

administration functionary effort permit that branch three legality components are referred, result judicial formality of handicap acts government. Judicial formality Handicap concerning authority, procedure, and substance.

Hans Kelsen (2007) in its theory about responsibility law that: "someone holds responsible is a law manner to the a certain deed or that he shoulder legal responsibility, subject means that him/hers be in control of a sanction in the case of doing that interferes".

3. Method research

Research Type this is the empirical law research (applied law research), use empirical law of case study have the shape of product of law behavior about mining. Its study Fundamental is reality behavior by state administration functionary in publication of mining effort permit and handling of mining right case.

This Research is executed at court arrange state effort, on duty energy mining and mineral Southeast Sulawesi Province, on duty energy mining and mineral north Konawe Regency, office PT Aneka Tambang Tbk, area police force southeast Sulawesi and detective body criminal Mabes police at certain doing an injustice directorate. In data collecting that indigenous to interview, researcher specifies population and sample. Research Population this is the institute government of effort permit publication mining, law enforcer, and state instructor of administration law. From population referred, determined sample with method intake sample non probability in purposive sampling that is select sample bases certain consideration is adapted for its position.

To get data and information that required in this dissertation writing, conducted with research method namely: (1) Field Research by, interview direct to competent parties, (2) library research are book data collecting is got from various of related to materials of law things that researched. Researcher in data analysis that gathered either primary data or data secondary will be analyzed in qualitative. Data is presented in descriptive, that is by explain and collect bunches of troubles that related research.

4. Results and Discussion

4.1 Abuse of effort permit legality mining

Based research objective, qualitative method with depth interviews with informant has achieved the following results. Abuse validity state authority of administration functionary in publishing permit of mining effort at region of mining power/permit of mining effort PT Aneka Tambang Tbk are formulated three legality aspects, as follows:

1. Collision principle of legality

Regent action north Konawe as administration functionary that publish permit of operation mining effort production PT Duta Inti Perkasa Mineral (PT DIPM) in a way that revise farm multifarious PT Aneka Tambang in Tapunopaka, Bahubulu island, and make legality overlap with great PT Sriwija Raya interfere in section 119 law

number 4 in 2009 about mineral mining and coal, expressed that: "IUP or IUPK can be abstracted by minister, governor, or regent/mayor in accordance with its informal if: a) owner IUP or IUPK not fulfills IUP set in obligation or IUPK and law and regulation; b) owner IUP or IUPK conducts doing an injustice as referred to in this law; or c) owner IUP or IUPK is expressed bankrupt".

Results of interviews with informants named Mr. MR and external liaison PT Antam Tbk, tell that: "regent action north Konawe revise permit of mining effort (IUP) production operation PT Antam Tbk from 6.213 become 5000 ha, and give that farm effort permit mining PT Duta Inti Perkasa Mineral not base of law because all kind of obligations as owner IUP exploration has been executed according to legislation rule that go into effect" (Interview 09 September 2014).

2. Collision principle of motivation for every decision

In field of administration law, publication of mining effort permit (IUP) production operation PT DIPM and PT SR the result of revise and spill overlap effort location PT Antam Tbk, in Ateng Syafrudin (1994) tell : "that principle of reason giving mean a decision must can be supported by taken as reasons elementary its".

(a) Collision of permit procedure legality mining effort, in researcher research at on duty energy mining and mineral north Konawe regency, results of interviews with informants named Mr. AG technical staff geology is got data that: "currently company that hanker inculcate investment of nickel mining in north Konawe, procedure is conducted by application of permit region publication mining effort (WIUP) at the same time pleadingly permit of mining effort (IUP) to regent, later from regent give disposition and guideline that technically for run head on duty about administration requirements hit location WIUP. After process administration and technical have been at level on duty then raise proposal for published IUP" (Interview 09 November 2014). From explanation above, show regent collision north Konawe about publication procedures WIUP metal mineral and coal, as the same manner as arranged at section 10 of Law Number 4 in 2009 about mineral mining and coal, expressed: verse (1), before conducted auction WIUP metal mineral or coal as referred to in section 8 verses (3), minister, governor, or regent/mayor in accordance with its informal announce openly WIUP that will be auctioned to effort body, cooperation', or civil within slowest three month before auction execution.

