, the ministry invited all the regional government leaders to Jakarta so that they could submit all their IUP documents, such as decisions on the issuance of mining licences, along with map attachments, documents related to financial obligations, and Environmental Impact Analysis (*Analisis Mengenai Dampak Lingkungan*, or AMDAL) approvals (Abdullah, 2017a: 4).

This did not work out well, because regional governments were not cooperative about providing data on mining licences in their areas. One reason for this was that regional governments considered that there was no legal basis for central government to determine C&C or non-C&C (Abdullah,

2017a: 4). As the reconciliation process did not go smoothly, data on mining licences could not be fully collected (Abdullah, 2017a: vii).[1]

After the failure of reconciliation, the Minister of Energy and Mineral Resources and the House of Representatives (*Dewan Perwakilan Rakyat* or DPR) met to discuss the problems concerning issuance of mining licences in the region and they agreed that it was necessary to re-manage IUP in the region and that only IUP meeting the legal requirements should be registered in the Ministry of Energy and Mineral Resources mining area database.[2] Therefore, the ministry began to assess all the IUP data provided by the regional governments, categorising them as either C&C IUP or non-C&C IUP[3]. The Director General of Mineral and Coal issued Decree 1406/30/DJB/2012 on Standard Operating Procedures (SOP) for Processing Clean and Clear certificates. 'Clean' meant that there was no overlap with the same type of IUP, while 'Clear' meant that administrative requirements were being obeyed[4]. The C&C criteria in the decree included: no overlap with other mining concessions; having an exploration report, feasibility study report, and the necessary environmental documentation; and paying financial obligations in the form of fixed fees and royalties.[5] Mining companies needed C&C certificates for their IUP because a number of regulations (for example, the Minister of Energy and Mineral Resources Regulation 1/2014) also required a C&C certificate for providing licensing services, including transportation and sales licences, export licences (*Surat Izin Ekspor* or SIE), export approval letters (*Surat Persetujuan Ekspor* or SPE), and investment changes (Abdullah, 2017a: 5). The consequence for mining companies without a C&C certificate was that they would not be provided with a number of services from the government.

In 2014 the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* or KPK) started to get involved in C&C. This involvement was

1 Also, interview with Surya Herjuna, the Head of the Sub-Directorate of Coal Business Services, Directorate of Coal Business Development, Directorate General of Minerals and Coal, December 16th 2019.

2 Interview with Surya Herjuna, the Head of the Sub-Directorate of Coal Business Services, Directorate of Coal Business Development, Directorate General of Minerals and Coal, December 16th 2019.

3 Interview with Surya Herjuna, the Head of the Sub-Directorate of Coal Business Services, Directorate of Coal Business Development, Directorate General of Minerals and Coal, December 16th 2019.

4 Interview with Surya Herjuna, the Head of the Sub-Directorate of Coal Business Services, Directorate of Coal Business Development, Directorate General of Minerals and Coal, December 16th 2019; Dedi Supriyanto, the Head of the Mineral and Coal Utilisation Section, Directorate of Mineral and Coal Programme Development, Directorate General of Minerals and Coal, 30th October 2019.

5 Directorate General of Minerals and Coal, 'Indonesia Mining Outlook 2015, Mineral and Coal Policy', Directorate General of Minerals and Coals, Ministry of Energy and Mineral Resources, Jakarta, January 28th 2014.

part of the National Movement to Save Natural Resources Programme (*Gerakan Nasional Penyelamatan Sumber Daya Alam*, or GN-PSDA), based on the charter of the 'Protecting Natural Resources' declaration, which was signed by the Chairperson of the Corruption Eradication Commission, the Armed Forces Commander, National Police Chief, and Attorney General on June 9th 2014 (Abdullah, 2017b: 13). The declaration included a statement supporting the management of Indonesian natural resources free from corruption, collusion and nepotism (Abdullah, 2017b: 13). Therefore, the KPK carried out mining governance reforms via what it called Mineral and Coal Coordination and Supervision (*Koordinator dan Supervisi Mineral dan Batubara*, or Korsup Minerba). Korsup Minerba involved academics and non-government organisations at both national and regional levels, all of which supported the KPK in carrying out supervision, research, and monitoring (Abdullah, 2017b: 13). The KPK supported C&C, because it could be used to access mining company data, as well as to filter the legality of existing IUPs (Abdullah, 2017a: 1-2). The KPK also expected that C&C might contribute to overcoming various negative impacts from the issuance of unlawful mining licences, which had caused the state financial losses (Abdullah, 2017b: 1-2).

Korsup Minerba urged having a legal basis for IUP assessment (Abdullah, 2017a:vii) because, as explained above, without legal basis for the implementation of reconciliation, regional governments would refuse to cooperate. Then, the Ministry of Energy and Mineral Resources issued Minister Regulation of Energy and Mineral Resources 43/2015 on Evaluation Procedures for the Issuance of Mineral and Coal Mining Business Licences, which applied to metal, mineral and coal mining IUPs throughout Indonesia.[6] The ministerial regulation concerned the C&C implementation mechanism, which will be discussed in one of the sub-sections of this chapter.

5.3 Illegality and legality verification policy in Indonesia

Indonesia used laws and regulations to control access to natural resources, but the government failed to implement and enforce them. Therefore, illegal practices were common in Indonesia, especially in the context of natural resource management (McCarthy, 2011: 89-90). This issue was further complicated by the fact that many state officials were involved in the illegal practice (Aspinall & Klinken, 2011: 2-3). Politicians and government employees accepted bribes, inducements, favors, commissions, etc., in exchange for ignoring the regulations and providing routine government services, including licensing (Cribb, 2011: 32). The process of issuing

6 https://programsetapak.org/pemantauan-bersama-untuk-meningkatkan-tata-kelola-sektor-pertambangan/

licences related to natural resources (i.e the use of timber, plantations, and mining licences) in forest areas was a form of government service that was widely abused by state officials, and the impact this had on deforestation which ultimately caused systematic damage and the conversion of natural forests (Kartodihardjo *et.al,* 2015: 184). One illegal practice often carried out by government officials when issuing licences violated the procedure for issuing licences, by speeding up the issuance process; for example, by accelerating the submission of documents or document processing (Meehan & Tacconi, 2017: 118). Another common illegal practice was to give preferential treatment to companies who obtained licences, even if those licences had been obtained against laws and regulations; for example, by granting licences to areas that were either not in accordance with forest classification or had been granted licences previously (so that they overlapped with existing licences) (Meehan & Tacconi, 2017: 118-119).

