

CHAPTER FOUR

FINDING AND ANALYSIS

A. Potential Mining in the Special Region of Yogyakarta

1. General Description of the Special Region of Yogyakarta

a. Territorial Boundaries and Geographical Condition

The Special Region of Yogyakarta is located near the Southern Coast of Java, surrounded on three sides by the province of Central Java, and with the Indian Ocean on the Southside. The population in the 2010 Census was 3,452,390 people. Based on the latest official estimate (January 2014), it has risen to 3,594,290 people. It has an area of 3,133.15 km², making as the second-smallest area of the provinces in Indonesia after the Jakarta Capital Region. Along with surrounding areas in Central Java, it has some of the highest population densities of Java.³²

Table 4.1
List of Administrative Area of the Special Region of
Yogyakarta

Division of DIY by City/Regency, 2011	Capital City	District	Sub- district & Village	Area (km²)
Yogyakarta City	Yogyakarta	14	45	32,50
Bantul Regency	Bantul	17	75	506,85
Gunugkidul Regency	Wonosari	18	144	1.485,36
Sleman Regency	Sleman	17	86	574,82
Kulon Progo Regency	Wates	12	88	58
TOTAL		78	438	3.185,8

(Source: <http://www.kemendagri.go.id/>)

In general, territorial boundaries of the Special Region of Yogyakarta are: in the Southern part, it is directly adjacent with the Indian Ocean and Wonogiri Regency. In the Northern part of Yogyakarta, the territorial boundary is directly adjacent with Klaten Regency. In Northwest with Magelang Regency and with Purworejo Regency in Westside.³⁴

Geographically, the Special Region of Yogyakarta is located in coordinates 8° 30' - 7° 20' South Latitude and 109° 40' - 110° 0' East Longitude. Based on the landscape, the Special Region of

³⁴ “Daerah Istimewa Yogyakarta”, https://id.wikipedia.org/wiki/Daerah_Istimewa_Yogyakarta accessed on 15 April 2018, (21.45).

Yogyakarta can be classified into 4 (four) physiographic units, i.e. a physiographic unit of Merapi Volcano, a physiographic unit of Sewu Mountains, a physiographic unit of Kulon Progo Mountains, and physiographic unit of Lowland.³⁵

b. Topography Conditions

The topographical conditions of the Special Region of Yogyakarta are shaped flat land, mountain slopes, and beach. There are also Merapi Volcano, Karst, Alluvial Plains, and the Indian Ocean which have a lot of potential natural resources.³⁶

The coastal area of the Special Region of Yogyakarta is \pm 8.250 hectares stretching from the Kulon Progo Regency, Bantul Regency to Gunungkidul Regency with a long beach that stretches from East to West along the 113 km.³⁷

A land condition in the Special Region of Yogyakarta is quite fertile, this is due to the location of this province in the floodplains of the slopes of Merapi Volcano. Furthermore, for the existing land in the Special Region of Yogyakarta, the land is mostly used for agricultural and housing activities. Therefore, the land area also contains potential mining or quarry resources to be further developed.³⁸

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

2. Potential and Reserves of Energy and Mineral Resources in the Special Region of Yogyakarta

Based on the regional conditions, geographical conditions, and topographical conditions where these conditions are the condition that may affect the potential of minerals contained in a region. Likewise, with the conditions of the Special Region of Yogyakarta, the potential of natural resources and the potential of energy and mineral resources are very abundant.