(b) Collision of effort permit substance mining, manage substantial handicap concerning "what" is ill-treatment; substantial handicap concerning "to what end" is abuse action authority. Deformity or in sufficiency that have the character of judicial formality and weight because concerning substance it is on the right track to make decision assumed illegal and can be taken back by Philipus Mandiri Hadjon et al. (2011). On the contrary insufficiency that not have the character of essential shall immediately refine by official functionary to eliminate its insufficiency until become decision that validity and have the power of law, Hamid Attamimi (1993).

3. Principle Collision neatness material

Indroharto (1994), that “in a law decision material, applicable law is must applied and that decision not alterable pertinent society the prejudicial without reason something that more trusted”. Principle Collision accurateness significant in publication of permit legality both company referred is action that arbitrarily (willekeur). A state action of administration functionary that fulfill formula hits willekeur as follows : (1) on the of deed play around with referred that all importance’s that related to decision released; and (2) Has been conducted deed play around with referred so not enter used, until result the of decision in common once not accepted/agreed.

4.2 Legal responsibility of effort permit publication mining

1. Account sue civil becomes private responsibility

Problems hits deed contempt of courts power is formulated section 1365 KUHs civil as follows:

- 1) Deeds of effort permit publication mining. Deed of permit publisher functionary publishes permit of mining effort to PT Duta Inti Perkasa Mineral by revise farm PT Antam Tbk and make overlapping legality with PT Sriwijaya is deed as in charge administration functionary in scope government north Konawe Regency.
- 2) Deed contempt of courts functionary of permit publisher. Those permit of mining effort PT DIPM that not have legal body, impinge section 12 verses (1) law letter b no.11 in 1967, expressed: mining power for execution of materialness mining effort dig those mentioned in section 3 verses (1) letter b can be given to private sector legal body that founded in accordance with regulations Republic of Indonesia. That great PT Sriwijaya in farm legality PT Antam tbk, differ with section 3 letters (f) law number 4 in 2009 about mineral mining and coal, expressed: “in order to support continual national development, target of mineral management and coal is guarantee rule of law in management of mineral mining business activity and coal”.
- 3) Mistake of permit publisher functionary. Mistake is important elementary body in deed contempt of court for by proven its mistake proves the happening of opponent deed law. The elements mistake covers as follows: (a) there is intention elementary body; b) there is negligence elementary body; (c) there is no reason justifier or forgiveful reason.
- 4) Loss PT Aneka Tambang Tbk. Deed Consequence North Regent Konawe is referred, PT Aneka Tambang Tbk, harmed as high as Rp. 10.000.000.000,- (ten billion rupiahs) interview, 19 September 2014 by Mr. MR.
- 5) Causality of publisher functionary deed permit with loss multifarious PT Aneka Tambang Tbk. Action of permit publisher functionary that publish permit of mining effort PT Duta Inti Perkasa Mineral with method revise farm PT Antam Tbk and make legality overlap with great PT Sriwijaya, cause farm PT Antam from landmass 6.213 ha that located in Tapunopaka and island Bahubulu only directly and

utilized become 5000 hectares are and great PT Sriwijaya conduct sale or transportation ore (nickel) above farm PT Antam.

