



## Intersection Between Administrative Freies Ermessen and Maladministration in Strategic Nickel Industrial Area Development in Morowali

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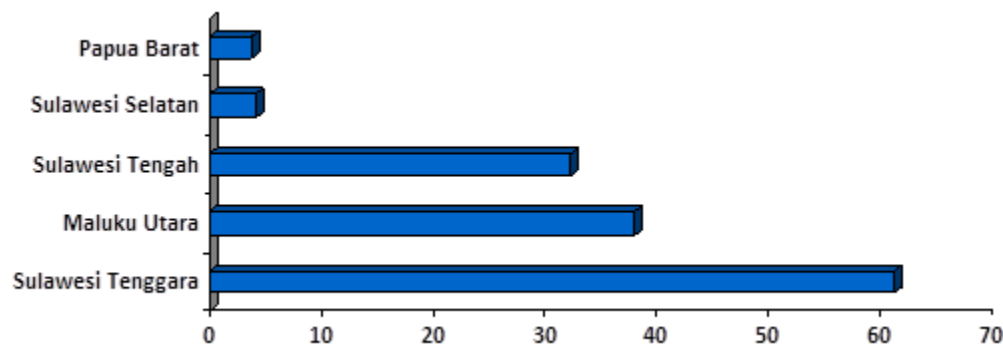
**Abstract:** *The development of the nickel industrial zone in Morowali Regency reflects a critical intersection between administrative discretion (freies Ermessen) and the growing risks of maladministration. While the project, primarily through the Indonesia Morowali Industrial Park (IMIP), makes a significant contribution to national economic growth and global energy transition, its implementation often circumvents legal and ethical governance frameworks. This study employs a normative juridical method, incorporating statutory, conceptual, and case approaches, to examine the legal boundaries of administrative discretion within strategic national projects. Findings reveal that discretion has been exploited to expedite permits, land acquisition, and fiscal incentives without sufficient public participation, transparency, or adherence to legal compliance. Such practices have led to environmental degradation, agrarian conflicts, and a decline in public trust in government institutions. Key indicators of maladministration include the abuse of authority, discriminatory policies that favour large corporations, procedural violations, and the absence of effective oversight mechanisms. The research highlights that discretion, when detached from its foundational legal and moral principles, can transform into a tool of unchecked bureaucratic power, thereby undermining good governance and democratic values. It argues for stricter regulatory oversight, more precise discretionary boundaries, and participatory frameworks to prevent misuse in future development agendas. Ultimately, the paper contributes to advancing administrative law discourse by emphasising the urgent need for institutional reforms to align discretionary practices with the principles of accountability, legality, and public interest in state administration.*

**Keywords:** *Administrative Discretion, Maladministration, Good Governance*

## A. Introduction

The development of a strategic nickel industrial area in Morowali Regency, particularly through the Indonesia Morowali Industrial Park (hereinafter referred to as IMIP), reflects the direction of state policy oriented towards accelerating economic growth through the downstreaming of natural resources. This area has experienced rapid development since 2014, now encompassing over 2,000 hectares of industrial land and accommodating more than 40,000 workers, including thousands of foreign nationals.<sup>1</sup> From a macroeconomic perspective, the mining sector's contribution to Central Sulawesi's Gross Regional Domestic Product (GRDP) continues to increase; according to the Central Statistics Agency (BPS), this sector contributed 24.13% to the province's GRDP in 2023.<sup>1</sup> At the national level, Morowali Regency is a significant contributor to the global nickel metal supply chain, supporting the global energy transition.<sup>2</sup>

**Picture 1.** Distribution of Nickel Resources in Indonesia



Sources: Databoks, 2024<sup>3</sup>

However, these achievements did not come without consequences. Behind the euphoria of economic growth lie complex legal and governance issues, particularly concerning the use of administrative discretion in regional development. Discretion, as a form of freedom for administrative officials to make decisions, should be exercised within the framework of the public interest and in accordance with the law.<sup>4</sup> However, in the IMIP development scheme, discretion often creates a loophole for maladministration

<sup>1</sup> Hasanuddin Hi. Pende and Moh. Mudassir Ali, "Analisis Pertumbuhan Produk Domestik Regional Bruto Pada Provinsi Sulawesi Tengah," *Tolis Ilmiah: Jurnal Penelitian* 5, no. 1 (2023): 63, <https://doi.org/10.56630/jti.v5i1.343>.

<sup>2</sup> Nurhayati Syarifuddin, "Pengaruh Industri Pertambangan Nikel Terhadap Kondisi Lingkungan Maritim di Kabupaten Morowali," *Jurnal Riset & Teknologi Terapan Kemaritiman* 1, no. 2 (2022): 19–23, <https://doi.org/10.25042/jrt2k.122022.03>.

<sup>3</sup> Adi Ahdiat, "Sulawesi Tenggara, Provinsi Paling Kaya Nikel Di Indonesia," *Databoks*, 2024, <https://databoks.katadata.co.id/pertambangan/statistik/e29d44ca196ad6d/sulawesi-tenggara-provinsi-paling-kaya-nikel-di-indonesia>.

