

## **Political economy perspective of mining policy: a case study on rent seeking in clear and clean regulation of coal mining in indonesia (2009-2014)**

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### **Abstract**

Since the New Order era mining policy is strongly tended to be political for the fact that this sector is highly promising. The case on Clear and Clean mechanism was full of potency on rent-seeking with the modus of various regulation misuse. Every spot of rent-seeking in this case has provided different opportunity of manipulation. The Clear and Clean case also shown about the strength of central government against local government. The local government was considered as the party that resembles the business owner so it was their duty to save the asset. The strength of patron-client in clear and clean policy was mainly proven by the fact of the appearance of Individual triangle alliance as a broker. This also explained that woman and paranormal as third person was strongly very influential in lobbying between the interest business owners and bureucrates. The result of research also reconfirmed about the strength of patron-client model. This model was indicated by the existance of strength informal actors that penetrated the environment of formal bureaucracy. Strength of those informal actors was the main key of access business owner in the rent-seeking network and circle in different spots.

**Keywords:** clear and clean policy; coal mining permit; elites; political economy; patron client; rent seeking

## INTRODUCTION

The research is aimed to thoroughly unwrap Indonesian coal mining policy in political economic perspective. As it is well known mining sector is one of prominent sector in Indonesia to contribute the economic growth. Since the New Order era mining policy is strongly tended to be political for the fact that this sector is highly promising. The specific clear and clean was proposed in 2010 to answer the need of a more transparent coal mining permit.

The case on Clear and Clean mechanism was full of potency on rent-seeking with the modus of various regulation misuse. Every spot of rent-seeking in this case has provided different opportunity of manipulation. The most important part of this formulation process was the point of “cost of” process. The case of Clear and Clean has shown about the different pattern that resembles the points of potency on rent-seeking. This potency of rent-seeking was dominated by policy actors from central government through manipulation of regulation.

This caused the harmful situation where the certification Clear and Clean process become an alternative instrument to eliminate the non-Clear and Clean Local Mining Permit (IUP) and provide a new arena of rent-seeking. The policy actors from central government then developed the new blok as central government mining permit (PKP2B). This highly cost of rent-seeking has not only caused an expensive cost of policy making process with fee transaction, but also it provided another tremendous social impact.

The case of eliminating Local Mining Permit (IUP) and make a new central government mining permit (PKP2B) in Pinang Jatus for example, has caused a mismanagement of indigenous land concession called Tanah Adat Adji Panembahan Lambakan and emerged the significantly severe negative externality. In the context of negative externality, central government almost has cancelled the policy on Clear and Clean. Ministry Energy and Mineral Source (ESDM) will evaluate against Clear and Clean certificate that have been issued. While the Law of Minerba has been issued with Law Number 4 Year 2009, central government have the authority to remanage the permit. For this fact, central government through Directorate General of mineral and Coal has socialized a program in managing through reconciliating and updating data of IUP by local government.

Several number of researches have explained the aspects of political economy with wider perspective. Those researches simply tried in revealing the rent-seeking activity in coal mining subsector. The importance of authority in specific regulation will answer the research question gap that has left by the previous researches. Some results have been reported from previous researches in explaining rent-seeking approach by Krueger (1974), Khan and Jomo (2000), Little (2002), and Rachbini (2012). Another researches were made to answer in more specific way about authority in rent-seeking process as reported by Jomo & Gomez (2000), Amsden (1989), Chang (1994), and Kim & Ma (1997). The further research on institution of rent-seeking actors and policy regulation were explained by Robinson & Torvik (2008), Tan (2008), Naritomi & Soares (2007), and Ballard (2002).

The specific research on similar Clear and Clean certification were focusing on the policy actors in different level of central and local government. This explained how activity of rent-seeking that were carried out and provide conflict of interest and role central or level as were reported by Wick & Butle (2006), Yasmi (2006), Evaquarta (2008), Kirana Jaya (2004), and Budiyanto (2002). Meanwhile, the study on impact and pattern of rent-seeking were recently reported by Khan and Jomo (2000), Ross (2002), Khan & Jomo (2000), and Mohammad & Whalley (1983). Their research have shown about the impact of policy in negating the public value. Research on rent-seeking in policy has provided a gap about the actor relation in rent-seeking practice in mining coal policy both central or local government.