Corruption and other forms of illegality in Indonesia were already 'rooted', having become a routine practice that did not go away (Aspinall & Klinken, 2011: 5; Cribb, 2011: 43). Even when the New Order period ended, giving way to the Reform period, corruption and other illegal practices by state officials proved to be more resistant to reform than people had expected (Aspinall & Klinken, 2011: 4). This also happened with the issuance of mining licences. After regional governments had been given authority to issue mining licences (as explained in Chapter II), they carried out an unlawful procedure to issue as many licences as possible.

Therefore, as explained above, C&C was issued in order to assess the legality of the mining licence issuance process for existing mining licences, so that only mining licences that were confirmed to have the required legal documents were granted C&C status. In fact, policies ensuring the legality of documents or products are not new in Indonesia. For example, there was already a legality verification scheme for combating unlawful timber trading, known as the Timber Legality Verification System (*Sistem Verifikasi Legalitas Kayu*, or SVLK). The scheme was developed by Indonesia, based on Voluntary Partnership Agreements (VPAs) with the 2003 European Union (EU) Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan (European Commission [EC] 2003).[7] The system ensures that all timber is produced in accordance with national laws, and that legality certificates, produced via legal procedures, are always provided for timber (Maryudi, 2016).

SVLK, which have been discussed in various forums and papers, concern: what is categorised as legal; how a scheme is implemented; effect(s) on the eradication of illegal logging; how the small-scale forestry sector is

7 https://silk.menlhk.go.id/index.php/article/vnews/23

impacted, etc. (for example, Obidzinski, *et.al.*, 2014; Nurrochmat, *et.al.*, 2016; Setyowati & McDermott, 2017). Some discussions criticise the SVLK scheme and its implementation, stating that the legality scheme has mainly served to simplify the resolution of Indonesian forest governance issues into an auditable list of regulatory requirements (Setyowati & McDermott, 2017: 755-756). Legality in SVLK policy is only narrowed by the availability of formal documents, and not by the evaluation of deviations to obtain these documents (Setyowati & McDermott, 2017: 755-756). The scheme is therefore only an administrative procedure, which fulfils administrative requirements and is therefore considered to have complied with the law. This is the case, even though the process of fulfilling administrative requirements can be misused, risking conflict with the goal of eradicating illegal logging, because the root of the problem is not being solved (Obidzinski & Kusters, 2015). It is even possible that the scheme actually legitimises exploitative (but legal) practices and makes it possible to legalise previously illegal or legally ambiguous practices (Bartley, 2014: 105).

Referring to the situation of rampant illegal practices in Indonesia and in SVLK, and in order to understand the extent to which C&C resolved the problem of thousands of illegally issued mining licences and their impact on the environment, this chapter assesses: the legality criteria, or criteria for granting a C&C certificate; the C&C mechanism; and the implementation of C&C itself.

In assessing the legality criteria used by C&C to assess mining licences, I refer to the general understanding of legality that is simply conformity with laws and regulations, and not to the deeper understanding of legality as discussed by legal scholars – for example, Fuller, who states that the ideal legality is that all rules are clear, consistent with each other, known to every citizen, never retroactive, and carefully followed by the courts, the police, and all those responsible for their administration (Fuller, 1964: 41), or the understanding of legality stated by Shapiro: that it is broad to the point of questioning the identity of the law, such as whether an unfair rule can still be said to be a law (Shapiro, 2011: 24). Legality, in the opinion of such scholars, is not only behaviour in accordance with the existing rules, but also that the rules themselves must be of a certain quality.

In contrast, I focus on assessing whether the legality criteria for assessing mining licences in C&C were in accordance with Indonesian laws and regulations. After assessing the criteria used in the C&C, the study analyses the mechanism used to determine whether or not a mining licence has met the legality criteria, and to determine the sanctions for mining licences that did not meet the criteria. Finally, the study analyses the implementation of C&C, focussing on how the mechanism for assessing mining licences was carried out, the role of government authorities in assessing mining licences, and the behaviour of companies and other parties involved. C&C may be

difficult to implement in Indonesia because, as explained above, rampant illegal practices and even unlawful activities are so deep-rooted and difficult to eradicate, making the mechanism easy to carry out through unlawful practices.

5.4 Minister of Energy and Mineral Resources Regulation 43/2015

As explained in Section 2, C&C was initially implemented without a legal basis. The Ministry of Energy and Mineral Resources asked the regional governments to provide documents related to metal and coal mining licences, then assessed whether or not the licences fell into the clean and clear category. However, the implementation was not effective, and after the KPK became involved in C&C, it pushed for a legal basis for its implementation. Eventually, the Minister of Energy and Mineral Resources issued Minister Regulation 43/2015, which was used (from 2015 to 2017) as a guide for assessing metal and coal mining licences.

In the hierarchy of laws and regulations in Indonesia (Articles 7 and 8 of Law 12/2011 on the Establishment of Laws and Regulations), as described in Chapter I, the ministerial regulation sits within several types of laws and regulations, namely: the 1945 Constitution; the Decree of the People's Consultative Assembly; Laws/Government Regulations in Lieu of Laws; Government Regulations; and Presidential decrees and other regulations established by the People's Consultative Assembly, House of Representatives, Regional Representative Council, Supreme Court, Constitutional Court, Financial Audit Agency, Judicial Commission, Bank Indonesia, Ministers, particular agencies, or government commissions. The rules in the ministerial regulation must therefore be in line with, and must not conflict with, the higher laws and regulations. In general, ministerial regulations regulate the rules contained in the laws and regulations above in more detail.