2. Account sue arrange state effort becomes private responsibility

- 1) Fundament Pretending, that action of permit publisher functionary above, if evaluated from legality aspect, branch from procedure legality and substance legality.
- 2) Good government public. that action of permit publisher functionary above, branch from 3 (three) respective principles with action referred, that is: (a) Principle of rule of law, according to Mahfud, MD and Marbun (2009), tell: “license that may not withdrawer that shall have the shape of state administration decision that has been up to standard material (informal requirement acts) and formal requirement (related to requirement that decision form). So to rule of law for one who accept decision, government must confesses license validity that has been given; (b) Principle of motivation for every decision, according Lutfi Effendi (2003), tell : “principle Motivation for decision, this principle wants every decision must have motivation/reason that enough as elementary in publishing decision. Reason is clear, bold, correctness, objective, and fair. Reason is as possible contained in decision until disgruntled can rise compare by using reason is referred. Reason is used administration judge to assess decision disputed; Principle don't mix inform against authority, according to Ridwan HR (2013), that “this principle, want in order to functionary arranges state effort using no its authority for the purpose of that has been determined by regulation that go into effect or use its authority oversteps”.

3. Crime responsibility becomes private responsibility. Individual responsibility is referred had absolute responsibility character and collective responsibility always is absolute responsibility by Asshiddiqie (2006). Principle of egregious law in criminal law responsibility recognized adagium “geen strafe zoned schooled, act us non facit reum nisi mens sir rea (Sudarto, 1983).

- 1) Intention of publisher functionary crime permit, in line with position case above, consequence to the doing an injustice is risk that since a beginning comprehended by maker (Chairul Huda, 2011). In easy Kanter and Sianturi (2012), intention for the purpose of, that is: “The happening of an action or consequence certain (matching with criminal law formulation), it's really as the materialization from intention or target and knowledge from perpetrator”.
- 2) Functionary Crime publisher permission as participant maker. Participation happened if in a doing an injustice involves people more than one, which must looked for account answer each one draw in doing an injustice referred. There are two system of responsibility burden in formulating deed North Regent Konawe as maker participation by Loebby Loqman (1995), cover as follows:
 - a. Have a share (Medeplegen), that is in memory of elucidation (Memorie van Toeliching) MvS the Netherlands, have a share conduct (medepleger)

it's everybody that intentionally "meedoet" also do in one crime (E. Utrecht. 1962).

- b. Adviser Maker (Uitlokker), that is. Besides as maker have a share, Regent can be classified as that persuade conduct doing an injustice or called persuader, in the sense every other deed actuate (subordinate) to conduct a deed that prohibited and menaced with crime by Martiman Prodjoamidjojo (1997).

That is, regent responsibility north Konawe to the legality abuse act government at area of mining effort permit will become private responsibility by Ridwan HR (2013). Private responsibility can cause account sue arrange state effort (administration law), account sue civil (civil law), and crime responsibility (criminal law) Tatiek Sri Djatmiati (2014).

4.3 Straightening of law of publication abuse doing an injustice permit of mining effort

1. Verification of authority abuse, in the case of the usage of authority referred as disagrees with "target and intention" that delegated authority then has conducted authority abuse (detournement de pouvoir)". According to Nur Basuki Winarno (2010) needed way formulates glare at which is on generally one glare at contain "nucleus part" (bestand delen), that means nucleus part is referred as must in accordance with deed conducted, then someone is menaced with crime.

In harmony with opinion Andi Hamzah (2011), then nucleus glares at from section 165 numbers 4 in 2009, as follows:

- a. Everyone Elementary body that release IUP, IPR or IUPK. That everyone elementary body that is administration functionary in charge conduct management and release document of effort permit region mining (WIUP) and permit of mining effort (IUP) IUP operation products PT Duta Inti Perkasa Mineral and make legality overlap with great PT Sriwijaya, that is: head on duty energy mining and mineral north Konawe regency.
 - b. Elementary body unconstitutional. That elementary body interferes in law covers action of administration functionary that conduct management and release document of effort permit region mining, revise permit of mining effort and make legality overlap is not based on found on law reasons section 151 verses (1) number 4 in 2009 about mineral mining and coal.
 - c. Elementary body misuses it's informal. That elementary body misused informal covered action of administration functionary not doing auction procedure in transparent and Accountability forming of auction committee in administrative document evaluation, technical, environment, and financial that raised PT Duta Inti Perkasa Mineral and PT Sriwijaya.
2. Verification of deed elementary body contempt of courts
 - a. Characteristic contempt of courts formal meaning. According to Andi Zainal Abidin Farid (2007), that characteristic co tempting of court is one of elementary body essential doing an injustice that expressed expressly or is not in a section of crime law because will become very bizarre if someone is punished when conduct deed that not impinge law. Starting from expert opinion above, a deed that can judge state administration functionary that publish permit of mining effort is arranged at section 165 law number 4 in 2009 about mineral mining and coal. If elementary body of authority abuse already can be proved then needn't prove elementary body contempt of courts for by self elementary body are referred has been proven. In the case of approvable elementary body of authority abuse, hence not yet of course elementary body contempt of courts approvable by Andi Zainal Abidin Farid (2007).
 - b. Characteristic contempt of courts material negative function. According to Lamintang (1997), teaching wederrechtelijkheid in significant meaning, whiter a that deed can be viewed as have the character of wederrechtelijk or not, its problem not only must evaluated in accordance with law the rules of that written, but also must evaluated according to public law from unwritten law.
 - c. Doctrine of criminal law autonomy material. According to H.A Demeersemen about principle De Autonomy Van Het Materiel, in Indriyanto Seno Adji (2009) "criminal law have autonomy to give different understanding with understanding that existed in other branch of law knowledge, however if criminal law not determines other, then utilized understanding that existed other law branch".
 3. Verification of evidence tools that validity
 - a. Investigation Action and examines (case title)
 - 1) Reporter Official inquiry/squealer, investigator gives evidence of report receipt/denunciating as follows: (a) report of model police a, that is police report made by police force member Republic of Indonesia that experience of, know, or find direct event that happened; and (b) report of model police b, that is police report that made by police force member Republic of Indonesia to the report/denunciating that accepted from society.
 - 2) Inspection of expert explanation that is expert explanation not only in the face of court, however in investigation step, investigation and prosecution come up with conference of expert explanation, can correct reading in section explanation 186 KUHP, expressed: "this expert explanation can also has been passed to inspection time by investigator or public prosecutor that poured in a report form and made by remember oath in his/her time accepts occupation or job.
 - 3) Inspection of legal body document. Adopt an idea Sudikno Mertokusumo in literature Andi Sofyan (2013), tell that: "written evidence tool or letter is everything that load effusive and slated for reading marking or to submit someone idea and utilized as the verification".
 - b. Interconnected Investigation of evidence tools mining doing an injustice.
 - 1) Inspection of administration functionary eyewitnesses. Related to Inspection of administration functionary eyewitnesses permit of mining effort consist of: minister, governor and regent/mayor as functionary of permit publisher.

Whereas technical level covers : head on duty mining mineral and energy, head on duty forestry, and head on duty environment;

- 2) Inspection of expert explanation. According to M. Yahya Harahap (2008) that location of expert explanation at second sequence after eyewitness explanation is representation of lawmaker assessment that important approach function of expert explanation. Investigation object hits view of administration jurist to give explanation wheter revise and make overlap of effort permit legality mining contains insufficiency of requirement judicial formality material and requirement of decision formal.
 - 3) Letter Inspection, Letter inspection that conducted by investigator by deepen formal truth and truth material at administrative equipment, technical, environment, and financial corresponding in publication of mining effort permit. In other word, whiter existed forgery doing an injustice by Lamintang and Theo Lamintang (2009).
- c. Examines investigation (case title)
- a. Deed Synchronization, evidence tool and participant maker. In determining status accuses or is not analyzed and synchronization between deed, evidence tools and makers hits how far legal responsibility with formula as follows: (a) deed North Regent of Konawe with functionary of bottom layer administration that related to legality abuse act government; (b) evidence tools that validity that can state North Regent Konawe with functionary of bottom layer administration conduct liable deed threat of crime, have the character of contempt of court formal is conducted with intention/negligence and can hold responsible; (c) makers participant consist of : effort body, 'cooperation', and civil and North Regent of Konawe with functionary of bottom layer administration.
 - b. Discussion and trouble-shooting of investigation resistor. Legal factor that become constraints from investigator, formulated as follows: (1) availability of administration jurist inspection and criminal law. Temporary, to determine demarcation of regent deed north Konawe with functionary of layer administration most that is pertained criminal law domain that can be continued in general court (crime), or domain of administration law that is jurisdiction competence arrange state effort; (2) investigation letters not passed by forensic analysis. According to Musa Perdana Kusuma (1983) that forensic knowledge that is: "knowledge that handles badness as the problem technical. In this group included in forensic medical science, forensic chemistry and forensic physics".
 - c. Harmonizes prosecution pre. In the eyes of Bambang Waluyo (2004), relation disharmonization institution second case handling law enforcer are more caused as follows: (a) investigator often not can fulfill its public

