

Maladministration on Mining Business Licenses: Case Study “Mining Business License Production Operation PT. Aneka Tambang, Tbk.”

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ABSTRACT

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As a potential natural wealth, mining sectors should be managed with proper rules. Therefore, control instruments are needed in the form of mining business licenses to prevent the negative impact of mining management. At the stage of production operations, the requirements that must be met by businesses are administrative, technical, environmental, and financial. This paper aims to describe maladministration in the issuance of mining business license process especially on upgrading process of exploration permits to production operating permits. This research is a normative juridical research with statute approach and case approach. The results showed that the issuance of mining business license production operation (IUP OP) of PT. Aneka Tambang, Tbk based on the Decree of the Regent of North Konawe No. 158 of 2010 does not meet the technical requirements, especially regionally because the IUP is overlapping 11 other IUP with the same commodity, and there is an IUP OP area which not a part of the exploration area.

1. INTRODUCTION

Indonesia is a country that is rich in natural resources, especially mineral and coal mining minerals which directly provide benefits to the community around the mine, regional income, and state revenue. Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) mention that sector of production which are important for the country and affect the life of the people shall be under the powers of the state. Furthermore, the article also confirms that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Therefore, its management needs to be carried out efficiently, effectively, openly, sustainably, fairly, and with an environmental perspective.

The energy and mineral resources (ESDM) sector are currently the main driving force for the national economy, providing state revenue, energy providers, attracting

investment, a trade balance surplus, and suppliers of industrial raw materials, and is the dominant factor in the formation of the Composite Stock Price Index (IHSG), regional development, and the creation of a chain effect in the form of sending workers abroad and creating job opportunities in the country.¹ According to the Ministry of Energy and Mineral Resources, non-tax state revenues from the mineral and coal mining sector reached Rp 34.6 trillion in 2020. This amount is 110% exceeding the target of Rp. 31.41 trillion.² In November 2020, there were 5,397 Mining Business Licenses (IUP) and Special Mining Business Licenses (IUPK), with 2,559 IUP for metal minerals and coal, 2,835 IUP for non-metal and rock minerals, and three IUPK.³

Mining has environmental, social, economic, and cultural consequences. As a result, the procedure must adhere to good and correct mining standards as well as a thorough environmental effect analysis (AMDAL). Therefore, mining management requires a control instrument through a licensing system. The practice of general mining activities is often found maladministration in the issuance of exploration IUPs as well as at the upgrading process of an exploration to the Production Operation IUP. Those shown due to overlapping mining business permits for the same commodity as well as activities in the plantation, agriculture, or IUP sectors which established in forest area without having a Borrow-to-Use Forest Area Permit (IPPKH).

One of the Production Operation IUPs recorded at the Directorate General of Mineral and Coal is the Production Operation IUP issued by the North Konawe Regent No. 158 of 2010 concerning the Granting of Production Operation Mining Business License to PT. Aneka Tambang Tbk covers an area of 16,920 Ha with “clear” and “clean” status. However, it is still overlapping license with 11 other IUPs with the same commodity. This paper aims to describe maladministration in the issuance of mining business license process especially on upgrading process of exploration permits to production operating permits.

2. RESEARCH METHOD

The type of this research is normative or doctrinal legal research that use law as foundation of norm. The norm system in question is related to principle, norm, legislation concerning the case *quo*.⁴ The first stage of normative research comprises research with purposes to achieve objective law, by conducting research on legal issues. The second

¹ Adrian Sutedi, *Hukum Pertambangan* (Jakarta: Sinar Grafika, 2012).

² CNBC Indonesia, “PNBP Sektor Tambang Minerba Capai Rp 34,6 Triliun Di 2020” (Cnbc.com, 2021), <https://www.cnbcindonesia.com/news/20210115190528-8-216437/pnbp-sektor-tambang-minerba-capai-rp-346-triliun-di-2020>.

³ Satya Hadi Pamungkas, *Wilayah Izin Usaha Pertambangan Mineral Dan Batubara* (Direktorat Jenderal Mineral dan Batubara Kementerian Energi dan Sumber Daya Mineral Republik Indonesia, 2020).

⁴ Fajar ND, Achmad Mukti, and Yulianto, *Dualisme Penelitian Hukum (Dualism of Legal Research)* (Yogyakarta: Pensil Komunika, 2012).

stage of normative legal research is aimed at obtaining subjective law.⁵ It also concerns with a critical review of legislation.⁶ This research would use statute approach which mean using the legislation as the basis for conducting the research.⁷ This research also would use case approach; the issuance of Konawe Utara Regent decree No. 158 of 2010 on Mining Business Production Operation License PT. Aneka Tambang, Tbk. The data is collected from books, journals, relevant laws, and regulations.