For mineral resources or existing mines in the Special Region of Yogyakarta, there are 28 types of minerals classification, from A, B, or C. Mineral in Classification of A is in the form of Coal, but the coal in this province is very limited in number as well as for Minerals in Classification of B which are in the form of Iron Sand (Fe), Mangan (Mn), Barite (Ba), and Gold (Au) located in Kulon Progo Regency. Minerals that dominate the Special Region of Yogyakarta are Minerals in Classification of C, they have a high potential for White Limestone (621.073,6 ton), Andesite (44.097,2 ton), Bentonite (1.699,16 ton), and Feldspar (1.225 ton). In addition to minerals that have a high potential, these are other Minerals in Classification of C i.e. Sand, River Stone, Gravel, Sand Stone, Clay, Backfill Soil, Limestone, Calcite, Zeolite, Rocking Breccia.³⁹

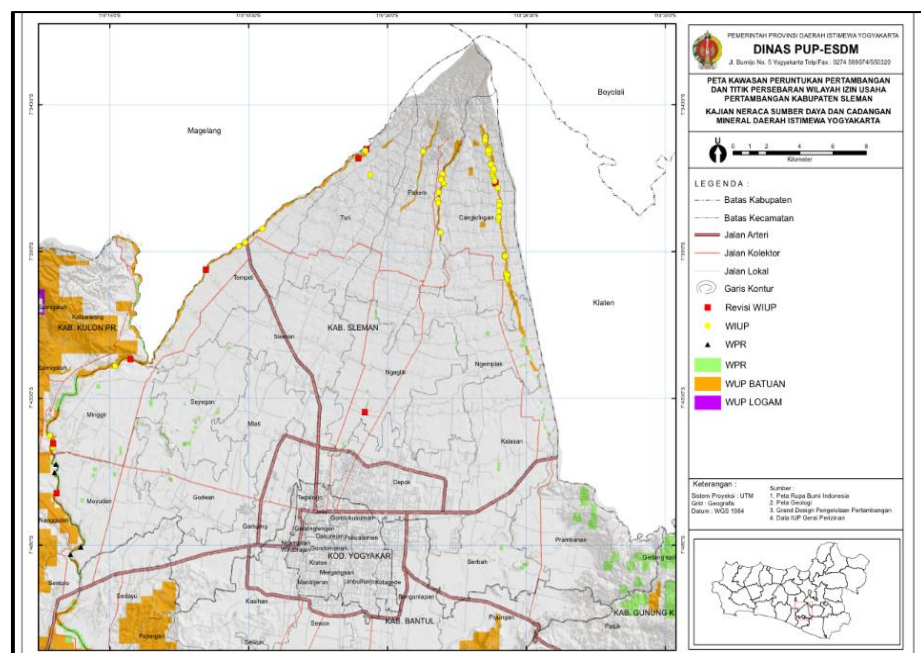
³⁹ *Ibid.*

Region of Yogyakarta to consider the mining areas that are allowed to be mined, then it also became a reference for the process of the recommendation of Mining Permits for the mining entrepreneurs in the Special Region of Yogyakarta.

Here are the details of the mining area and the mineral reserves contained in each regency which is envisaged through the Regional Map of Mining Allocation and Distribution Point of Mining Permits in the Special Region of Yogyakarta:

- a. Regional Map of Mining Allocation and Distribution Point of Mining Permits in Sleman Regency

Figure 4.3



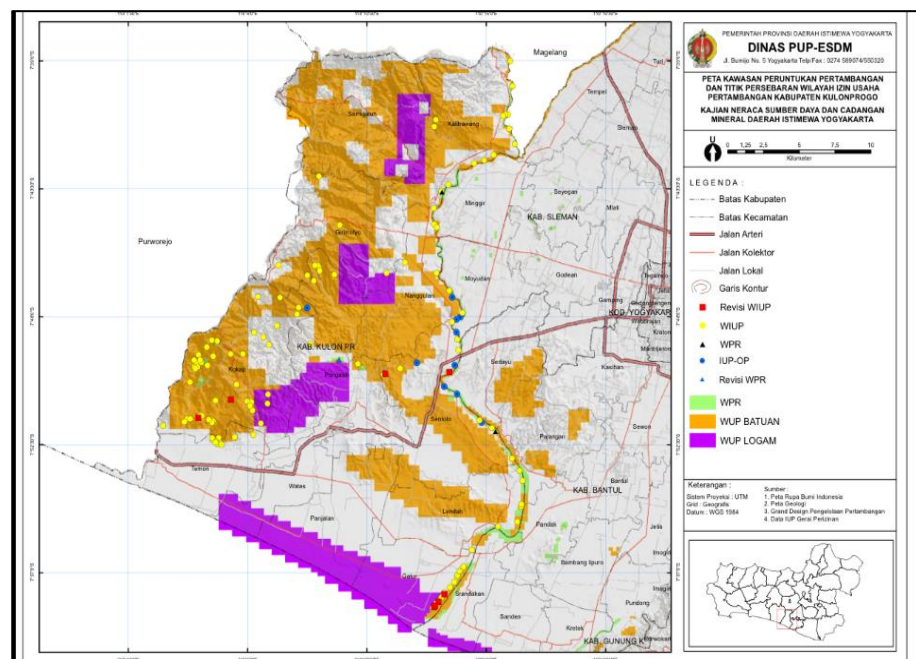
(Source: Department of Public Works, Housing, Energy and Mineral Resources)