prosecutor guideline or guideline difficult understood investigator, until cause law suit shuffle through public prosecutor to investigator conversely; and (b) frequently law suit that returned public prosecutor for completed investigator, not reinstated to public prosecutor. In other word, handling of mining doing an injustice case is needed two matters, that is heroic coordination investigator supervisor; and coordination to public prosecutor.

5. Conclusions and Suggestion

Authority Abuse, procedure and publication substance Decision of Official Administration either in permit of mining effort (IUP) PT Aneka Tambang Tbk and make overlap with PT Sriwijaya Raya cover collision principle of legality, collision at principle of motivation for every decision and principle collision accurate significant (materiel zorgvuldigheid). Account sue civil and account sue arrange state effort and crime responsibility will become private responsibility if branch from key task and function.

Crime of administration functionary is caused proven its elementary body of authority abuse that have the character of contempt of court base evidence tools that validity cover explanation of administration functionary eyewitnesses, criminologist explanation/administration law and case handling entangle integrated crime system of judicature.

Related to conclusion that said above, to realize arrange manner government that either in the case of publication of mining effort permit, then researcher gives suggestion as follows: (1) minimize authority abuse, procedure and substance of mining interposing, mining auction effort and publication of effort permit region and permit of mining effort is conducted auction electronically (electronic tendering) or called electronic mining; (2) the need of straightening of and handling of mining doing an injustice case is conducted in integrated pass by crime system of judicature (appellate court, public attorney, police force, institute of human); (3) the need of administration regulation change and formulation of functionary administration criminal law state that publish permit of mining effort uses minimum standard prison crime/coop and fine.

References

- [1] A. Hamid. S Attamimi (1993). Hukum Tentang Peraturan Perundang-Undangan dan Peraturan Kebijakan (Hukum Tata Pengaturan). Fakultas Hukum Universitas Indonesia : Jakarta.
- [2] Amir Syamsuddin et al. (2004). Putusan Akbar Tandjung, Analisis Yuridis Para Ahli Hukum. Pustaka Sinar Harapan : Jakarta.
- [3] Andi Hamzah (2011). Asas-Asas Hukum Pidana. PT Rineka Cipta : Jakarta.
- [4] Andi Zainal Abidin Farid (2007). Hukum Pidana 1. cetakan kedua. Sinar Grafika : Jakarta.
- [5] Andi Sofyan (2013). Hukum Acara Pidana : Suatu Pengantar. Rangkang Education : Yogyakarta.