3. RESULT AND DISCUSSION

3.1. Sumarry of License Concept Procedure

Indonesia is known as the licensing state because there are too many permits that must be fulfilled in one type of business, permits in Indonesia are sectoral, there are no general laws and regulations that apply to all sectors.⁸ Utrecht provides the understanding of permission (*vergunning*) that if the regulator does not generally prohibit an act, but still allows it if it is carried out in a specified manner for each concrete matter, then the administrative action that allowed is called as a permit.⁹

The concept of permission according to N.M. Spell and T.J.B.J Ten Berge define that permission is an agreement from the authorities based on laws or government regulations, to in certain circumstances deviate from the provisions of the statutory prohibition. By giving permission, the ruler allows the person who asks him to perform certain actions that are prohibited. This involves the approval of an action which in the public interest requires special control over it. This is a broad explanation of the notion of permission.¹⁰

The government uses permits as a juridical means to control the behavior of citizens. The granting of permits, especially in the mining sector, is one of the functions and authorities of authorized officials whose purpose is to manage and utilize the potential of natural resources as well as part of efforts to promote people's welfare and improve the national economy. Legally, the granting of such permits is of course part of a state administrative decision. Therefore, in the context of the basic test of *toetsing gronden*, Tatiek Sri Djatmiati explained that a permit is a form of state administrative decision (KTUN) which is issued and revoked based on a juridical basis that must be followed. The above concept can be described in a narrow sense, namely the binding of activities

⁵ Hardijan Rusli, *Metode Penelitian Normatif* (Jakarta: Gramedia Pustaka Utama, 2006).

⁶ Othorina Susanti, Dyah, and A'an Efendi, *Penelitian Hukum* (Jakarta: Sinar Grafika, 2015).

⁷ Jony Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*, 2nd ed. (Malang: Bayu Media, 2007).

⁸ Asmuni, *Konsep Pelaksanaan Keputusan Tata Usaha Negara* (malang: Setara Press, n.d.).

⁹ Adrian Sutedi, *Hukum Perizinan Dalam Sektor Pelayanan Publik* (Jakarta: Sinar Grafika, 2015).

¹⁰ Philipus M. Hadjon, *Pengantar Hukum Perizinan*, 1st ed. (Surabaya: Yuridika, 1993).

to a permit regulation is generally based on the desire of the legislator to achieve a certain order or to prevent bad conditions.

Technically, mining activities, especially nickel ore, are carried out by changing the landscape, starting with the Land Clearing stage, which is cleaning the mine site from plants. The stripping stage is to remove the overburden layer and take it to the shelter to add post-mining land. The exposed cover has a depth of 5-10 meters depending on soil conditions. After the overburden layer was exposed, medium and high grades of nickel ore were seen. This stage is called Ore Mining, then the high-grade nickel ore is transported to the screening station to be screened according to the size required by the processing plant. Next is the Stockpile stage, which is a temporary storage place for ore while reducing the water content before being processed to the factory which is then transported to the apron feeder, then transferred again to the Dryer, aka a place where some of the moisture content of the wet beans is evaporated through combustion.¹¹ From the series of mining technical activities, it shows how big the potential impact will be, so that control instruments are needed through various types of permits so that they are carried out in accordance with good mining rules.

N.M.'s view Spelt and J.B.J.M Ten Berge argue that the purpose of a licensing system is to tie actions to a licensing system, legislators can pursue a variety of goals. The motives for using the permit system, namely:

- a. Desire to direct ("*struen*") certain activities (e.g., building permits);
- b. Preventing harm to the environment (environmental permits);
- c. Desire to protect certain objects (cutting permits, demolition permits on monuments);
- d. Willing to share small items (permission for residents in densely populated areas
- e. Guidance by selecting people and activities (permission based on "*Drank-en Horecawei*", where the administrator must meet certain conditions).

Permission is used by the authorities as an instrument to influence (relationship with) the citizens to want to follow the way he recommends achieving a concrete goal. Permit (*Vergunning*) is an agreement from the authorities based on the law or government regulation to in certain circumstances save from the prohibition provisions of the legislation. Permission can also be interpreted as a dispensation or release from a prohibition.