Ministerial Regulation 43/2015 was issued when 32/2004 on Regional Government was replaced by Law 23/2014 which changed the rules regarding authority for mining management. The law regulates that the regent/mayor is no longer authorised to issue or revoke metal minerals and coal mining licences, the authority for which would now only be held by the Minister of Energy and Mineral Resources and the governor. The Ministerial Regulation also stipulated that only the Minister of Energy and Mineral Resources and the governor had the authority to assess mining licences. All regents/mayors must submitted mining licence documents to the governor if the mining licence owner was a company with domestic investments, or to the Minister of Energy and Mineral Resources if the mining licence owner was a company with foreign investments (Article 2).

On behalf of the Ministry of Energy and Mineral Resources, the Director General of Mining and Coal and the governor would assess mining licence documents (Article 4). The type of metal and coal mining licences to be assessed were IUPs, originating from the adjustment of KP and KP that had neither expired nor been adjusted to become an IUP (Article 5 (1)). Therefore, IUPs that were not included in these two criteria did not need to be assessed; for example, IUPs that were not from KP and that had been issued after Mining Law 4/2009 entered into force.

Mining licence assessment was based on administrative, spatial, technical, environmental and financial criteria (Article 5 paragraph (2)). The administrative criteria concerned the availability of documents related to mining licences, such as the licence application, licence extension, status upgrade licence, and licence reduction. The spatial criteria required documents showing that the mining area did not overlap with other mining licence areas. The technical criteria comprised an exploration report document for exploration IUP holders, and feasibility study documents for IUP holders entering the production operation stage. The environmental criteria referred to the completeness of the environmental documents submitted. Finally, the financial criteria included documents showing fulfilment of the obligation to pay fixed fees, for exploration IUP holders, and documents showing payment of fixed fees and royalties, for production operation IUP holders.

In the assessment process, the Director General of Mineral and Coal (on behalf of the Minister of Energy and Mineral Resources) and the governor would ensure and adjust licensing documents collected to satisfy the rules of Mining Law 4/2009 and its implementing regulations. For example, this could happen by adjusting the term of a mining licence in a licence document, if it exceeded the period stipulated by Mining Law 4/2009 (Articles 10 and 11), in order to shrink the area if there were overlapping mining business areas, or to give the area to the first applicant if a licence was found that evidenced overlap with another mining licence area for the same type of mining (Article 12). Another way in which this could happen was if changes were made to the coordinates of mining licences, so that they would lie partly outside of mining area reserves (Articles 14 and 15).

The Director General of Mineral and Coal (on behalf of the Minister of Energy and Mineral Resources) and the governor imposed administrative sanctions on exploration IUP holders if they did not meet the technical criteria – namely: not having exploration reports, feasibility study reports, environmental documents, or any proof of payment of fixed financial fees (Article 17 (1)) – and on exploitation IUP holders if they did not have proof of payment of fixed fees and production fees (royalties) (Article 17 (2)). The administrative sanction came in the form of a written warning, the temporary cessation of business activities, or the revocation of IUP (Article 17 (3)).

The Director General of Mineral and Coal (on behalf of the Minister of Energy and Mineral Resources) and the governor would revoke a mining licence: if the application for an IUP extension was made after the IUP or KP validity period had expired; if the KP reserve or application was made after Mining Law 4/2009 had come into effect; if the application for a reserve area had been filed in the areas of Contract of Work (COW), Coal Contract of Work (CCoW), KP and IUP that were still active and already contained the same type of mining; and if, from the results of the administrative assessment, it was found that the Exploitation KP was not preceded by the Exploration KP (Article 7 and Article 8). Licence revocation was also imposed if all the coordinates fell outside of the mining area reserve (articles 14 and 15) and the exploitation did not meet the environmental criteria (Article 18). If the governor did not revoke an exploitation of mining licence that did not meet the environmental documentation criteria, the Director General of Mineral and Coal (on behalf of the Minister of Energy and Mineral Resources) would revoke it instead (Article 19).

After the governor had assessed a mining licence, the results had to be submitted to the Minister of Energy and Mineral Resources, no later than 90 calendar days from signing the official handover of licensing documents from the regent/major (Article 21 (1)). The Director General of Mineral and Coal (on behalf of the Minister of Energy and Mineral Resources) would provide a Clean and Clear IUP certificate, based on the results of the evaluation conducted by the Director General of Mineral and Coal and the governor (Article 24).

Based on the explanation above, there were several weaknesses in Ministerial Regulation 43/2015 that could make C&C ineffective for dealing with thousands of unlawfully issued mining licences, let alone for improving environmental conditions. First, the contents of the ministerial regulation should only be technical rules that explain the rules of higher legislation. Therefore, there should be a higher regulation stipulating that an assessment of existing mining licences must be carried out. As C&C was only regulated at the level of ministerial regulation, its legal force was weak. Second, the C&C criteria stipulated in the ministerial regulation did not include the obligation to hold a forest use licence (*Izin Pinjam Pakai Kawasan Hutan*, or IPPKH) for mining to be carried out in a forest area, even though one of the problems in issuing mining licences was their issuance in environmentally vulnerable areas, such as conservation forest or protected forest areas. The criteria set out in the ministerial regulation also neglected to include documents related to reclamation and post-mining, even though the laws and regulations required these documents for the process of issuing mining licences. Third, the assessment of mining licences was based on document checking only, and according to experiences of illegal practices common in Indonesia, providing such documents could easily be carried out through unlawful procedures. This mechanism was almost the same as

the SVLK mechanism described above, for which timber was considered legal based only on the completeness of documents. This mechanism had been criticised because of its inability to demonstrate legal compliance, as it could not ensure that the required documents had actually been issued legally.