## RESEARCH METHODE

This study uses qualitative methods with a non-positivist approach through explorative case studies. Analysis delivered with theory of rent-seeking toward the Clear and Clean Certification as one of regulation on mining coal. Theory of rent seeking by Khan (2000) has explained that practice of *rent seeking* is related to the expenditure of some resources including the aspects on efforts of creating, distributing, transfer and maintaining the *rent*. Those efforts were delivered to fulfill the interests in obtaining a privilege from government in pursuing certain access to the policy makers on policy

making process (Parker, 2011). Network of rent-seeking in permit regulation mining coal was analysed through variables of regulation, actors, and institutions.

To complete the explanation theory on the rent-seeking this research has used the Laswell and Mills theory to narrate the relationship of inter-actors in every single case of rent-seeking as critical development of the idea of Charles Lindblom about rational actor. Relation of actors will not always act in rational of the interest of the actor. Explanation of Laswell and Mills become important that practice of rents seeking is considered always based on transactional practice. Model of patron client is used to analyze the relation of elites and role as superior member (patron) and inferior member (client).

Analysis of superior and inferior member is used to see deeply the character and mechanism of interest elites so that the rent-seeking phenomena while seeing the local characters in Indonesia, such as the existence of paranormal as a part of policy maker. The use of patron-client model is related with the results of studies by Little (2002) that stated whether the form of rent-seeking in most of Southeast countries are corruption and patron-client. Analysis on role actor in rent-seeking permit is the further effort in analyzing process of rent seeking spots on permit regulation of mining coal that is explained in the preface. The discussion is based on the process and actors, regulation, and also pattern of rent-seeking emphasized by Khan and Jomo (2000) that stated patron-client was focus on corruption, transfer, and intervention. The discussion also includes the arguments on Elites Theory. Theory of Laswell is used as the basic inexplains how the political elites may produce such authoritative decisions that influenced widely in most of society life (Parsons, 2008).

Empirically it is also explained by the results of previous research as confirmation on the role of actors in coal mining policy. Role of actors and contestation of rent-seeking possess a certain character as main of the research result and novelty of it. The research of this paper also confirmed the theory by Wright C. Mills that an output of policy is strongly determined by the elites entity that dominate the higher position on an organization. In this context, it is represented by the mining corporation and bureaucracy structure. Case in this research has shown that elites policy maker and business people were indeed the epicentrum of rent-seeking on coal mining business.

The analysis against variable and indicator research in practice mafia rent seeking policy mining coal is policy variable or regulation with indicator inconsistent policy, manipulation policy, and gap regulation utilization. Variable of institution have dynamic indicator institution, role institution and the cooperation among the corporations as indicator of the weakness of governance. The variable of actor policy is measured by indicator of the third person, the role of bureaucrat and how the business persons influence the policy. This variable is measured to underline the indicator weaknesses of the leader or policy maker. For the respondents protection needs, the author uses a pseudonym in explaining the case in the study.

## RESULT AND DISCUSSION

### Rent-Seeking on Certification of Clear and Clean Regulation

Regulation became a potency of rent-seeking for its tendency for the policy actors to mismanage the process of policy making process and later misuse the implementation. The regulation manipulation in this case merely the regulation abuse in which the permit administration process certification Clear and Clean was taken place. Considering that the restriction on terminology of rent-seeking as a certain effort in fulfilling an interest to obtain privilege from government in special access towards and policy formulation (Parker, 2011), so this case is very relevant. The case Clear and Clean was focus on the regulation gap on permit administration process in Clear and Clean certification. This very process was used by those business owners to save their problematic IUP. The problematic certification of Clear and Clean was caused by careless administration that published the permit without technical field assessment. Furthermore this provided a new arena for rent-seeking among the mining business owners.