However, what attracts the attention of the public today is the shift in the purpose of granting permits as a new idea by Tatiek Sri Djatmiati suggests that in the development of licensing in Indonesia, there has been a shift in the objectives of granting permits. The purpose of permits as a juridical instrument to control people's lives is turning into a

¹¹ Michael Agustinus, "Melihat Proses Pengolahan Nikel Di Tambang Terbesar RI" (Kumparan.com, 2021), <https://kumparan.com/kumparanbisnis/melihat-proses-pengolahan-nikel-di-tambang-terbesar-ri-27431110790538043/1>.

source of income, not only for central licensing but also for regional ones.¹² As a KTUN in issuing permits, it must follow the provisions relating to a decision (*beschikking*),¹³ as well as the parameters for testing permits. Test parameters against a permit include:

- a. The applicable laws and regulations.
- b. General principles of good governance.

With this parameter, the government will carry out its functions and authorities in an administrative manner, both in terms of authority, compliance with requirements or procedures, and substance in issuing permits. The main legal instrument to realize a clean government is administrative law. Thus, orderly administration will prevent maladministration in the granting of mining business permits.¹⁴

3.2. Indonesian Mining Business Licences (IUP)

Enrique Ortega Girones, et al describe that Licensing in the mineral and coal mining sector is a controlling control.¹⁵ Mining has several characteristics, namely non-renewable, has a relatively higher risk, and its exploitation has a relatively higher physical and social environmental impact than the exploitation of other commodities in general. For this reason, mining activities have several types of permits at each stage of activity. Based on Article 1 number 7 of Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal stipulates that a Mining Business Permit, hereinafter referred to as IUP, is a permit to carry out a Mining Business. Furthermore, Article 36 paragraph (1) stipulates that the IUP consists of two stages of activities, namely:

- a. Exploration which includes General Investigation, Exploration, and Feasibility Study activities; and
- b. Production Operations which include construction, mining, processing and/or refining or development and/or utilization activities, as well as transportation and sales.

3.2.1. Mining Business lisenze Exploration

Financial Services Institutions and public companies should have an audit committee that oversees the company's activities. The audit committee reports to the board of commissioners on the management of the company. This audit committee must meet specific criteria established by the POJK Number 55/POJK.04/2015.

¹² Tatiek Sri Djatmiati, "Perizinan Sebagai Instrumen Yuridis Dalam Pelayanan Publik" (Airlangga, 2014).

¹³ S. Wojowasito, *Kamus Umum Belanda Indonesia* (Jakarta: Ichtar Baru Van Hoeve, 2000).

¹⁴ Ahmad Rustan Syamsuddin, "Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang Dan Jasa," *Jambura Law Review* 2, no. 2 (2020): 161–81, <https://doi.org/10.33756/jlr.v2i2.5942>.

¹⁵ Ahmad Redi, *Hukum Penyelesaian Sengketa Pertambangan Mineral Dan Batubara* (Jakarta: Sinar Grafika, 2017).

Exploration IUP is a business license granted to carry out the stages of general investigation, exploration, and feasibility studies. Based on Article 23 of the Government Regulation of the Republic of Indonesia Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities (PP No. 23 of 2010) stipulates that the requirements for an Exploration IUP and a Production Operation IUP include the following requirements:

- a. Administrative;
- b. Technical;
- c. Environment; and
- d. Financial.

Procedures for evaluating the acquisition of permits in mining business activities, the government through the Ministry of Energy and Mineral Resources has established technical regulations, namely the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 43 of 2015 concerning Procedures for Evaluation of the Issuance of Mineral and Coal Mining Business Permits (Permen ESDM No. 43 of 2015). Article 5 paragraph (2) stipulates that: Evaluation of the issuance of IUP as referred to in paragraph (1) is based on the following criteria:

- a. Administrative consists of:
 - 1) Submission of application for extension/increase of mining power (KP) or IUP before the expiration of the KP or IUP;
 - 2) KP reserves and applications are stipulated before Law Number 4 Year 2009 concerning Mineral and Coal Mining;
 - 3) KP Exploitation is an improvement from KP Exploration;
 - 4) Do not have more than one KP or IUP for business entities that are not open;
 - 5) The validity period of the Exploration IUP does not exceed the provisions of Law Number 4 of 2009 concerning Mineral and Coal Mining;
 - 6) Applications for reserve areas are not submitted for fisca contract of work (KK), coal mining concession work agreement (PKP2B), KP, or IUP areas that are still active and have the same commodity;
 - a) The term of the Production Operation IUP may not exceed the period of the Exploitation KP;
 - b) KP which is still valid after Law Number 4 of 2009 concerning Mineral and Coal Mining,
- b. Territory consists of:
 - 1) Mining business permit area (WIUP) does not overlap with other WIUP with the same commodity;
 - 2) WIUP does not overlap with state reserve area (WPN);
 - 3) Does not overlap with the administrative areas of other districts/cities or provinces;