5.5 Implementation of the Clean and Clear (C&C) policy

This section discusses the implementation of C&C after the enactment of Ministerial Regulation 43/2015, especially in South Sumatra. Based on the explanation in Section 2, C&C was divided into two stages, the first being C&C before the issuance of Ministerial Regulation 43/2015 and the second being after issuance of the ministerial regulation. The first phase of C&C began with the so-called 'reconciliation', where the Ministry of Energy and Mineral Resources asked the head of regional governments to submit all mining licence documents that had been issued. This activity continued, by analysing the completeness of the documents and giving them either C&C or non-C&C status. As explained above, the first stage of collecting mining licence documents faced difficulties, mainly because of the challenges of working with regional governments, so not all of the mining licence data could be collected by the Ministry of Energy and Mineral Resources. However, from the data successfully collected, it appeared that there were problems with the issuance of mining licences in the regions, in 2014 the Directorate General of Mineral and Coal stated that 2,476 (or 77% of the) mining licences for Indonesia's mining operations involved administrative issues, such as incomplete identification or business registration documents.[8] After the first phase of C&C indicated that there were major problems, the second phase of C&C began. In the second phase, assessment of mining licences was carried out not only by the Ministry of Energy and Mineral Resources but also by the governor, in accordance with Ministerial Regulation 43/2015, and the KPK was also involved in the implementation of this policy.

The process proved difficult. First (as mentioned above), although the ministerial regulation stipulated that the district/municipal government was required to submit their IUP documents to both the provincial government and central government, for verification, many district governments did not submit mining licence data, because they objected to handing over their

8 https://programsetapak.org/wp-content/uploads/2016/10/Indonesias-mining-sector-leaking-revenues-and-clearing-forests.pdf

authority to the provincial government, as was regulated by Law 23/2014.[9] Second (as explained above), the assessment of the legality of mining licence issuance was based only on the completeness of documents submitted. There was no field checking, therefore the actual conditions could not be known.[10] For example, based on one document there was no overlap between licences in the area under consideration, but in reality there *was* overlap in the field. Third, there were law enforcement problems, as Minister Regulation 43/2015 stipulated that mining licences which did not meet certain C&C criteria should be revoked. However, several regional governments neither revoked such mining licences nor negotiated with troubled mining companies that were looking for loopholes to avoid punishment, as in the case of East Kalimantan Province.[11] The Director General of Mineral and Coal at the time, Sukhyar, said that regional governments were reluctant to revoke the mining licences, because they cared about the mining companies, and if the mining licences were revoked the mining companies would need to go through the process of issuing mining licences again, which was an expensive burden on them.[12] Fourth (as explained above), the ministerial regulation did not state any requirements for the completeness of IPPKH documents for mining in forest areas, or for completeness of mining reclamation and post-mining documents as criteria for the legality of mining licences. Therefore, there were still many mining licences in forest areas without IPPKH, and which did not implement the obligations related to mine reclamation and post-mining. For example, data from *Jaringan Advokasi Tambang* (JATAM) shows that in West Kalimantan 95% of IUPs with C&C status overlapped with forest areas, but did not have an IPPKH.[13] Meanwhile, in Central Sulawesi, of the 14 IUPs with C&C status, four did not make reclamation guarantees, whilst the remaining ten did make reclamation guarantees, but did not carry out any reclamation.[14] Indeed, when C&C was implemented, 75% of mining licence holders throughout

9 Interview with Muhammad Wafid, the Director of Directorate of Mineral and Coal Programme Development, Directorate General of Minerals and Coal, October 22nd 2019; Dedi Supriyanto, the Head of Mineral and Coal Utilization Section, Directorate of Mineral and Coal Programme Development, Directorate General of Minerals and Coal, October 30th 2019; Asep Warlan Yusuf, Administrative Law Professor at Parahyangan Catholic University, April 5th 2018; Achmad Fadillah, Head of Mining Division Energy and Mineral Resources Agency, West Java Provincial Government, April 9th 2018.

10 The opinion of Abrar Saleng, Mining Law Professor from Hasanuddin University: https://www.dunia-energi.com/tanpa-pengecekan-lapangan-clear-and-clean-iup-tidak-menyelesaikan-masalah/

11 https://www.mongabay.co.id/2017/11/06/406-izin-pertambangan-di-kaltim-dicabut-tanggapan-pegiat-lingkungan/

12 https://www.hukumonline.com/berita/a/pemerintah-akui-belum-bisa-tegas-cabut-iup-bermasalah-lt54b134f714100

13 https://programsetapak.org/wp-content/uploads/2017/01/saatnya-kerja-nyata-selamatkan-SDA.pdf

14 https://programsetapak.org/wp-content/uploads/2017/01/saatnya-kerja-nyata-selamatkan-SDA.pdf

Indonesia had not fulfilled their obligations related to reclamation and post-mining guarantees.[15]

The Ministry of Energy and Mineral Resources continued to push implementation of C&C, the that only mining companies that had C&C certificates could operate. The ministry encouraged IUP holders to check the validity of their licences and obtain C&C certificates. Furthermore, the ministry blocked non-C&C IUPs by sending letters to a number of agencies, such as the Ministry of Law and Human Rights, customs agencies, and sea transportation agencies, so that non-C&C IUPs would not be given administrative services.[16]

The role of the KPK in implementing the Clean and Clear policy

As explained above, since 2014 the KPK had been involved in supporting implementation of C&C through *Korsup Minerba*. It helped to overcome some of the weaknesses in the implementation of the policy. It supervised government agencies in carrying out their responsibilities for implementing C&C. For example, *Korsup Minerba* ensured that central government formulated rules and standards for implementing the policy, by conducting monitoring and evaluation. It also pushed regional governments to prepare any IUP documents issued by regents/mayors (Abdullah, 2017b: 44).[17] *Korsup Minerba* also bridged barriers to data flow and coordination between institutions within the central and regional governments.[18] *Korsup Minerba's* role also included preliminary baseline studies, coordination meetings, and the preparation of action plans with relevant agencies, as well as monitoring, coordinating, and supervision of action plans that had been prepared by the various relevant agencies (Abdullah, 2017b: 43).