The need of business owner against certification Clear and Clean as term of condition on coal exporting has been causing a small chaos. The regulation of Clear and Clean was extremely hunted by those business owners. This policy maker atmosphere become very exclusive. They are so hard to find, so difficult to access and almost impossible to penetrate for its very strict mechanism in accessing the central of policy makers. The brokers in this sector become more careful and will strongly research and screen for any parties who want to access this elites group.

The urgency and strategic value of Clear and Clean certificate was emerged in the periode of booming coal in 2009 until 2014. All of the IUP permit holders tried so hard to pursuit the administration process of Clear and Clean certification. Their approach to the bureaucracy were done to obtain the permit for non-Clear and Clean IUP. That was urgent because some of those companies have not passed the process yet but the have already signed the payment contract with foreign buyers fo export to China, India, Japan, Korea, and Vietnam. That is no wonder that during the period of 2009-2014 all of efforts were delivered to obtain the certification of Clear and Clean. Since it was important for coal mining industry in Indonesia those business owners will do anything, at all cost.

#### **Clear and Clean Certification Without Field Assessment**

One of case of Clear and Clean is permit administration process certification done by PT. Crgl Indonesia. The meeting between the actors of rent-seeking in Ministry of Energy and Mineral Resource was done between Mr. H, one of the directors of PT. Crgl Indonesia as a company on trading coal. The permit administration on process of certification was introduced through the assistance of one of the highly officials of first echelon (Mr. PP) in Ministry of Transportation of Republik Indonesia. Mr. PP has introduced Mr. H with another highly official of Third echelon in Ministry EDSM namely Mrs. D.

The meeting between Mrs. D and was organized in a venue near the office of Ministry of Energy and Mineral Resource Republik Indonesia. In the meeting Mr. H was accompanied by Mr. PP and his wife. The wife is Mrs. NN in Ministry of Energy and Mineral Resource Mrs. NN is well known as LL, a lobbyist and also paranormal to access the policy maker circostance. The discussion with Mrs. D was direct to the topic of Clear and Clean matter.

This was because the client is considered trustful that well known by the third person. In this occasion Mr. D stated that the key person in the errand of Clear and Clean certification is Mr. Fdl. As explained by Mrs. D, Fdl is a highly officials of fourth echelon in Law Bureau Ministry of Energy and Mineral Resource. His position is a key to access Clear and Clean certification. One of the intersenting point is the discussion is about the rate to provide a technical map. This very map is needed to defend for an overlapping question. The purpose for mining should not be overlapped with othe purpose especially forestry. This technical map can be printed for clients and each costs 25 million IDR as a dowry.

The amount of total rate to process certification Clear and Clean vary depends on the case Clear and Clean. Maximum rate as stated by Mrs. D is 500 million IDR. Mrs. D added the explanation about the term and condition in obtaining certification on Clear and Clean. The most important condition is the fulfilling payment of any tax. Even if it would be found an overlapping purpose on the spot of misning, as long as all tax is paid the Clear and Clean certificate will be issued.

So far Mr. H always ask the advisory of Mr. PP in term of acessing permit administration process for Clear and Clean certificate in Ministry of Energy and Mineral Resource. This was merely because Mr. H has good relationship with Mr. PP since he obtained the administration process on permit of harbor in coal mining freight belongs to PT. Crgl. In that time Mr. PP arranged the lobby and meeting between Mr. H and Mrs. D in Ministry of Energy and Mineral Resource. The meeting was facilitated by his wife as usual. NN is the second wife of Mr. PP who possessing a wide range network of lobbying in among bureaucracy in several Ministry.

The case of Clear and Clean also emerged the name of policy actor of Mr. RO as Director of PT TIC and the third persons around him, The actor of IS is the most prominent middle man belongs to RO. IS is well known as a middle man with the strong ability to access inside of the labyrinth of rent-seeking in Ministry of Energy and Mineral Resource. In this very processof Clear and Clean certificate IS also worked intensely with Mr.Fdl from Law Bureau of Mining and Energy and Mineral Resource. After the consultation Mr.Fdl suggested the middle person and team firstly to make payment of the unpaid tax of PNPB. The PNPB payment were including (1) regularly Land Rent and (2) royalty payment if the company had produced coal, and (3) other unpaid tax. After the payment are accomplished Mr. Fdl continued the permit administration processon Clear and Clean certificate.