- 4) Coordinates of the Exploration IUP are in accordance with the coordinates of the reserve area;
 - 5) Coordinates of Mining Business License (IUP) for Production Operation are within the coordinates of the Mining Business License (IUP) for Exploration; and/or
 - 6) IUP coordinates are parallel to the latitude longitude.
- c. Technical in the form of:
- 1) Exploration report for Exploration IUP holders who have not yet entered the feasibility study stage; or
 - 2) Exploration Report and Feasibility Study for Exploration IUP holders who have entered the Feasibility Study activity stage or Production Operation IUP holders.
- d. Environment in the form of environmental documents that have been ratified by the competent authority in accordance with the provisions of laws and regulations;
- e. Financial in the form of:
- 1) Proof of payment of fixed fees up to the last year of submission, for Exploration IUP holders; or
 - 2) Proof of payment of fixed fees and production fees (royalty) up to the last year of submission, for Production Operation IUP holders.

Furthermore, in Article 12 paragraph (1) letter a Minister of Energy and Mineral Resources No. 43 of 2015 stipulates that: If based on the results of the evaluation conducted by the Director General or the governor, there is an overlap of the WIUP with another WIUP of the same commodity, the Director General or the governor shall:

- a. reduction of WIUP, if some WIUP overlaps; or
- b. the implementation of the first application system for area reserves that have met the requirements, will receive priority to be granted an IUP (first come first served), if all WIUPs overlap.

Production Operation Mining Business License PT. Aneka Tambang Tbk based on the Decree of the Regent of North Konawe Number 158 of 2010 dated April 29, 2010 (KW 10 APR OP 005) is a merger of 3 areas of Mining Business Permits previously issued respectively on January 11, 2010, namely:

- a. Decree of the Regent of North Konawe Number 12 of 2010 concerning the granting of an Exploration Mining Business Permit to PT. Various mining Tbk. (KW 99 NPP024) covering an area of 6,376 Ha in the Lalindu block.
- b. Decree of the Regent of North Konawe Number 13 of 2010 concerning the granting of a Production Operation Mining Business License to PT. Various mining Tbk. (KW99NPP001) covering an area of 3,047 Ha in the Mandiodo block.

Decree of the Regent of North Konawe Number 14 of 2010 concerning the granting of an Exploration Mining Business Permit to PT. Various mining Tbk. (KW 99 STP 057b) covering an area of 7,371 Ha in the Lasolo/B block.

3.2.2. IUP Production Operation

Production Operation IUP is a permit granted for construction, mining, processing, and refining activities, as well as transportation and sales in the context of mining. This type of IUP is granted to business entities, cooperatives, or individuals as an increase in exploration activities. Article 46 paragraph (1) of Law no. 3 of 2020 concerning Mineral and Coal Mining stipulates that every holder of an Exploration IUP is guaranteed to obtain a Production Operation IUP as a continuation of its mining business activities. This guarantee from the government will only apply if the holder of an Exploration IUP fulfills all its obligations as regulated in the provisions of the laws and regulations.

This provision confirms that the Production Operation IUP is an increase from the exploration permit. This means that the Production Operation IUP in terms of territory must be in the exploration IUP area that has been previously issued and does not experience overlapping IUPs. IUP overlap occurs when in one area there is more than one area designation. The overlap can occur between IUP and IUP, IUP and outside mining such as the forestry or plantation sector. One of the government's ways to overcome the overlapping problem is by verifying the IUP which is part of the National Reconciliation of IUP Data. The verified IUP will get Clear and Clean status.¹⁶