<sup>4</sup> Lintang Ario Pambudi, "Quo Vadis Pengaturan Diskresi Pemerintah Pasca Undang-Undang Cipta Kerja," *UNES Law Review* 5, no. 3 (2023): 1239–49, <https://doi.org/10.31933/unesrev.v5i3>.

practices such as permit irregularities, neglect of public participation, and weak environmental oversight. The Indonesian Ombudsman's 2022 Annual Report noted that the mining sector is one of the sectors with the highest number of complaints of maladministration, particularly related to the lack of transparency in permit issuance and weak oversight of Environmental Impact Assessment (AMDAL) implementation.<sup>5</sup>

This phenomenon has been further reinforced by criticism from civil society organisations. WALHI, in its Environmental Outlook 2025, noted that National Strategic Projects (PSN) that use accelerated mechanisms often violate the principles of environmental prudence and community participation. In the Morowali case, WALHI reported that approximately 74% of affected residents stated they had never been included in the public consultation process for the smelter development. In comparison, only 11% of the AMDAL documents were fully published.<sup>5</sup> This demonstrates an imbalance of power between the state, corporations, and affected communities, as well as weak oversight of policies implemented in the name of national strategic development.

Philosophically, the development of the nickel industry in Morowali presents a tension between the state's ideals of economic prosperity and the moral principles of social and ecological justice. Within the framework of *das sollen*, development should be carried out by upholding the principles of participation, intergenerational justice, and environmental preservation.<sup>6</sup> However, in reality (*das sein*), field practices have demonstrated numerous administrative irregularities that harm local communities and strengthen the dominance of foreign corporations and national elites.<sup>7</sup> The fact that most industrial permits are issued through an accelerated process by the Investment Coordinating Board (BKPM) without a thorough strategic spatial planning study demonstrates that the principle of prudence in development is not consistently upheld.<sup>8</sup>

The social conditions of the Morowali community have also undergone a dramatic transformation. The expansion of the nickel industry has significantly altered the local socioeconomic structure, resulting in social inequality, changes in livelihoods, and even

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<sup>5</sup> Wahana Lingkungan Hidup Indonesia, *Environmental Outlook 2025: Melanjutkan Tersesat, Atau Kembali Ke Jalan Yang Benar* (Wahana Lingkungan Hidup Indonesia, 2025).

<sup>6</sup> Fransiscus Juan Palempung et al., "Kajian Yuridis Penerapan Asas Berkelanjutan dan Berwawasan Lingkungan Dalam Kegiatan Investasi Di Bidang Pertambangan Minerba," *Jurnal Tana Mana* 4, no. 2 (2023): 24–36.

<sup>7</sup> Margo Hadi Pura Firmansyah, "Problematisa Yuridis Penjatuan Sanksi Pidana Mati Terhadap Pelaku Korupsi," *Jurnal Ilmiah Wahana Pendidikan* 10, no. 4 (2024): 558–69, <https://doi.org/10.5281/ZENODO.13731831>.

<sup>8</sup> Nandang Sutrisno and Sagar Aji Poerana, "Reformasi Hukum dan Realisasi Investasi Asing pada Era Presiden Joko Widodo," *Undang: Jurnal Hukum* 3, no. 2 (2020): 237–66, <https://doi.org/10.22437/ujh.3.2.237-266>.

agrarian conflicts.<sup>9</sup> Data from the Mining Advocacy Network (JATAM) shows that as of 2023, there were at least 27 unresolved land conflicts in and around the Morowali nickel industrial area.<sup>10</sup> In terms of culture and security, the increasing population heterogeneity due to industrial urbanisation has triggered the potential for horizontal conflict, which has erupted several times in the form of inter-community violence.<sup>11</sup>

Furthermore, state intervention in the IMIP project through granting it National Strategic Project status opens up significant opportunities for the use of discretion to override substantive legal provisions. For example, Government Regulation No. 42 of 2021 concerning the Facilitation of National Strategic Projects allows for the simplification of permits and the waiver of regional spatial planning requirements if deemed to hinder investment.<sup>12</sup> In this case, administrative discretion, which should be a solution, has instead become an instrument to justify violations of the principle of legality. This also has implications for overlapping environmental governance, as reported in a 2023 environmental audit by the Ministry of Environment and Forestry (KLHK), which found violations of emission and waste management standards at three companies within the IMIP area.

Previous research by Ilyas Lampe (2021), entitled "Issues of Nickel Industrialisation and Corporate Communication Management in the Morowali Industrial Estate," focused on social dynamics, horizontal conflicts, and PT IMIP's corporate communication strategies in responding to environmental and labour issues. The study used a qualitative case study approach, focusing on managing the company's image and reputation through media and CSR. However, that research did not specifically examine aspects of state administrative law, particularly regarding the use of discretion by public officials in the context of the National Strategic Project (PSN).<sup>13</sup> This research instead focuses on the intersection of administrative discretion and maladministration practices within the framework of the nickel industrial development project. Thus, this research fills the empirical gap in the lack of legal studies on the legality of discretionary actions and the potential for deviations in industrial estate governance.

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<sup>9</sup> Yeni Nuraeni, "Dampak Perkembangan Industri Pertambangan Nikel Terhadap Kondisi Sosial, Ekonomi Dan Budaya Masyarakat," *Jurnal Unimus* 1, no. 1 (2018): 12-22.