The involvement of the KPK greatly accelerated the implementation of C&C. As a government institution, it had the power to enforce the criminal law of corruption and, in fact, the KPK had arrested government officials involved in corruption related to the use of natural resources. Hence government officials generally followed the instructions of *Minerba Korsup*, because they felt that they needed to be careful when dealing with the KPK.[19] As a result, the role of *Korsup Minerba* in ensuring that every govern-

15 https://programsetapak.org/wp-content/uploads/2017/01/saatnya-kerja-nyata-selamatkan-SDA.pdf

16 https://www.mongabay.co.id/2017/12/09/pemerintah-akan-blokir-ribuan-izin-tambang-bermasalah/

17 See also, KPK Presentation, 'Coordination and Supervision of Mineral and Coal Mining Management 19 Province in Indonesia', Bali Province, December 3rd to 4th 2014.

18 Interview with Dian Patria, the head of *Korsup Minerba*, May 3rd 2018.

19 Interview with Dian Patria, the head of *Korsup Minerba*, May 3rd 2018.

ment institution carried out its obligations was significant.[20] In addition to overcoming the coordination problems between institutions, *Korsup Minerba* also accelerated the process of implementing C&C by increasing government capacity; for example, by ensuring the availability of data and information technology for institutions involved in the implementation of C&C.[21]

Moreover, *Korsup Minerba* took the initiative to ensure that implementation of C&C could improve forest protection. As explained above, the criteria for mining licence legality in Minister Regulation 43/2015 did not include IPPKH for mining licences located in forest areas, meaning it was possible that even mining licences with C&C status could be located in conservation forest or protected forest areas. *Korsup Minerba* established a mechanism for evaluating these mining licences too (Abdullah, 2017a: 26; Abdullah, 2017b: 60-61). *Korsup Minerba* cooperated with The Ministry of Environment and Forestry (*Kementerian Lingkungan Hidup dan Kehutanan*, or KLHK), The Ministry of Energy and Mineral Resources and the regional governments to agree on action plans. In the plans, the governor/regent/mayor was asked to send a notification letter to reduce concessions located in conservation forest and protected forest areas, creating a temporary cessation of activities and, for IUPs that did not yet have an IPPKH, asking companies to process licences at the KLHK (Abdullah, 2017a: 26; Abdullah, 2017b: 60-61).

Korsup Minerba also cooperated with communities, NGOs and academics in monitoring the implementation of C&C at both central and regional levels. It often received reports from the public regarding violations that had occurred in the field.[22] The report on field conditions was useful for overcoming the mining licence assessment weakness specific to C&C, i.e. that it was based on the completeness of documents only.

---

20 Interviews with Asgan R. Nasrullah, an employee of the Directorate of Mineral and Coal Program Development, Directorate General of Minerals and Coal, December 10th 2019; Surya Herjuna, the Head of Sub-directorate of Coal Business Services, Directorate of Coal Business Development, Directorate General of Minerals and Coal, December 16th 2019; Dedi Supriyanto, the Head of Mineral and Coal Utilization Section, Directorate of Mineral and Coal Program Development, Directorate General of Minerals and Coal, October 30th 2019; Rabin Ibnu Zainal, Director of PINUS, August 28th 2018;Dian Patria, the head of *Korsup Minerba*, May 3rd 2018.

21 Interviews with Asgan R. Nasrullah, an employee of the Directorate of Mineral and Coal Program Development, Directorate General of Minerals and Coal, December 10th 2019; Surya Herjuna, the Head of Sub-directorate of Coal Business Services, Directorate of Coal Business Development, Directorate General of Minerals and Coal, December 16th 2019; Dedi Supriyanto, the Head of Mineral and Coal Utilization Section, Directorate of Mineral and Coal Program Development, Directorate General of Minerals and Coal, October 30th 2019; Rabin Ibnu Zainal, Director of PINUS, August 28th 2018;Dian Patria, the head of *Korsup Minerba*, May 3rd 2018.

22 Interview with Dian Patria, the head of *Korsup Minerba*, December 9th 2019.

Clean and Clear policy implementation in South Sumatra Province

The dynamics of C&C implementation in each region of Indonesia varied, because of varying regional characteristics. The problems that commonly occurred when implementing the policy above have already been described (above), but to examine the implementation of C&C more deeply I undertook research in the Province of South Sumatra. I chose this province because, based on information from the KPK, it is considered to be the area in which implementation of C&C was most successful.[23] The South Sumatra Provincial Government supported the implementation of this policy. It was also cooperative towards *Korsup Minerba* and had a good relationship with the regional NGOs.[24] This may also have had something to do with the fact that (based on data owned by NGOs in South Sumatra at the time) South Sumatra Province leaders were not associated with the mining companies operating in that region. My research in South Sumatra aims to understand the extent to which the C&C policy was implemented effectively, and whether its impact on the environment in the province can be considered a successful implementation of the policy.

South Sumatra produces metallic minerals consisting of gold, silver, iron ore, iron rock, lead, and coal. Coal reserves in South Sumatra make up 22.24 billion tons (or 39%) of the national coal reserves.[25] Mineral and coal resources are exploited on the basis of hundreds of mining licences issued by the South Sumatra provincial government, 15 district governments, and one city government.[26] Most of these mining licences were issued for locations in forest areas.[27] Data from the Directorate General of Mineral and Coal at the Ministry of Energy and Mineral Resources on April 28th 2014 shows that 794.28 hectares covered by mining licences in Musi Rawas Regency and 85.96 hectares covered by mining licences in Musi Banyuasin Regency were situated within conservation forest.[28] Meanwhile, 1,200.13

23 Explanation of *Korsup Minerba* in a press conference organised by NGOs in South Sumatra and *Korsup Minerba*, Palembang, April 3rd 2018.

24 Interview with NGOs in South Sumatra, such as WALHI, PINUS and HAKI, April 3rd 2018; Dian Patria, the head of *Korsup Minerba*, December 9th 2019.

25 Presentation by Robert Heri, the Head of the Energy and Mineral Resources Agency, South Sumatra Provincial Government, 'Process of Arranging Mineral and Coal Mining Business Licenses in South Sumatra Province', Seminar and Workshop on Early Year Notes of Mineral and Coal Mining in South Sumatra, Palembang, January 10th 2017.