IUP Production Operation PT. Aneka Tambang Tbk Number 158 of 2010 is a merger of 3 Exploration IUPs, namely Exploration IUP No. 12 of 2010, IUP Exploration No. 14 of 2010, and Production Operation IUP No. 13 of 2010.¹⁷ (LAHP Ombudsman Sultra, 2020: 17). The three IUPs are still overlapping with other IUPs with the same commodities, including Exploration IUP No. 12 of 2010 (KW 99 NPP024) covering an area of 6,376 Ha located in the Lalindu Block, which overlaps with the Exploration IUP of PT. Avri Raya issued in 2008. Exploration IUP PT. Aneka Tambang, Tbk Number 13 of 2010 (KW99NPP001) covering an area of 3,047 hectares located in Mandiodo also overlaps with 9 Exploration IUPs that have been issued by the Regent of North Konawe, namely PT. James Armando Pundimas, PT. Karya Murni Sejati 27, PT. Wanagon Anoa Indonesia, PT. Hafar Indotech, PT Mugni Energi Bumi, PT. Rizki Cahaya Makmur, PT. Sangia Perkasa Raya, PT. Srijaya Raya, and CV. Ana Konawe. While the IUP Exploration of PT. Aneka Tambang No. 14 of 2010 (KW 99 STP 057b) covering an area of 7,371 Ha located in the Lasolo Block also overlaps with the Exploration IUP CV. Mallibu.

The three IUPs mentioned above were then gradually combined with the issuance of the Decree of the North Konawe Regent Number 63 of 2010 concerning the granting

¹⁶ Hendrik Siregar, "Akhiri Cara Mudah Tambang Habisi Hutan: Stop Izin Pinjam Pakai Hutan," *Jurnal Landreform* 1, no. 1 (2014): 27–34.

of an Exploration Mining Business Permit to PT. Aneka Tambang Tbk. (KW 10 PEB ER 001) on February 8, 2010, which is a merger of SK Number 12 of 2010 and SK Number 14 of 2010. Subsequently, the Decree of the Regent of North Konawe Number 105 of 2010 was issued on March 29, 2010, concerning the granting of Production Operation Mining Business Permits to PT. Aneka Tambang Tbk. (KW 10 MRT OP 001) which is an increase in the Exploration IUP based on Decree No. 63 of 2010. On 29 April 2010 the Decree of the North Konawe Regent No. 158 of 2010 was issued regarding the granting of a Production Operation Mining Business Permit to PT. Aneka Tambang Tbk. (KW 10 APR OP 005) which is a merger of SK Number 105 of 2010 and SK Number 13 of 2010 covering an area of 16,920 Ha.

IUP area of PT. Aneka Tambang Tbk. based on SK Number 158 of 2010 if added up in accordance with the area in each SK IUP Exploration No. 12, 13, and 14 of 2010, then the total area becomes 16,794 Ha, not 16,920 Ha as in the attachment of the Production Operation IUP Decree Number 158 of 2010. Thus, there is an additional area of about 126 Ha which was not previously in the Exploration IUP area. both in the SK IUP Exploration No. 12, 13, or 14 of 2010. IUP No. 158 of 2010 contains an area of at least 126 Ha that has not yet gone through the IUP Exploration stage of several IUPs which are the basis for the issuance of IUP No. 158 of 2010. Supposedly, all areas of Production Operation IUP have been entered and designated as exploration IUPs first. Furthermore, Article 34 paragraph (1) stipulates that the Production Operation IUP as referred to in Article 22 paragraph (1) letter b is granted to business entities, cooperatives, and individuals as an increase from exploration activities.

With regard to the overlapping of IUPs, in accordance with the provisions of Article 12 paragraph (1) letter a of the Minister of Energy and Mineral Resources of the Republic of Indonesia No. 43 of 2015 stipulates that: in the event that based on the results of the evaluation conducted by the Director General or the Governor there is an overlap of the WIUP with another WIUP of the same commodity, the Director General or the Governor shall: reduce the WIUP if part of the WIUP overlaps. Meanwhile, the provisions related to the evaluation of IUP production operations that are not in the IUP Exploration completion have been regulated in the provisions of Article 15 of the Minister of Energy and Mineral Resources No. 43 of 2015 which stipulates that: in the event that based on the results of the evaluation conducted by the Director General or the Governor, the coordinates of the Production Operation IUP are not within the coordinates of the Exploration IUP, the Director General or the Governor shall:

- a. Changes in the coordinates contained in the change in the decision to issue a Production Operation IUP if it is outside the coordinates of the Exploration IUP; or
- b. IUP revocation if all the coordinates of the Production Operation IUP are outside the coordinates of the Exploration IUP.

Thus, the Decree of the Regent of North Konawe Number 158 of 2010 dated April 29, 2010, concerning the granting of a Production Operation Mining Business License to PT. Aneka Tambang Tbk (KW 10 APR OP 001) experienced defects in terms and procedures in its issuance. The legal consequences for decisions that are defective in terms and procedures are invalid and can be canceled. This is in accordance with the provisions of Article 71 paragraph (1) of Law no. 30 of 2014 concerning Government Administration stipulates that Decisions and/or Actions can be canceled if:

- a. there is a procedural error; or
- b. there is a substance error.