<sup>10</sup> Transparency International Indonesia, *Industri Keruk Nikel: Korupsi Struktural Dan Dampak Multi Dimensinya Studi Kasus Di Halmahera Timur Dan Tengah* (Transparency International Indonesia, 2024).

<sup>11</sup> Ganda Martunas Sihite et al., "Peran Serikat Pekerja Dalam Penyelesaian Konflik Pekerja Lokal Dengan Pekerja Asing Tiongkok Di Morowali Utara," *Jurnal Kolaborasi Resolusi Konflik* 5, no. 1 (2023): 65-73, <https://doi.org/10.24198/jkrk.v5i1.46987>.

<sup>12</sup> Agung Wardana, "Geografi Hukum Proyek Strategis Nasional: Studi Kasus Bendungan Bener di Purworejo, Jawa Tengah," *Undang: Jurnal Hukum* 5, no. 1 (2022): 1-41, <https://doi.org/10.22437/ujh.5.1.1-41>.

<sup>13</sup> Lampe, "Isu-Isu Industrialisasi Nikel Dan Pengelolaan Komunikasi Korporat di Kawasan Industri Morowali."

This research directly emphasises the focus of the problem, "The Intersection of Administrative Discretion and Maladministration in the Development of the Strategic Nickel Industrial Estate in Morowali Regency." Therefore, this study will answer two main questions as a problem formulation: 1) What forms is the use of administrative discretion in the development of the strategic nickel industrial area in Morowali Regency?; and 2) To what extent does this discretionary practice have the potential to, or even has it given rise to, maladministration in the context of national strategic project governance?

The purpose of this paper is to analyse and explain the forms of use of administrative discretion in the development of the strategic nickel industrial area in Morowali Regency, as well as to outline the legal boundaries and principles of good governance that are violated when this discretion transforms into maladministration. By understanding the intersection between discretion and maladministration, this study aims to contribute to the renewal of the discourse on state administrative law, particularly in the implementation of National Strategic Projects (NSPs) schemes that are prone to conflicts between legal, political, and economic interests.

## **B. Method**

This research employs a normative juridical method, specifically legal research that examines positive legal norms, encompassing legislation, legal doctrine, and judicial decisions.<sup>14</sup> The approach used in this research includes three types: first, the statute approach used to analyze regulations related to administrative discretion, National Strategic Projects (PSN), and natural resource governance; second, the conceptual approach to understand in depth the concepts of discretion, maladministration, and the principles of good governance; and third, the case approach by tracing concrete practices in the development of the nickel industrial area in Morowali as a case study. The technique of collecting legal materials is carried out through library research, which involves gathering primary legal materials, such as legislation, and secondary legal materials, including scientific journals, research institution reports, books, and official government documents.<sup>15</sup>

## **C. Result & Discussion**

### **1. From Morowali to Global Contexts: A Comparative Legal Analysis of Administrative Discretion in Nickel Industrial Development**

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<sup>14</sup> Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum* (Publika Global Media, 2024).

<sup>15</sup> Nitaria Angkasa, *Metode Penelitian Hukum: Sebagai Suatu Pengantar* (CV Laduny Aliftam, 2019).

Administrative discretion refers to the authority of government officials to make decisions in uncertain or ambiguous legal situations.<sup>16</sup> Within the framework of a modern rule of law, discretion is a crucial instrument for ensuring legal flexibility in addressing complex societal dynamics. However, discretion cannot be used arbitrarily but must remain grounded in the principles of legality, accountability, and the public interest.<sup>17</sup> In the development of the strategic nickel industrial area in Morowali Regency, discretion is widely used to expedite business permits, land acquisition, and supervision of industrial activities. The normative basis for this is Law Number 30 of 2014 concerning State Administration.

Efficiency in government administration is the primary rationale for the use of discretion in National Strategic Projects (PSN), such as the IMIP. However, the focus on broad economic benefits often conflicts with the principles of social and ecological justice. The state, which should be the protector of community rights, instead becomes more prominent as a facilitator of capital and investment interests. Adjusting regional government structures to national interests is achieved by reducing the public's deliberative space. In such circumstances, discretion transforms from a public service tool into an extension of state capitalism.<sup>18</sup> The exercise of administrative discretion in the development of the Morowali Industrial Park (IMIP) illustrates how regulatory flexibility has been used to accelerate investment in nickel downstream processing. Local and national authorities exercised discretionary powers in zoning, licensing, and industrial facilitation, often prioritising economic growth over strict adherence to environmental and labour regulations. While this strategy successfully attracted foreign capital and contributed significantly to state revenue, it has also generated recurrent concerns about ecological degradation, workplace accidents, and insufficient protection of local communities.

The most visible use of discretion is in the Environmental Impact Assessment (EIA) issuance process. Procedures that should be rigorous and participatory are often ignored in the interest of accelerating development. WALHI (2024) noted that the majority of EIA documents in Morowali are not publicly available, substantially hindering the public's right to know and provide input on project impacts.<sup>19</sup> In many cases, public officials approve EIAs based solely on internal technical recommendations,

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<sup>16</sup> Zaki Ulya, "Pertanggungjawaban Pejabat Pemerintahan Dalam Menetapkan Diskresi (Studi Terhadap Putusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016)," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 3 (2017): 412–30, <https://doi.org/10.20885/iustum.vol24.iss3.art4>.

