The Corruption Eradication Commission (KPK) at one time said that there were some 4000 overlapping land claims, particularly in coal and nickle mining areas. I do not know exactly how many, but I have personally witnessed countless cases involving overlapping mining claims. Too many clients of mine, including state-owned eriterprisesj which I believe, going by my legal reason¬ing, would naturally be immune from such issues, were not: State-owned gold and nickel mining company Aneka Tambarig and state coal compamy Bukit Asam, for instance; have had their lands embroiled in disputes due to overlapping claims. A number of foreign companies are beginning to feel so frustrated by these land grabbing disputes. Some cases have been taken to court and some to international arbitration.

A clearer portrait of this land mining rights issfte stems from a number of causes. First,misuse of power by regents who issue mining business permits or IUP (previously mining authorization) for lands which already have IUPs issued. The classic excuse used by these regents is that since these lands are not being utilized, the region would need income to increase regional revenues, besides stimulating informal sector development. The reaons seem to make sense to some extent. However,in many cases, these"mining business permits" are in fact issued.on land that are either in the process of being utilized, or being prepared for utilization.

Incases where the land has nOt been utilized yet, the question then arises: "Why haven't these lands been exploited?" One needs to bear in mind that according to Law No. 4/2009 on Mineral and Coal Mining, a mining permit consists of exploration and exploitation permits. The explo¬ration permits comprises of general inquiry, exploration and feasibility study. The exploitation permit consists of actual construction activities, mining, processing and refining, as well as transportation and sale (Article, 36). Regents need to examine the stage of an IUP and appraise it proportionately. All permits have their deadlines of expiry. If they have not ex¬pired, they cannot be revoked. However, what is happening now is that new IUPs are being issued on top of existing IUPs that are being used to conduct legitimate activities on the said land.

Perhaps there are permits that have not been utilized albe-it repeated reminders. For such cases, there has tQ be a.clear, transparent and accountable legal mechanism. All permit holders have to be given a chance toutilize their permits be¬fore they are revoked. Regents should also be prepared to face all legal suits in court or in arbitration court, both national and international. All permit issuances and revocations have to be based on law because Indonesia is a country of laws. Second, regents should issue and revoke permits in compliance with the

law and should not violate standing legal provisions and principles. As we allknow,based on Law No. 32/2004 oh Regional Governments, regents have the authority to issue and revoke IUPs.

this is the essence and crux of regional autonomy. However, since regions are located within the scope of Indonesian law, regents.also heed to respect all other valid provisions arid existing legal regulations. Yet, in many cases, regents behave like "minor kings" with their fiefdoms, who do not need to bow to the higher state law. Must riot all the regents be subject to the principles of good governance?

We are not turning back the clock, because regional autonomy is "a point of no return". We are not hoping to return to the centralized government system. However, many who are already frustrated 'say that powers granted ,to regents through regional autonomy is spiraling out of control. Several incidents show that it is indeed going top far, but the centralized government system is not the answer; We all have to fix 'governance'

in the regions until the rule of law becomes a basis for ail regional government decrees. Regents should be top law enforcers, not violators.

third, from the political point of view, regency elections are costly and they are rife with money politics; To participate in all election 'stages," can¬didates heed tens or. Even hundreds of billions of rupiah, depending on where the regency is. Do candidates possess such massive amount of funds? Many candidates who do not have suffi¬cient capital finally end up pleading to donors who are usually businesspeople. This is when political bartering occurs. Donors invest in candidates with the hope that their investments will later pay off. So, when the elections end and a new regent is elected or the current one is re-elected, all calculations begin and eventually come into-fruition. For sure, the repayment is 'not made m cash, but via issuance of IUPs; including for lands leased to other companies with valid permits. Regents are aware of this, but powerless to refuse the demand of the do¬nors who provided them political capital. This is the political trap that undermines the rule of law. From region to region, we find the same problem plaguing agricultural, mining or even fishery sectors.

It is easy to say that laws must be enforced. However it can¬not be done if police, prosecutors, courts and advocates col¬lude with one another and validate the wrong. The central gov¬ernment should not throw in the towel either by saying that it is all because of regional autonomy. The central government, first and foremost, has the responsibility to stamp put this

out¬break of overlapping land claims. Do not let this issue develop into a ticking time bomb that will harm us all.

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