As experienced by PT. TIC, the cost of permit administration process Clear and Clean certificate was about 200 million IDR per IUP. This amount is way smaller the the regular rate in general. It was stated by IS that he is get used to have deal with Mr.Fdl in processing IUP using informal way (special lane). In this context Mr.Fdl is very responsive in helping IS. He made all of the

administration file and letters. All of the errand was well done by actively visiting the hotel where the IS and team stay in Jakarta. All of the detailed job description was done all-in worth with the big compensation he has gained.

The role of IS as the third person of PT. TIC has shown the domination of misuse of regulation. When PT. TIC has effort for registration of their 7 IUP blok, IS received a formal letter made by Mr.Fdl from The Bureau of Law in the Ministry of Energy and Mineral Resource. This letter should be followed up by Local Office of Mining bureau of The district of Kutai Kartanegara. Later on the Head of local office (Mr.Dna) sent the formal confirmation about the letter to the central ministry. After receiving confirmation the seven blok has been registered and received certificate of Clear and Clean soon, the new IUP of PT.TIC were announced as a IUP with Clear and Clean status. This is published lately even that the registration deadline was closed.

In the context of local government, District leader Kutai Timur, Mr.Isran Noor, has stated it publicly about the transaction in Clear and Clean certification among the mining companies (Kompas, 27 November 2014). Certification of Clear and Clean does not have basis of law for the certification was not mentioned in the regulation of environmental analysis (AMDAL). According to him the certification of Clear and Clean will only be the transactional commodity in Ministry of Mining and Energy and Mineral Resource. This was even mentioned in front of several highly official of local government office in Kalimantan. Interestingly, the statement was denied by the Director General Coal and Mineral of Ministry of Energy and Mineral Resource, Sukhyar. He denied what has accused by Isran about that transactional certification. According to Sukhyar since the very beginning the Ministry of Mining and Energy and Mineral Resource has a good intention to have better management permit on mining sector.

Other experience on permit administration process of Clear and Clean was narrated by Mr. SBC, the Director of PT.HG, the holding company of giant property business in Indonesia. Mr. SBC has some IUP in Palangkaraya Central of Kalimantan Province and some other IUP in Berau, East Kalimantan Province. The companies of Mr. SBC also have the certification of Clear and Clean through entry access in Ministry of Energy and Mineral Resource. Mr. SBC made use of the advisory of a highly official of first echelon, Mr. WK. This actor name of Rus as middle man as the courier were hired, Rus is the nephew of WK. Mostly the role of Rus is as the professional arranger in obtaining permit in Ministry of Energy and Mineral Resource. Through his beloved uncle he become famous and considered important among the Ministry of Mining and Energy and Mineral Resource. For Mr. SBC, Rus is trustful with the longer experience of work in process permit in Ministry of Energy and Mineral Resource. For every single permit administration process certification the compensation was given by SBC for *all in* 300 million IDR per IUP. By receiving the compensation, Rus and his tim would prepare all the file needed for the certification, and PT. HG has to only prepare for the payment.

Another experience in permit administration process of Clear and Clean certificate was reported by the Director of PT PEN, Mr. UZ. He had IUP underground type in the District of Banjar south of Kalimantan. Technically the coal mining using underground method have no regulation made by Ministry of Energy and Mineral Resource because Ministry of Energy and Mineral Resource, They only regulated and legalized the conventional or open pit mining. But since the business owner has a close relationship with the highly official of first echelon in ESDM (Mr.DS) the regulation can be managed. The highly official of Mr. DS and Mr. UZ has worked together before with the owner of foreign coal mining underground in Hanbing Province, China. The director of the company, Mr. Yung worked the mining with, Mr. UZ through a certain contract with Directorate General of Mineral and Coal Ministry of Mining and Energy to make an additional regulation of coal mining underground in Indonesia.