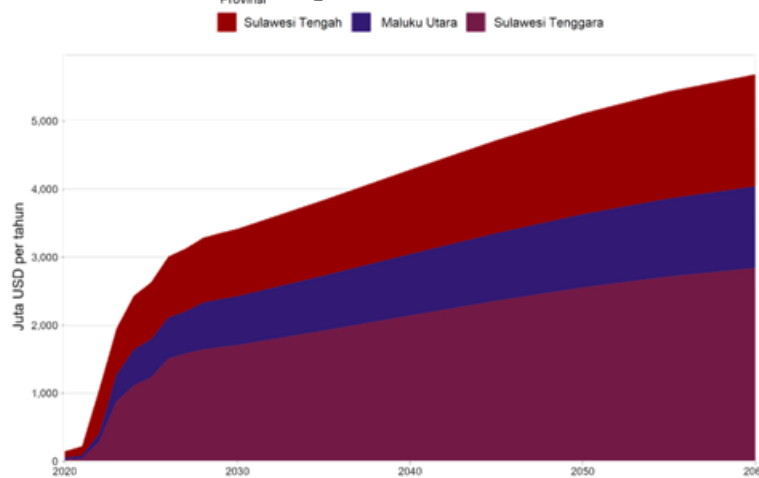
<sup>17</sup> Hezky Fernando Pitoy, "Kewenangan Diskresi Pemerintah Daerah Dalam Konsep Negara Hukum," *Lex Et Societatis* 6, no. 4 (2018): 5–14.

<sup>18</sup> Farrel Maulana Riyadi, "Peran Diskresi dan Pertanggungjawaban Penyelenggaraan Pemerintahan," *Jurnal Multidisiplin Inovatif* 8, no. 12 (2024): 41–47.

<sup>19</sup> Yoyok Bepe, "Walhi Beberkan Proyek Kawasan Industri Di Morowali Sarat Konflik Agraria," *Wahana Lingkungan Hidup Indonesia*, 2024, <https://teropongnews.com/2024/07/walhi-beberkan-proyek-kawasan-industri-di-morowali-sarat-konflik-agraria/>.

without considering the objections of surrounding communities. This phenomenon demonstrates that discretion has been used to bypass legal procedures and has resulted in an economic burden due to massive air pollution from nickel processing and captive power activities in Central Sulawesi, as seen in the following figure:

**Picture 2.** The Economic Burden of Health Impacts Associated with Smelters and Captive Power Plants



Sources: Centre of Research on Energy and Clean Air, 2024

Furthermore, the land acquisition mechanism for industrial estates also exhibits deviant discretionary practices. Many decisions regarding the release of forest areas or customary land are made without adequate public consultation. Data from JATAM (2024) indicates that there were 27 active agrarian conflicts involving local communities and industrial estate developers by the end of the year.<sup>20</sup> In many cases, regional officials use their authority to issue administrative decisions that expedite the land conversion process without considering the social impacts.<sup>21</sup> Discretion, which should be a solution to the legal vacuum, actually compounds the complexity of structural injustice.

In contrast, **international practices such as those in Australia and New Caledonia** reveal a more rule-bound approach to administrative discretion. In Australia, environmental impact assessments (EIAs) are detailed and legally binding, leaving limited space for arbitrary relaxation

<sup>20</sup> Abita Jovina, "Konflik Agraria Di Indonesia Terus Naik, Capai 295 Kasus Di 2024," *Goodstats*, 2024, <https://data.goodstats.id/statistic/konflik-agraria-di-indonesia-terus-naik-capai-295-kasus-di-2024-bdOCp>.

<sup>21</sup> Muhammad Ibrahim Rantau et al., "Kewenangan Pemerintah Daerah Dalam Pelaksanaan Kebijakan Perlindungan Lahan Pertanian Pangan Berkelanjutan (LP2B) (Studi Kasus : Perlindungan Lahan Pertanian Pangan di Provinsi Banten)," *Jurnal Administrasi Politik dan Sosial* 5, no. 1 (2024): 17–28, <https://doi.org/10.46730/japs.v5i1.130>.

by administrative bodies. Indigenous consultation processes are formalised through lawfully enforceable agreements, ensuring that local communities play a substantive role in the approval of projects. Similarly, in New Caledonia, while mining projects have historically generated social tensions, administrative discretion is tempered by a codified mining framework that emphasises community involvement and compensation schemes. These mechanisms function to constrain the arbitrary use of discretion and to balance industrial development with social and environmental safeguards.

Law No. 30 of 2014 clearly regulates the limits of discretion use. Article 22 establishes five main requirements: decisions must be in accordance with objectives, based on law, uphold the general principles of good governance (AUPB), be objective, and free from conflicts of interest.<sup>22</sup> However, in the IMIP development practice, many discretionary decisions fail to meet these five requirements. Discretion is used not because of a legal vacuum, but because of a desire to expedite projects while ignoring legal norms. This suggests that discretion is being exploited as a legal loophole to enhance administrative power.