3.3. Maladministration of issuance of IUP Production Operation

Public policy and service issues have become a central issue and an important issue today, related to deviant practices carried out by unscrupulous government officials and government employees.¹⁸ In general, maladministration is defined as behavior or actions against the law and ethics in a public service administration process, which includes abuse of authority/position, negligence in action and decision making, neglect of legal obligations, protracted delays, discriminatory actions, requests for compensation, and so on. other things that can be judged in terms of quality with the error.¹⁹ Actions that include maladministration are; Administrative irregularities, administrative omission, abuse of power, Negligence, unlawful procedure, unfairness, malfunction, or incompetence, discrimination, avoidable delay, lack of refusal information. (Administrative irregularities, administrative negligence (error), abuse of authority, negligence (recklessness), unauthorized procedures, unfairness (cheating), failure to use (use), incompetence (inability), discrimination (discrimination or favoritism), avoidable delays, lack of or always denying information.²⁰

Tatiek Sri Djatmiati stated that maladministration is not only one of the parameters for the presence or absence of personal errors or office errors, but also to determine maladministration acts in government actions to be the responsibility of the position or become personal responsibility. If this is ignored, it will indirectly harm the country's economy and people's lives. Philipus M. Hadjon stated that maladministration is always associated with behavior in services, in this case services performed by public officials.²¹

Based on Article 1 paragraph (3) of Law no. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia stipulates that maladministration is behavior

¹⁸ H. Jawade Hafidz Arsyad, *Korupsi Dalam Perspektif HAN* (Jakarta: Sinar Grafika, 2015).

¹⁹ Hendra N, Yustus M, and Diani I. R, *Memahami Maladministrasi* (Jakarta: Ombudsman Republik Indonesia, 2013).

²⁰ G.H. Addink, "Transparency of Administration" (Utrecht, 2011).

²¹ Tatiek Sri Djatmiati, "Maladministrasi Dalam Konteks Kesalahan Pribadi Dan Kesalahan Jabatan, Tanggung Jawab Pribadi Dan Tanggung Jawab Jabata" (Trisakti, 2010).

or action against the law, exceeding authority, using authority for purposes other than those for which the authority is intended, including negligence or neglect of legal obligations in the administration of public services carried out by state and government officials who cause material and/or immaterial losses to the community and individuals. Maladministration actions have implications for the emergence of legal responsibilities and job responsibilities. Careless use of authority in granting mining business permits may result in maladministration. Maladministration problems in mining governance include overlapping permits with the same commodity, as well as other commodities. Philipus M. Hadjon who stated that maladministration acts in addition to giving birth to administrative and civil responsibilities, can give birth to criminal responsibility such as those related to bribery, gratification, collusion, and corruption.²²

Regarding the issuance of Production Operation IUP based on the Decree of the Regent of North Konawe Number 158 of 2010 against PT. Aneka Tambang, Tbk (KW 10 APR OP 005) covering an area of 16,920 hectares located in North Konawe Regency, Southeast Sulawesi Province, has met the elements of maladministration in the form of procedural irregularities, and negligence in providing public services because they do not meet regional technical requirements, namely there are still overlaps. part of the IUP overlaps with 11 other IUPs which are the same commodity. In addition, there is a Production Operation IUP area which was previously not included in the Exploration IUP area of 126 Ha. Prior to issuing a Production Operation IUP, a careful evaluation of the IUP should first be carried out by considering the fulfillment of administrative, technical, environmental, and financial requirements.

4. CONCLUSION

Based on the discussion and analysis, it can be concluded that in the issuance of Production Operation IUP based on the Decree of the North Konawe Regent Number 158 of 2010 to PT. Aneka Tambang, Tbk covering an area of 16,920 Ha does not meet the regional technical requirement, there are still overlapping IUPs with commodities with eleven other IUPs which are currently still active IUP status and Production Operation IUP area which was previously not included in the Exploration IUP area of 126 Ha. Finally, this shows that maladministration has occurred in the form of procedural deviations and negligence in the issuance of Production Operation IUP Number 158 of 2010 to PT. Aneka Tambang, Tbk.

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²² Philipus M. Hadjon, "Hukum Administrasi Sebagai Instrumen Hukum Untuk Mewujudkan Good Governance" (Trisakti, 2010).

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