26 Presentation of the KPK Natural Resources Corruption Prevention Team, 'Coordination and Supervision of Mineral and Coal Mining Management in South Sumatra Province', Directorate of Research and Development of the KPK, April 28th-30th 2014.

27 Presentation of the Governor of South Sumatra Province, 'Prospects for Mining of Metal Minerals in South Sumatra', during the discussion on the Minister of Energy and Mineral Resources Regulation Number 7 of 2012, Jakarta April 10th-11th 2012.

28 Presentation of the KPK Natural Resources Corruption Prevention Team, 'Coordination and Supervision of Mineral and Coal Mining Management in South Sumatra Province', Directorate of Research and Development of the KPK, April 28th-30th 2014.

mining licences in Banyuasin Regency and 8,116.49 mining licences in Empat Lawang Regency were situated in protected forests.[29]

As described above, the Ministry of Energy and Mineral Resources carried out the first phase of C&C in 2011. The result was that, of the 359 mining licences in South Sumatra, 83 (or 23.12%) were categorised as non-C&C.[30] Furthermore, reclamation guarantee funds had only been submitted for 29 mining licences and post-mining guarantee funds had only been sent for 4 mining licences.[31] As explained above, no sanctions were imposed during the implementation of the first phase of C&C, but non-C&C mining licence holders were not provided with any government services related to their business.

Since the issuance of Ministerial Regulation 43/2015, C&C had been implemented in South Sumatra in collaboration with the Provincial Government, *Korsup Minerba* and several NGOs in South Sumatra, such as *Pilar Nusantara* (PINUS), *Wahana Lingkungan Hidup Indonesia* (WALHI) and *Hutan Kita Institute* (HAKI). *Korsup Minerba* and NGOs were involved, because they were positive that C&C would overcome the existing problems with mining licences.[32]

Based on Ministerial Regulation 43/2015, all district/city governments in South Sumatra had to submit IUP documents to the South Sumatra Provincial Government for evaluation. The transfer of authority was responded to negatively by the district/city government and it was not cooperative regarding the implementation of C&C.[33] Therefore, the process of submitting the licence documents did not run smoothly, and some district/city governments did not respond to the request letter for documents that was sent by the provincial government.[34] The provincial government therefore immediately sent out letters to companies holding an IUP, requesting that

29 Presentation of the KPK Natural Resources Corruption Prevention Team, 'Coordination and Supervision of Mineral and Coal Mining Management in South Sumatra Province', Directorate of Research and Development of the KPK, April 28th-30th 2014.

30 Presentation of the KPK Natural Resources Corruption Prevention Team, 'Coordination and Supervision of Mineral and Coal Mining Management in South Sumatra Province', Directorate of Research and Development of the KPK, April 28th-30th 2014.

31 Presentation of the KPK Natural Resources Corruption Prevention Team, 'Coordination and Supervision of Mineral and Coal Mining Management in South Sumatra Province', Directorate of Research and Development of the KPK, April 28th-30th 2014.

32 Discussion between NGOs at a press conference organised by NGOs in South Sumatra and *Korsup Minerba*, Palembang, April 3rd 2018.

33 Interview with Aries Syafrizal, the Head of the Mineral and Coal Engineering and Reception Division, the Energy and Mineral Resources Agency, South Sumatra Provincial Government, August 28th 2018.

34 Interview with Rabin Ibnu Zainal, Director of PINUS August 28th 2018; Aries Syafrizal, the Head of the Mineral and Coal Engineering and Reception Division, the Energy and Mineral Resources Agency, South Sumatra Provincial Government, August 28th 2018.

they submit all mining licence documents. The letters contained the threat that, if the documents were not submitted, the company's negligence would be reported in regional newspapers. This threat proved to be a successful method for collecting mining licence documents.[35] Furthermore, *Korsup Minerba* and the Provincial Government of South Sumatra invited district/city governments to cooperate regarding C&C, and organised several meetings between *Korsup Minerba*, the provincial government, and district/city governments, to discuss development of the policy and action plans.[36]

Mining licence documents for operations in South Sumatra could finally be collected, but there was no guarantee that the process of issuing these documents would be carried out legally. The illegal issuance of such documents was indeed an issue in C&C (as described above). An NGO provided photos of several IUP documents, stating that illegal practices in the issuance of mining licence documents had been found in a company where the IUP had been signed by the regent in 2009, although at that time the regent was deceased.[37] It seemed that the IUP document had only been prepared to meet the requirements of the Clean and Clear policy.[38] However, two officials from the Provincial Government of South Sumatra claimed that they could recognise fake documents, so they claimed that all the verified documents were legal.[39]

Furthermore, because the C&C mechanism only checked documents, real mining problems in the field were not covered by C&C. An official in the South Sumatra provincial government admitted that even if an IUP did not overlap with another one in the relevant document there could very well be overlaps in the field.[40] As the monitoring system for mining activities in the field remained limited, it was difficult to see the implementation of C&C in the field.[41]

35 Interview with Aries Syafrizal, the Head of the Mineral and Coal Engineering and Reception Division, the Energy and Mineral Resources Agency, South Sumatra Provincial Government, August 28th 2018.

36 Interview with Dian Patria, the head of *Korsup Minerba*, May 3rd 2018; Interview with Hendriansyah, the Head of the Mineral and Coal Business Division, the Energy and Mineral Resources Agency, South Sumatra Provincial Government, August 28th 2018.

37 Interview with Rabin Ibnu Zainal, Director of PINUS, August 28th 2018.

38 Interview with Rabin Ibnu Zainal, Director of PINUS, August 28th 2018.

39 Interview with Aries Syafrizal the Head of the Mineral and Coal Engineering and Reception Division, the Energy and Mineral Resources Agency, South Sumatra Provincial Government, August 28th 2018; Hendriansyah, the Head of the Mineral and Coal Business Division, the Energy and Mineral Resources Agency, South Sumatra Provincial Government, August 28th 2018.