Another concrete example is the establishment of special economic zones without aligning with regional spatial plans (RTRW). Under Government Regulation No. 42 of 2021, PSNs are granted the right to simplify spatial planning and permit procedures, including bypassing discussions with the local Regional People's Representative Council (DPRD). This constitutes vertical discretion that diminishes regional sovereignty in spatial planning. As a result, industrial projects like IMIP can proceed despite violating regional spatial plans. Thus, discretion becomes a tool for policy centralisation that compromises regional autonomy.<sup>23</sup>

Tensions between the state and society become increasingly apparent when discretionary decisions restrict public participation. Communities feel they have lost control over decisions that significantly impact their lives. Discretion is used not to bridge the gap between law and social needs, but rather to justify ignoring legal norms. In the long term, this practice erodes trust in the government and diminishes the legitimacy of the rule of law. This accumulated injustice creates structural wounds that are difficult to repair through mere normative regulation.

Another form of discretion is seen in the disregard for administrative sanctions against companies violating environmental regulations. The 2023 Ministry of

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<sup>22</sup> Tri Suhendra Arbani, "Penggunaan dan Batasan Diskresi Dalam Pengelolaan Keuangan Daerah di Indonesia," *Jurnal Widya Pranata Hukum* 1, no. 2 (2019): 179–87.

<sup>23</sup> Bonifasius Agung Nugroho et al., "Pembentukan Kawasan Ekonomi Khusus (KEK) di Perbatasan Wini, Indonesia dengan Oecusse, Timor Leste Guna Meningkatkan Kesejahteraan, Ketahanan Pangan dan Keamanan di Perbatasan," *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 3 (2025): 1694–702, <https://doi.org/10.38035/rrj.v7i3.1412>.



Environment and Forestry audit report noted that several companies in the IMIP area were found to have polluted the environment without adequate sanctions.<sup>24</sup> The decision not to impose sanctions is often disguised as "maintaining the investment climate," a classic narrative in discretionary politics. This suggests that discretion is used not for the public interest, but to protect private interests. As a result, law enforcement loses its credibility in the eyes of the public.

Discretion is also frequently used in granting fiscal incentives, such as tax breaks or energy subsidies, to industries within the IMIP area. These facilities are granted through administrative decisions that are not always based on objective parameters.<sup>25</sup> Closed procedures and minimal oversight create an environment that opens up space for conflicts of interest and potential corruption. In this regard, discretion has become an instrument that reinforces the unequal distribution of economic resources. Fair public services have become privileged services for large corporate entities.

In its 2022 Annual Report, the Ombudsman of the Republic of Indonesia also criticised the use of discretion in the National Strategic Plan (PSN), which is often not supported by strong legal arguments. The Ombudsman noted an increase in public complaints in the mining and energy sectors, indicating signs of abuse of authority. One of the primary concerns is the absence of an evaluation or review mechanism for discretionary policies.<sup>26</sup> This lack of oversight confirms that our public administration system has not fully adapted to the dynamic principles of the rule of law.

While administrative law doctrine states that discretion is necessary to ensure the continuity of government in situations of emergency or normative uncertainty, the existence of the principles of the rule of law, checks and balances, and accountability remains an absolute limitation.<sup>27</sup> However, discretion in Morowali reflects more of a routine exercise of power than a responsible policy solution. Decisions made under discretion often contradict the AUPB. Discretion also experienced a deviation from the concept of *das sollen* to the deviant practice of *das sein*.

The dominant and closed practice of discretion widens the gap between government and society. The public no longer sees the state as a protector of rights, but as a wielder of untouchable power. In this scenario, discretion becomes a tool of

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<sup>24</sup> Transparency International Indonesia, *Industri Keruk Nikel: Korupsi Struktural Dan Dampak Multi Dimensinya Studi Kasus Di Halmahera Timur Dan Tengah* (Transparency International Indonesia, 2024).

<sup>25</sup> Saputri Ramadhani and Novayagori Tarmizi, "Upaya Meningkatkan Perlindungan Hukum Bagi Pelapor Tindak Pidana Korupsi di Indonesia," *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 10, no. 2 (2024): 945–51.

<sup>26</sup> Ombudsman Republik Indonesia, *Laporan Tahun 2022: Mengawasi Pelayanan Publik Bagi Pemulihan Yang Lebih Kuat*. (Ombudsman Republik Indonesia, 2022).

<sup>27</sup> Agustinus F Paskalino Dadi et al., "Kebijakan Diskresi dalam Pemerintahan Perspektif Hukum Administrasi Negara," *Jurnal Kolaboratif Sains* 7, no. 10 (2024): 3807–11.

bureaucratic elitism, alienating the spirit of participatory democracy.<sup>28</sup> Information asymmetry deepens as access to data, consultative meetings, and evaluation processes is closed to public scrutiny. The impact is policy delegitimation and the potential for growing social resistance.

From a juridical-administrative perspective, the use of discretion in National Strategic Projects (PSN), such as the IMIP, can be examined through the concept of *freies ermesen* (discretion). Discretion is a form of freedom of action granted to officials within the framework of a welfare state, enabling them to ensure the delivery of public services and welfare. However, discretion without firm rules can lead a state governed by law to become a state with unlimited power.<sup>29</sup> This is dangerous because administrative actions become more political and alienated from the public interest. Discretion that is free from morality and law will only perpetuate structural inequality and social conflict. Administrative policies such as circulars, regional head decrees, or other forms of regulations lacking a formal legal basis are frequently used in IMIP development. In many cases, these decisions override citizens' rights to information, consultation, and a healthy environment. This form of discretion fails to meet the legal and ethical standards of democratic governance. The use of administrative power as a pragmatic solution has the potential to lead to maladministration, mainly when discretion is used as a pretext to avoid a more open and participatory legal process.