From the map above, it can be noted that in Sleman Regency, there are Mining Permits Area (WIUP) and People's Mining Area

(WPR). These areas are areas that could be recommended by the government to prospective holders of mining permits or prospective holders of people's mining permits. Through the map, it can also be known that the resources contained in the Sleman Regency are Rocks and Metals.

b. Regional Map of Mining Allocation and Distribution Point of Mining Permits in Kulon Progo Regency

Figure 4.4



(Source: Department of Public Works, Housing, Energy and Mineral Resources)

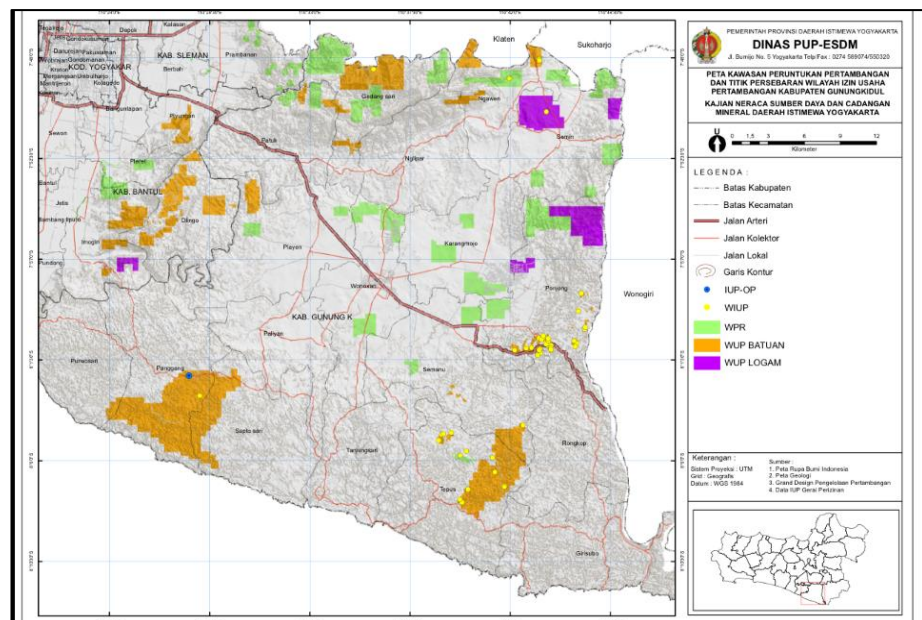
From the map above, it can be noted that in Kulon Progo Regency there are mining locations that already have Production Operation Mining Permits (IUP OP), there are also Mining Permits

Area and People's Mining Permits. Besides that, there are also revision areas of mining permits area and revision areas of people's mining permits. The revision of mining permits area is contained in Sentolo District, Srandakan, and Kokap. While for the revision of people's mining area, it is in the Pengasih District.

Through the map, it can be noted that minerals contained in the Kulon Progo Regency are in the types of Rocks and Metals, in that Rock in this regency is a type of minerals that has the largest reserves for the Special Region of Yogyakarta.