The explanatoion above has confirmed that actors of rent-seeking in the Ministry of Energy and Mineral Resource consist of highly officials in various background. They are the high officials of fourth echelon until first echelon. this referred to the situation that a certain relation has been strongly developed between bureaucrate in Ministry of Energy and Mineral Resource with the business owners. Some of those highly officials in the first echelon level were even possessing another position in the company of the mining business. Some of those local bureaucrate has possessed the position in the Board of Commissioner in the mining company. Most of the time those bureaucrate use the name of family or relatives to hide the identity.

In there of the deadline of KP and IUP registration from Directorate General of Mineral and Coal Ministry of Mining and Energy, it has been announced that the registration was closed by June in 2011. It has been socialized through The Agent of Energy and Mineral Resource in district/municipal level. In case some IUP or KP has not been registered after the date, the process will not be able to continue to the next level of Clear and Clean process. The inconsistent policy can also be seen in the case on Clear and Clean. The registration process can be arranged by a certain line. In Ministry of Energy and Mineral Resource. The special mechanism was organized through Directorate General of Mineral and Coal. Even that the due date of registration has been expired. Few of local office or Agent of Mining and Energy and Mineral Resource of districts was not be able to access registration because in the same time the Commission of Corruption Erradication has penetrated the office supervising the Bureau of Mining and Energy that provide coal mining permit in East Kalimantan Province .

Emphasizing the rent-seeking mechanism was organized by assessing regulation policy on data manipulation, misuse of regulation gap, and implementation of inconsistent policy. The result of analysis of the Clear and Clean is as follow.

Table 1. Analysis on Rent-Seeking Practice in Certification of Clear and Clean

Proses	Analysis
Data manipulation/ regulation	Some company (in 2012, there were 51,96 % from total company coal mining) considered <i>clear and clean</i> . Actually they were pseudo- <i>clear and clean</i> Without field assessment and administration.
Misuse of regulation gap	IUP holders can monitor themself against the process regulation in Directorate General of Mineral and Coal. This should be the job of technical agent in local government to be responsible. The access of IUP holders was used to obtain privilege in the process certification <i>clear and clean</i> .
Inconsistent policy	Mining of <i>underground</i> category have no regulation to operate yet. The mining policy in Indonesia has only regulated the <i>open pit</i> coal mining type. But still the underground mining was certified with clear and clean. Policy on <i>clear and clean</i> has caused the conflict of interests between local and central government. Mechanism and procedural stages was organized without field visit as instrumen of monopoli (PKP2B) and inconsistent with the Law of Minerba about the decentralization of IUP

Source: Analysis data primer (2016)

### **Certification Clear and Clean: New Arena of Rent-Seeking.**

The case of Clear and Clean was the strong evidence on how the regulation gap was obviously used to pursuit an individual or group interest of rent-seeking. The fee transaction in the proses of certification Clear and Clean was developed through the third person/courriers. Thet represent part of the rent-seeking network in permit administration process in Ministry of Energy and Mineral Resource. The amount of transaction was quite significantly big.

The payment of 700 million IDR was received from PT TIC and another 300 million IDR from PT. HG. Another amount was 500 million IDR from PT Crgl Indonesia. The similar modus was done in manipulating regulation by paying the unpaid tax (PNPB) before the company continuing the process of issuing their certification of Clear and Clean. As mentioned before, the process was assisted by highly official of fourth echelon in the Bureau of Law in Ministry of Energy and Mineral Resource.