**Table 1.** Administrative Discretion Forms in the IMIP Industrial Area

No.	Administrative Sector	Form of Discretion Used	Objective	Potential Issues
1	Environmental Permits (AMDAL)	Approval of AMDAL without public consultation	Accelerate permit issuance	Violation of participation rights
2	Land Acquisition	Land designation without community deliberation	Efficiency in land procurement	Agrarian conflict
3	Spatial Planning	Ignoring local spatial plans via Government	Alignment with National	Weakening of regional autonomy

<sup>28</sup> Zaenal Abidin, *Diskresi Di Negara Konstitusional* (Deepublish, 2022).

<sup>29</sup> Dyah Adriantini Sintha Dewi, "Pendayagunaan Freies Ermessen Pejabat Pemerintahan Dalam Konsep Negara Kesejahteraan," *Yustiisia* 5, no. 1 (2016): 184–94.

		Regulation No. 42/2021	Strategic Projects (NSP)	
4	Foreign Labor	Closed issuance of additional permits for foreign workers	Fulfillment of industrial demands	Social disparity
5	Fiscal Incentives	Selection of recipient companies without transparent criteria	Attract investment	Conflict of interest

Sources: Authors, 2025 (edited)

Furthermore, it is crucial to establish upper and lower limits when exercising discretion. The lower limit ensures that fundamental rights of citizens are not violated, while the upper limit means remaining subject to the applicable legal system.<sup>30</sup> In the development of IMIP, these limits are often ignored for reasons of efficiency or investment stability. When administrative decisions are made without considering due process of law, discretion has transformed into a form of unilateral power. In the logic of a state based on the rule of law, this is a deviation that deserves correction.

By juxtaposing the theoretical framework of discretion with the reality of IMIP development, it is clear that the practice in the field does not comply with Articles 22 and 23 of Law No. 30 of 2014. Discretion, which should be used cautiously, is instead exploited to circumvent democratic and accountable processes. If this practice continues, the rule of law will regress to one dominated by the logic of bureaucratic power.<sup>31</sup> Discretion, which should be an administrative exception, has become a new norm that marginalises the principle of social justice. Therefore, re-examining the validity and accountability of discretion in the PSN is very urgent.

## **2. Potential and Realisation of Maladministration in Administrative Discretion Practices in National Strategic Projects in Morowali**

Maladministration refers to any form of public administrative behaviour or action that contravenes the AUPB, whether intentional or negligent. Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia explicitly mentions the types of maladministration, including abuse of authority, discrimination, prolonged delays, and

<sup>30</sup> Galang Asmara, "Urgensi Kewenangan Diskresi Dalam Penyelenggaraan Pemerintahan Untuk Memajukan Kesejahteraan Umum," *Jurnal Diskresi* 1, no. 1 (2022): 1-16.

<sup>31</sup> Yulius et al., *Kewenangan Bebas (Diskresi) Dalam Perspektif Teori Dan Praktik Pemerintah* (Prenada Media, 2022).

failure to provide services. In the field of National Strategic Projects (PSN), maladministration can arise as a direct consequence of the implementation of discretion that does not comply with the principles of accountability.<sup>32</sup> Administrative discretion that is not strictly limited and not accompanied by effective oversight has the potential to cause deviations in the decision-making process. In the case of the IMIP development, these signs are not only potential but have manifested as concrete practices, as listed in the following table:

**Table 2.** Indications of Maladministration Due to Discretion in the IMIP Project

No.	Type of Maladministration	Example of Discretionary Practice	Violated Regulation	Impact
1	Abuse of Authority	Approval of AMDAL without technical data	Law No. 32/2009 on Environmental Protection	Policy legitimacy is questioned
2	Discrimination	Incentives granted only to large companies	Law No. 25/2009 on Public Services	Economic inequality
3	Unreasonable Delay	Absence of fiscal policy evaluation	Law No. 28/1999 on Anti-Corruption, Collusion, and Nepotism (KKN)	State fiscal loss
4	Failure to Provide Services	Exclusion of citizens in land acquisition	Law No. 39/1999 on Human Rights	Horizontal conflict
5	Unclear Procedures	Issuance of foreign labor permits without	Law No. 13/2003 on Manpower	Local social resistance

<sup>32</sup> Regina Yovita Aiko Silvana et al., "Validasi Administrasi: Justifikasi Ombudsman Terhadap Maladministrasi di Makassar," *Jurnal Kewarganegaraan* 6, no. 4 (2022): 6833–43.

		referring to official quotas		
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Sources: Authors, 2025 (edited)

Issuing environmental permits without public consultation constitutes maladministration because it violates the fundamental principles of transparency and participation, which are essential to good governance. When officials use discretion to expedite the AMDAL process without fulfilling the obligation to include affected residents, community rights are disregarded.<sup>33</sup> This is not merely a procedural issue, but also a substantive one, affecting the legitimacy of the resulting policies. The right to a healthy and sound environment cannot be overridden in the name of administrative efficiency. Maladministration, in this case, occurs due to deviations from the legal obligations that government officials are required to uphold.