- c. Regional Map of Mining Allocation and Distribution Point of Mining Permits in Gunungkidul Regency

Figure 4.5



(Source: Department of Public Works, Housing, Energy and Mineral Resources)

Srandakan, and 4 (four) revision in Pandak District. The types of minerals similar for those found in other three regencies, i.e. Rocks and Metals.

B. The Role of Provincial Government in Combating Illegal Mining in the Special Region of Yogyakarta

1. The Change of Policy on the Authority of Mining Permits from City/Regency Government to Provincial Government Based on the Law No. 23 of 2014 on Local Government

Governance refers to the system, functions, ways, works, activities, affairs, or commanding acts that are committed or carried out by the Government. They will be related to the government and state administration, then it will also be related the modern organization as the state and its apparatus. Max Weber introduces the bureaucratic terminology by saying as follows:⁴⁰

The government is not another but the one who succeeds in sustaining the claim that the executive order has the right to inculcate physical forces to impose its rules within a certain territory. While in the implementation of governmental organizations formed the bureaucracy.

As stated in the Law No. 23 of 2014 on Local Government the implementation of local government is directed to accelerate the realization of community welfare through the improvement of services, empowerment, and community participation, and enhancement of

⁴⁰ Carol Dahl, "A Survey of Oil Product Demand Elasticities for Developing Countries", *Wiley Online Library*, XVIII (March, 1994), p.13.

regional competitiveness. The implementation of local government is having regard to the principles of democracy, equity, justice, and uniqueness of a region in the system of the Unitary State of the Republic of Indonesia.

Related to the implementation of government affairs, in the Article 14 of the Law No. 23 of 2014, it is mentioned that the conduct of government affairs in the field of forestry, marine, energy, and mineral resources are divided between the Central Government and Provincial Government.

The Law No. 23 of 2014 is the legal basis which became the substitute of the Government Regulation No. 38 of 2007 in which the law is enacted by replacing the tasks and authority of government affairs in the field of Mineral and Coal Mining. It previously became the authority of each City/Regency Government, but then it became the authority of the Provincial Government in accordance with the provisions that have been arranged.

The authority of the Provincial Government in the management of mining is regulated in the Article 7 of Law no. 4 of 2009 on Mineral and Coal Mining, the norm is almost the same as the authority of the Central Government, only the level concerning the local arrangements

of provinces and cross city/regency are related to the mining permissions.⁴¹

Conceptually, the term of the authority or authorities is often aligned with the term Netherlands "*bevoegdheid*" which means authoritative or powerful. The authority is a very important part of the Administrative Law because the Government can just run its functions on the basis of the authority it has obtained.⁴²

The authority of the provinces of Sub Division of Mineral and Coal as mandated by the attachment of the Law No. 23 of 2014, i.e.:

- a. Determining Mining Permits Area of metal, nonmetal and rock mineral in 1 (one) province and sea territory up to 12 miles;
- b. Controlling of Mining Permits for metallic minerals and coal in the framework of domestic investment in mining permits area within one province, including sea territories up to 12 nautical miles;
- c. Controlling of Mining Permits for non-metallic minerals and rocks in the framework of domestic investment in mining permits area within 1 (one) province including sea territory up to 12 nautical miles;

⁴¹ Meray Hendrik, "Pengaturan Hak Penguasaan Negara Atas Pertambangan Studi Perbandingan Konsepsi Kontrak Karya Dengan Izin Usaha Pertambangan", *Law Review Universitas Pelita Harapan*, XI (July, 2011), p.11.

⁴² Diyas Wardana, "Kewenangan Pemerintah Daerah Dalam Penegakan Hukum Terhadap Pertambangan Pasir Tanpa Izin di Desa Teluk Dalam Kecamatan Tenggarong Seberang Kabupaten Kutai Kartanegara", *Jurnal Beraja NITI*, III (November, 2014), p.4.