Table 2. *Rent-Seeking* Potency on Certification of Clear and Clean

Case	Analysis <i>rent-seeking</i>
Rent-extraction certification clear and clean for evaluation based on Decree of Directorate General of Mineral and Coal Number. 1406/30/DJB/2012 on date 30 april 2012	New arena of rent-seeking and bribing, with no field assessment
<i>Rent-creation as bribing in permit administration process certification clear and clean</i>	PT. HG has obtained permit administration process <i>clear and clean</i> directly to the highly official of first echelon of ESDM (WK). Transaction of Mr. SBC through Rus for 300 million IDR bribing via paranormal Mr. SL.  PT TIC (Mr. RO) committing transaction for permit administration process Clear and Clean through courier IS to Mr. Fdl (Law of Bureau ESDM) with amount of 1,4 M IDR for 7 IUP.  PT Crgl Indonesia has accomplished payment of transaction through courier Mrs NN with total amount of 500 million IDR
<i>Rent-seizing: Manipulation on the number of clear and clean certification</i>	51,96% of the companies without Clear and Clean in 2012.
Instrument of monopoly (PKP2B Permit)	Policy <i>clear and clean</i> and authority conflict of interest in term of Minerba Law.
<i>Rent-extraction clear and clean underground mining</i>	No regulation for specific coal mining of <i>underground</i> . Government only regulates <i>open pit mining</i> . Certification <i>clear and clean</i> was issued for <i>underground</i> mining after highly official of first echelon Ministry of Mining and Energy and Mineral Resource was hired as commissioner.

Source: Analyzed primary data (2016)

The Clear and Clean case also shown about the strength of central government against local government. The local government was considered as the party that resembles the business owner so it was their duty to save the asset. The strength of patron-client in East Kalimantan Province was mainly proven by the fact of the appearance of Individual triangle alliance as a broker.

Meanwhile the the name of Rus also has appeared so frequently as informing that Rus is a very close relative of the highly official of first echelon in Ministry of Energy and Mineral Resource when this research was taken. Another frequent appearance was the name of Mrs. NN in Ministry of Energy and Mineral Resource. This also explained that women as third person was strongly very influential in lobbying between the interest business owner of Mr.H, one of PT Crgl Indonesia director and dan Mrs. D, a bureaucrate in Ministry of Energy and Mineral Resource. This also reconfirmed the strength of patron-client model. This model was indicated by the existance of strength informal actors that penetrated the environment of formal bureaucracy. Strength of those informal actors was the main key of access business owner in the rent-seeking network and circle in different spots.

The case of Clear and Clean also introduced the character of paranormal SL from the district Tegal in Central Java. He is a trustful and prominent paranormal belongs to WK, the highly official of first echelon in Ministry of Mining and Energy and Mineral Resource. The existance of this figure resembles the similar pattern of the existance of certain character in the informal structure that may interfere the political atmosphere of formal bureaucracy as harmful indicator of patron-client (Harris-White, 2001). In that study of research Harris-White stated that the role of paranormal was very specific with the task and duty as the first layer to fully safe the othe formal actors on mining coal business players. In this case, SL was the paranormal who will testify the credibility and safety of the clients. Those who are willing to meet WK should meet SL paranormal for a basic screening for his

ability with another frequent appearance was the name of Mrs. NN in Ministry of Energy and Mineral Resource. This also duty on being paranormal.

## **CONCLUTION**

The Clear and Clean case has shown about the dynamic and strength between central government against local government. The local government was considered as the party that resembles the business owner so it was their duty to save the asset. The strength of patron-client in east Kalimantan Province was mainly proven by the fact of the appearance of several names of the third person. These middle persons appear as 3Ps namely middle persons, women lobbyist and paranormal (perantara-perempuan-paranormal ).

The name of the 3Ps have also appeared in other cases beside the Clear and Clean namely Rus and IS. The frequent appearance was the name of women lobbyist namely Mrs. D and Mrs. NN in Ministry of Energy and Mineral Resource. This also explained that women third person was strongly very influential in lobbying between the interest business owners and bureaucrats. In the specific case of Clear and Clean the main actor was Mr. H from PT Crgl Indonesia, Mrs. D, and DS a bureaucrate in Ministry of Energy and Mineral Resource of Republik Indonesia.

Result of research in Clear and Clean case also reconfirmed about the strength of patron-client model. This model was indicated by the existance of strength informal actorts that penetrated the environment of formal bureaucracy. Strength of those informal actors was the main key of access business owner in the rent-seeking network and circle in different spots of coal mining rent- seeking activity.

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