- [6] Ateng Syafrudin (1994). Himpunan Makalah Asas-Asas Umum Pemerintahan Yang Baik, Judul : Asas-Asas Pemerintahan Yang Layak Pegangan Bagi Pengadialn Kepala Daerah. PT Citra Aditya Bakti : Bandung.
- [7] Bambang Waluyo (2004). Pidana dan Pemdanaan. Sinar Grafika : Jakarta.
- [8] Chairul Huda (2011). Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan. Kencana Prenada Media Group: Jakarta
- [9] E. Utrecht (1962). Rangkaian Sari Kuliah Hukum Pidana II. Universitas Padjajaran : Bandung.
- [10] E.Y. Kanter dan S.R. Sianturi (2012). Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya. Storia Grafika : Jakarta.
- [11] Hans Kelsen (2007). General Theory Of Law and State. alih bahasa: Somardi. Teori Umum Hukum dan Negara, Dasar-Dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Deskriptif Empirik. BEE Media Indonesia: Jakarta.
- [12] Indriyanto Seno Adji (2009). Korupsi dan Penegakan Hukum. CV Diadit Media : Jakarta
- [13] Indroharto (1994). Himpunan Makalah Asas-Asas Umum Pemerintahan Yang Baik; Judul : Asas-Asas Umum Pemerintahan Yang Baik. PT Citra Aditya Bakti : Bandung.
- [14] Jimly Asshiddiqie (2006). Teori Hans Kelsen tentang Hukum. Sekretariat Jenderal Mahkamah Konstitusi RI: Jakarta.
- [15] Loebby Loqman (1995). Percobaan, Penyertaan dan Gabungan Tindak Pidana. Universitas Tarumanegara UPT Penerbitan : Jakarta.
- [16] Lutfi Effendi (2003). Pokok-Pokok Hukum Administrasi. Bayumedia Publishing: Malang.
- [17] M. Yahya Harahap (2008). Pembahasan Permasalahan dan Penerapan KUHAP; Pemeriksaan Sidang Pengadialn, Banding, Kasasi dan Peninjauan Kembali. Sinar Grafika : Jakarta.
- [18] Martiman Prodjohamidjojo (1997). Memahami Dasar-Dasar Hukum Pidana Indonesia. PT. Pradnya Paramita: Jakarta.
- [19] Munir Fuady (2002). Perbuatan Melawan Hukum. cetakan pertama. PT Citra Aditya Bakti: Bandung.
- [20] Musa Perdana Kusuma (1983) Bab-Bab tentang Kedokteran Forensik. Ghalia Indonesia : Jakarta.
- [21] Nur Basuki Winarno (2010). Penyalahgunaan Wewenang Dalam Pengelolaan Keuangan Daerah. Laksbang Mediatama : Yogyakarta.
- [22] P.A.F. Lamintang (1997). Dasar-Dasar Hukum Pidana Indonesia. PT Citra Aditya Bakti : Bandung.
- [23] P.A.F. Lamintang dan Theo Lamintang (2009). Delik-Delik Khusus Kejahatan Membahayakan Kepercayaan Umum Terhadap Surat, Alat Pembayaran, Alat Bukti dan Peradilan. edisi kedua. Sinar Grafika : Jakarta.
- [24] Philipus Mandiri Hadjon (2011). Hukum Administrasi dan Tindak Pidana Korupsi. Gadjah Mada University Press : Yogyakarta.
- [25] Ridwan HR. (2013). Hukum Administrasi. PT Rajagrafindo Persada : Jakarta.
- [26] SF. Marbun (1997). Peradilan Administrasi Negara dan Upaya Administrasi di Indonesia. Liberty : Yogyakarta.
- [27] SF. Marbun dan Mahfud MD (2009). Pokok-Pokok Hukum Administrasi Negara. Liberty : Yogyakarta.
- [28] Sjachran Basah (1994). Pencabutan Izin Sebagai Salah Satu Sanksi Hukum Administrasi Negara. Fakultas Hukum Universitas Airlangga: Surabaya.
- [29] Sudarto (1983). Hukum dan Perkembangan Masyarakat. Sinar Baru : Bandung.
- [30] Tatiek Sri Djatmiati (2014). Intregasi Perizinan Pertambangan Dalam Kajian Hukum Administrasi. Makalah Seminar Internasional, Pertambangan Dalam Perspketif Bekerjasama Dengan SJY Research & Legal Consultant. Kendari-Sultra 11 November 2014.
- [31] Undang-Undang RI No. 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.
- [32] Peraturan Kepala Kepolisian Republik Indonesia Nomor 14 Tahun 2012 tentang Manajemen Penyidikan Tindak Pidana