40 Interview with Aries Syafrizal, the Head of the Mineral and Coal Engineering and Reception Division, the Energy and Mineral Resources Agency, South Sumatra Provincial Government, August 28th 2018.

41 Interview with Rabin Ibnu Zainal, Director of PINUS, August 28th 2018; Dian Patria, the head of *Korsup Minerba*, December 9th 2019.

Regarding mining licences in forest areas, although C&C criteria in Ministerial Regulation 43/2015 did not cover forestry requirements (as described above), in its involvement in implementing the C&C policy throughout Indonesia, *Korsup Minerba* had taken several actions regarding mining licences for sites located within forest areas. As a result of these efforts, hundreds of hectares of mining licences for activities located in conservation forest in Musi Rawas Regency and Musi Banyuasin Regency were removed from the area, and mining licences for activities sited in protected forest in Banyuasin Regency also no longer exist.[42]

As a result of the implementation of the first phase of C&C in South Sumatra (as described above), out of 356 mining licences, 276 met the Clean and Clear criteria. In 2015, after *Korsup Minerba* got involved in implementing the policy, the result was only 175 mining licences being considered C&C.[43] After the issuance of Ministerial Decree 43/2015, an IUP evaluation was carried out based on the Ministerial Regulation, starting in 2016, and the result was that only 141 IUPs were deemed to meet the C&C criteria.[44]

The revocation of several mining licences and company lawsuits in South Sumatra Province

Based on Ministerial Regulation 43/2015, the Director General of Mineral and Coal or the governor could impose sanctions on a company if its mining licence did not meet regulation requirements in terms of administration, technical matters, or environmental concerns. For certain violations (as described above), the sanction would be revocation of the mining licence. Unlike the general phenomenon that occurred in other regions in Indonesia (as described above), where regional governments were reluctant to revoke problematic mining licences after assessing them, the Provincial Government of South Sumatera revoked 34 non-C&C mining business licences. As a result of the revocation, nine companies filed a lawsuit with the administrative court.

In fact, the provincial government of South Sumatera was aware that one consequence of revoking the licence could be mining companies filing lawsuits, and it was prepared for the possibility. *Korsup Minerba*, NGOs

42 Presentation by Robert Heri, the Head of the Energy and Mineral Resources Agency, South Sumatra Provincial Government, 'Process of Arranging Mineral and Coal Mining Business Licenses in South Sumatra Province', Seminar and Workshop on Early Year Notes on Mineral and Coal Mining in South Sumatra, Palembang, January 10th 2017.

43 PINUS' presentation Highlights on Mineral and Coal Mining in South Sumatra, at a press conference organised by NGOs in South Sumatra and *Korsup Minerba*, Palembang, April 3rd 2018.

44 PINUS' presentation Highlights on Mineral and Coal Mining in South Sumatra, at a press conference organised by NGOs in South Sumatra and *Korsup Minerba*, Palembang, April 3rd 2018.

and academics helped the South Sumatera Provincial Government in dealing with such cases because, as explained above, they supported the implementation of the second phase of C&C. Furthermore, they thought that if the provincial government was defeated in court, the situation would be unfavourable for the natural resources protection movement, because it would form a bad precedent in the fight for revocation of mining licences in other areas of Indonesia.[45] To win these cases they developed a strategy together with the provincial government,[46] and they were also involved in providing data; case analysis; discussions; and observation of the trials[47].

The judgments in these lawsuits were fairly positive for the government. Of the nine mining company lawsuit cases, five were won by the Provincial Government of South Sumatera, whilst four were won by mining companies. Two of the latter demonstrated the weakness of C&C policy and will be discussed below: the case of *PT Trans Power Indonesia v. Governor of South Sumatera* and *PT Duta Energi Mineratama v. Governor of South Sumatera*.

The South Sumatera Governor revoked both companies' mining licences, because they could not show certain documents stipulated in the laws and regulations, namely: a government decision on the mining reserve area; reclamation and post-mining plan documents; and proof of payment of fixed contributions and production fees (royalties). However, both companies claimed that their mining licences were not one of the objects of evaluation, as referred to in Article 5 of Ministerial Regulation 43/2015. The objects of evaluation were: a mining licence (IUP) that had been adjusted via Mining Authorisation (KP) and/or a KP which had not expired but had not been adjusted to become an IUP. Their IUP was a new IUP, not an adjustment from a KP. The companies' other argument was that the sanctions should be given in stages, namely: a) a written warning; b) the temporary suspension of some or all exploration activities or production operations; and c) revocation of the IUP. The governor's action of revoking the company's IUP immediately, without written warning or temporary suspension of business activities, revealed its arbitrary nature.

The court granted the companies' claims with several considerations, including: in line with the Circular of the Director General of Mineral, Coal and Geothermal 1053/30/DJB/2009, an application for a KP which had been received before the enactment of Law No 4/ 2009 could be further processed, without having to go through an auction process using the IUP format. Thus, the company's IUP was not an object of evaluation based on Ministerial Regulation 43/2015. Furthermore, in line with Article 17

45 NGO discussion in a press conference organised by NGOs in South Sumatera and *Korsup Minerba*, Palembang, April 3rd 2018.
46 Ibid.
47 Ibid.

of Ministerial Regulation 43/2015, if a company did not have complete documents, the government should provide administrative sanctions in stages, the first being a written warning, then second being the temporary suspension of business activities, and the last being revocation of the IUP by the government – in contrast with a governor immediately actioning the sanction to revoke a mining licence. The decision of the courts was upheld by both the high court and the supreme court.

Based on these cases there were several weaknesses in Ministerial Regulation 43/2015 that hindered efforts to overcome the problem of unlawful mining licences. Based on the regulation, not all mining licences were suitable for assessment. As explained above, Article 5 of the Ministerial Regulation stated only a KP or an IUP adjusted from a KP must be evaluated. However, in the transition period (especially in early 2009 when Mining Law 4/2009 had just been passed) many applicants were granted IUP directly, without going through KP. Moreover (as explained above) one of the reasons for revoking a mining licence was because a company did not have mine reclamation and post-mining plan documents, although C&C criteria in the ministerial regulation did not include completeness of the reclamation and post-mining plan documents. Therefore, even though the two companies did not have these documents, they were not considered to have committed a violation.