A similar pattern is also evident in land acquisition for industrial projects, which is carried out without transparency. In several cases in Morowali, the local government granted discretion to technical officials to determine the status of community land for industrial development without proper verification and deliberation, thereby disadvantaging indigenous communities and farmers who lacked adequate legal access. Neglecting the right to information and consultation in decision-making can be categorised as a form of delay in service delivery, even an abuse of authority. This problem demonstrates that discretion exercised without oversight mechanisms can lead to violations of the principles of non-discrimination and procedural fairness.

Discretionary practices in managing foreign workers also demonstrate the potential for serious maladministration. The discrepancy between the number of permits granted and the reality on the ground shows the weak accountability of this policy.<sup>34</sup> When discretion is used to accommodate investment interests while violating technical labour regulations, the state loses its oversight function. Allowing violations of the foreign worker quota constitutes a form of administrative negligence that can be classified as passive maladministration. The lack of transparency in the permit-issuing process further reinforces the suspicion that discretion has transformed into uncontrolled power.

The use of discretion in granting fiscal incentives to companies is also prone to maladministration. When officials have the authority to determine who is eligible for tax benefits without a transparent oversight mechanism, there is ample room for conflicts of

<sup>33</sup> Oheo K. Haris, "Pembadanan Prinsip Kepemerintahan yang Baik (Good Governance) dalam Penerbitan Izin Usaha Pertambangan (IUP) (Studi Kasus di Sulawesi Tenggara)," *Perspektif Hukum* 15, no. 2 (2015): 129-46, <https://doi.org/10.30649/ph.v15i2.32>.

<sup>34</sup> Ridwan, *Hukum Administrasi Negara* (RajaGrafindo Persada, 2018).

interest to arise.<sup>35</sup> Granting tax benefits without objective criteria can be categorised as discriminatory against other business actors.<sup>36</sup> Furthermore, the lack of evaluation of the impact of fiscal policy also indicates a protracted delay in public accountability. In national strategic projects, fiscal governance irregularities constitute a clear form of abuse of discretion for interests inconsistent with constitutional mandates.

Maladministration can also be seen in administrative decisions made without adequate documentation and argumentation. Administrative discretion, in principle, must be accompanied by objective, logical, and verifiable reasons.<sup>37</sup> In practice, many industrial estate development decisions are made in closed forums without minutes and without disclosing the underlying data that underpins their considerations. This type of secrecy violates the principles of transparency and public accountability. When administrative decisions cannot be audited or tested, the opportunity for corruption and irregularities becomes increasingly open.<sup>38</sup>

The Indonesian Ombudsman noted that the National Strategic Project (PSN) sector is one of the sectors with the highest rate of maladministration complaints. The Ombudsman's 2022 Annual Report stated that the majority of complaints related to unclear procedures, decisions not complying with legal provisions, and disregard for the interests of local communities.<sup>39</sup> These findings indicate that excessive and uncontrolled discretion has a systemic impact on strategic project governance. Instead of protecting citizens' rights, the state has become an instrument for facilitating investment, ignoring legal procedures. This situation structurally reinforces the assumption of a power deviation in government practices.

Under the State Administration Law, discretion is permitted only when regulations are unavailable or if existing regulations are inadequate to resolve the issue. However, in many practices, discretion is exercised even when clear regulations exist, simply because these regulations are perceived as hindering the acceleration of the agenda.<sup>40</sup> Discretion is used to justify ignoring legitimate legal procedures. Therefore,

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<sup>35</sup> Muhamad Sadi Is and Kun Budiarto, *Hukum Administrasi Negara* (Prenada Media, 2023).

<sup>36</sup> M. Ikbar Andi Endang, "Diskresi dan Tanggung Jawab Pejabat Pemerintahan Menurut Undang-Undang Administrasi Pemerintahan," *Jurnal Hukum Peratun* 1, no. 2 (2018): 223–44, <https://doi.org/10.25216/peratun.122018.223-244>.

<sup>37</sup> Yudit Bertha Rumbawer et al., "Ambiguitas Keputusan Administrasi Negara: Antara Diskresi dan Legalitas," *Jurnal Sultan: Riset Hukum Tata Negara* 2, no. 2 (2024): 52–63, [https://doi.org/10.35905/sultan\\_htn.v2i2.9569](https://doi.org/10.35905/sultan_htn.v2i2.9569).

<sup>38</sup> Rengga Kusuma Putra, *Hukum Administrasi Negara* (Lauk Puyu Press, 2024).

<sup>39</sup> Ombudsman Republik Indonesia, *Laporan Tahun 2022: Mengawasi Pelayanan Publik Bagi Pemulihan Yang Lebih Kuat*. (Ombudsman Republik Indonesia, 2023).

<sup>40</sup> Andi Sastria et al., "Perkembangan Hukum Administrasi Negara di Indonesia," *Jurnal Begawan Hukum (JBH)* 2, no. 1 (2024): 207–14.

discretion has shifted its function to administrative justification, violating the principle of legality. This clearly indicates abuse of authority.