The judges' opinions that the IUPs of the two companies were not part of the object of evaluation for a mining licence were correct, because their IUPs did not fall into the categories regulated by Ministerial Regulation 43/2015. However, the judges were not right in their interpretation of Article 17 (3) of the Ministerial Regulation. The judges argued that, according to Article 17 (3), the Governor of South Sumatera should provide administrative sanctions in stages. Whereas there was no provision in the regulation that the imposition of sanctions must be gradual. Article 17 (3) only stated provisions regarding types of administrative sanction, namely: a written warning; the temporary cessation of business activities; or revocation of the IUP. This means that the governor had the authority to choose the appropriate sanctions for violations committed by the two companies.

5.6 Conclusion

C&C was a policy designed to assess the legality of the issuance of metal mineral and coal mining licences in Indonesia. It was a reaction to the widespread issuance of mining licences in the regions through unlawful procedures, outside of central government control. This is not actually a new type of policy in Indonesia. Previously, the SVLK (for example) was intended to verify the legality of timber circulating in the market. The SVLK has been criticised because assessment of the legality of timber is based only

on an assessment of the existence of certain documents, but it does not go beyond that to trace how the document was obtained, which is odd, given that illegal documentation practices are rampant in Indonesia and government officials are also involved.

Reflecting on the literature related to illegal practices in government bureaucracy in Indonesia and the SVLK, this chapter has discussed to what extent the C&C could solve the problem of the existence of thousands of mining licences issued through unlawful procedures, and to what extent the policy has impacted on environmental improvements. In the end it was found that, despite some successes, C&C could not solve the problem of thousands of problematic mining licences existing, and it therefore did not promote environmental conditions.

There are several reasons why the policy failed in this respect. The first is a legal-technical one. The policy was regulated in Ministerial Regulation 43/2015, which was insufficient as a legal basis for C&C. Ministerial regulations should only regulate technical rules for implementing higher regulations. Therefore, the rules in the Ministerial Regulation were not comprehensive and did not have enough force to be implemented.

Secondly, several legal requirements for the issuance of mining licences, regulated by various laws and regulations, were not included in the C&C criteria. Among them were the placement of guarantee funds for mine reclamation and post-mining, and IPPKH for mining activities in the forest, even though both were serious issues from an environmental perspective. This means that, even if a mining company did not have these documents, its mining licence could still be categorised as a C&C mining licence.

Thirdly, the mining licence assessment mechanism only assessed the completeness of the documents, and this mechanism was easy to misuse. This is like the SVLK mechanism, where the measure of legality is based only on the existence of certain documents. It is always possible that the documents have been obtained illegally, a practice that occurs often in Indonesia, but also that the situation on the ground differs from that found in the licence.

While the implementation of C&C in various regions in Indonesia varied, it was generally problematic. Many district/city governments were not cooperative and refused to submit mining licence documents to the provincial government for the assessment. This was in addition to the fact that, since the beginning of the decentralisation period, there had been no adequate coordinating relationship between the central and regional governments. Even though Ministerial Regulation 43/2015 stipulated that district/city governments must submit the documents, (as explained above) the governments refused because of the reason mentioned above that a ministerial regulation was insufficient for imposing this obligation The problem

of coordination between provincial and district/city governments also occurred in areas that were considered to be the most successful in implementing C&C policies; for example, in the province of South Sumatera, where the provincial government had difficulty obtaining mining licence documents from the district/city government. Furthermore, because the assessment of mining licence legality was only based on the completeness of the documents, in the implementation, the legality of obtaining the documents was not being traced and explored.

The revocation of mining licences resulting from the assessment of mining licences was a problem in various regions. Many regional governments did not want to revoke mining licences even though they should, based on the C&C assessment stipulated in Ministerial Regulation 43/2015. Cases in which licences were actually revoked were not always successful either. As this chapter found, in South Sumatera the governor revoked mining licences, but several mining companies whose licences had been revoked filed lawsuits at the state administrative court. Of the nine cases that went to trial, five were won by the South Sumatera provincial government. The governor lost two cases, in both of which the judge decided to cancel revocation of the mining licences, and it can be concluded that there were weaknesses in Ministerial Regulation 43/2015, which made it difficult to catch all the problematic mining licences.

However, in part, C&C was a success. This was largely due to the support of *Korsup Minerba*, KPK and several other parties, such as NGOs and universities. The KPK used its position as a respected law enforcement agency to encourage every institution in the central and regional governments to carry out their obligations and cooperate with each other. In addition, although the IPPKH and mine reclamation and post-mining documents were not included in the C&C criteria regulated by Ministerial Regulation 43/2015, *Korsup Minerba* made an effort to ensure that mining companies were complying with forestry and mine reclamation and post-mining regulations. Although these efforts could not guarantee compliance by all mining companies, in some places there were positive results. One example was in South Sumatera, where no further mining activities were licensed in conservation areas, and the number of mining licences issued within protected areas decreased. However, the involvement of the KPK and other parties was certainly limited, and it was impossible for them to supervise the implementation of all mining licences in the field and throughout Indonesia.

Hence, C&C was especially useful for collecting data on mining licences that had previously been difficult to obtain, and for ensuring that there was no overlap between the same types of mining licence – based on documents, at least. However, this policy could not be relied upon to overcome the problem of thousands of mining licences being obtained via unlawful

procedures, because it only assessed the completeness of mining licence documentation whilst ignoring conditions on the ground. Furthermore, this policy was not enough to affect environmental improvements, because the criteria related to the environment, such as the IPPKH, mine reclamation, and post-mining, were not included in the C&C criteria. It was still possible to obtain a mining licence with a C&C without carrying out any obligations related to mine reclamation and post-mining, and without an IPPKH, even though the area being licensed was in a forest or even conservation area.