The presence or absence of internal control mechanisms and limitations largely determines the boundary between legitimate discretion and maladministration. Without a system of oversight over how decisions are made, there is no guarantee that discretion is exercised in the public interest.<sup>41</sup> In Morowali, oversight of administrative discretion remains very weak, whether by the Regional People's Representative Council (DPRD), the regional inspectorate, or external oversight institutions. When controls are weak, there is ample room for collusion and administrative transactions. Thus, institutional weaknesses in oversight are a primary cause of the transformation of discretion into maladministration.

From a social perspective, maladministration resulting from excessive discretion creates public unrest and distrust in the government. Many citizens believe that the development process is being conducted in a closed, unilateral, and unfair manner.<sup>42</sup> Discretion, which should address situational needs, instead undermines the principle of equality in public services. When citizens are not treated fairly in administrative policies, the presence of the state is perceived as a threat to their autonomy. This represents the profound sociological impact of unaccountable discretion.<sup>43</sup>

Uncorrected discretionary practices also create a negative precedent within the bureaucratic system. Government officials become accustomed to using discretion as a shortcut to avoid strict legal procedures.<sup>44</sup> This fosters a permissive legal culture, which contradicts the spirit of bureaucratic reform. Discretion, which should be exceptional, instead becomes an administrative habit. In the long term, this condition undermines the integrity of the state's administrative legal system.

Maladministration occurs not only in the procedural dimension but also in the substantive dimension. Administrative decisions that appear legitimate in form but ignore substantive justice can still be classified as maladministrative.<sup>45</sup> For example, a decision on land acquisition that is formally legitimate but harms indigenous communities who were not fairly and equally involved. Such choices, even though based on formal authority, still fail to meet the principle of justice that underlies public service.

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<sup>41</sup> Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia* (UGM Press, 2024).

<sup>42</sup> Muhammad Khaerul Luthfi, "Pertanggungjawaban Atas Penggunaan Diskresi Oleh Pejabat Pemerintah Dari Sudut Pandang Hukum Administrasi Negara," *Jurnal Ilmiah Nusantara (JINU)* 1, no. 4 (2024): 299–311.

<sup>43</sup> Weron Murary et al., *Hukum Administrasi Negara: Teori Dan Implementasi Membangun Pemerintah Yang Efektif* (Media Penerbit Indonesia, 2024).

<sup>44</sup> Eka Budianta, "Penggunaan Diskresi Dalam Birokrasi Pemerintahan," *Jurnal Hukum Progresif* 10, no. 2 (2016): 1765–79.

<sup>45</sup> Dola Riza, "Maladministrasi Dalam Pelaksanaan Putusan Pengadilan Tata Usaha Negara Dalam Perspektif Undang-Undang Pelayanan Publik," *Jurnal Normative* 11, no. 1 (2023): 39–57.

Therefore, the substantive aspects of the policy must also be examined when assessing maladministration.

When discretion is used to prevent public participation in the policy-making process, it violates the principles of administrative democracy. Participation is not merely a formality, but rather part of a mechanism of social control over power.<sup>46</sup> In the IMIP project, the public is often treated as simply an object of development, not a subject in the decision-making process. This is a form of administrative exclusion that demonstrates that discretion is used to limit, rather than expand, democratic space. Maladministration arises from the narrowing of public participation rights in government.

Maladministration practices resulting from uncontrolled discretion can be addressed through the reformulation of the monitoring system and the clarity of discretionary indicators. Regulatory reforms are needed to establish limits, valid indicators, and evaluation standards for the use of discretion in National Strategic Projects (PSN). Furthermore, periodic and open administrative audits must be mandatory to ensure transparency in all decisions. Project governance reforms must prioritise the principles of openness, accountability, and protection of vulnerable groups. Without these principles, discretionary practices will continue to be a source of inequality and social conflict.

## D. Conclusion

Based on the previous discussion, it can be concluded that the use of administrative discretion in the development of the strategic nickel industrial area in Morowali Regency reflects a shift in the function of discretion from a responsive tool of government administration to a closed and unaccountable instrument for legalising administrative power. Discretion, originally intended to address legal gaps or ambiguities, is instead actively used to expedite the licensing process, land acquisition, grant fiscal facilities, and ignore substantial legal obligations such as public participation and environmental oversight. This practice often ignores the principles of administrative law as stipulated in Law Number 30 of 2014 concerning State Administration, particularly Articles 22 and 23, which stipulate the requirements for valid discretion. Thus, the discretion used in the National Strategic Project (PSN) in Morowali has deviated from its function as a law-based public service mechanism.

Furthermore, the uncontrolled practice of discretion has given rise to various forms of maladministration in the context of PSN governance. This maladministration encompasses abuse of authority, policy discrimination, neglect of public participation

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<sup>46</sup> Mhd Taufiqurrahman, "Kebijakan Diskresi Pejabat Pemerintahan Dalam Memutuskan Kebijakan Publik," *Juris Studia* 5, no. 3 (2024): 766–71.



rights, and a lack of transparency in decision-making processes that affect the public interest. In many cases, administrative decisions lack strong legal arguments, are not based on objective evaluation, and tend to favour investor interests over public interests. This demonstrates that discretion has been exercised beyond the legal and moral boundaries that should serve as ethical safeguards in democratic governance. Therefore, discretion used without limits and without oversight has the potential to legitimise structural inequality and violate the principles of the rule of law.

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