- d. Controlling of People's Mining Permits for metal mineral commodities, coal, non-metallic minerals and rocks in the people's mining areas;
- e. Controlling of Production Operation Mining Permits especially for processing and refining in the framework of domestic investment whose mining commodities come from 1 (one) same province;
- f. Controlling of Mining Service Permits and certificate of registered in the framework of domestic investment whose business activities in 1 (one) province;
- g. Determining benchmark prices of non-metallic minerals and rocks.

After the enactment of the Law No. 23 of 2014, the Minister of Energy and Mineral Resources then issued Circulation Letter (SE) with the aim to control the authority system. In the circulation letter of the Minister of Energy and Mineral Resources No. 04.E/30/DJB/2015 an instruction is stipulated that the Mayor/Regent immediately submit permission files to the Governor. The details of the circulation letter include:

- a. Mayor/Regent no longer have the authority in the administration of government affairs in the field of mineral and coal mining commencing on October 2nd, 2014 since the enactment of the Law No. 23 of 2014;
- b. With the enactment of the Law No. 23 of 2014, then the articles in the Law No. 4 of 2009 on Mineral and Coal Mining and its

implementing regulations governing the authority of Mayors/Regents no longer have the power of law;

- c. To provide legal certainty and business certainty to the holders of Mineral and Coal Mining Permits, the Governor and Mayor/Regent shall immediately coordinate related to the submission of Mining Permits (IUP) which includes Exploration Mining Permits, and Production Operation Mining Permits of Metal Minerals, Non-Metals, Rocks, and Coal, etc.

2. The Role of Provincial Government of the Special Region of Yogyakarta in Combating the Illegal Mining Through Department of Public Works, Housing, Energy and Mineral Resources (DPUP-ESDM)

With the change of government affairs in the field of Energy and Mineral Resource, then in the Special Region of Yogyakarta also applied the rule of that government affairs in the field which now has become the authority of the provincial government.

Along with the enactment of the Law No. 23 of 2014, then the Government of the Special Region of Yogyakarta established the rules to focus the role of government in the field of energy and mineral resources based on a more specific legal basis to regulate it through the Governor Regulation of the Special Region of Yogyakarta No. 31 of 2015 concerning Procedures for Provision of Mining Permits Area for Metallic Minerals, Non-Metallic Minerals and Rocks.

It is stated in Article 2 paragraph (2) of the Governor Regulation No. 31 that these rules are structured with a purpose:

- a. To arrange and control the mining business activities of metallic minerals, non-metallic minerals, and rocks in the Special Region of Yogyakarta;
- b. To ensure the mining utilization of metallic minerals, non-metallic minerals and rocks in a sustainable and insightful environment; and
- c. To ensure legal certainty in the mining operation of metallic minerals, non-metallic minerals, and rocks.

In addition to the Governor Regulation of the Special Region of Yogyakarta No. 31 of 2015, the government affairs in the field of mining will be in accordance with the supposedly the issuance of the Governor Regulation of the Special Region of Yogyakarta No. 46 of 2015 on the Implementation of Mining Permits Activity of Metallic Minerals, Non-Metallic Minerals and Rocks.

In order to regulate the mining permissions in the Special Region of Yogyakarta, it is in accordance with Article 2 paragraph (1) that the purpose of the issuance of the Governor Regulation No. 46 is as a guideline in the implementation of mining permits activity of metallic minerals, non-metallic minerals, and rocks.

In the authority that has been granted to the provincial government in terms of performing the role as authorized in the matters of the government of the mining sector, the Regional Work Unit (SKPD) that

is granted authority in the Special Region of Yogyakarta is the Department of Public Works, Housing, Energy and Mineral Resources (DPUP-ESDM).⁴³

In carrying out the duties and authorities, DPUP-ESDM DIY is guided by the Governor Regulation of the Special Region of Yogyakarta No. 60 of 2015 on the Details of Duties and Functions of the Department of Public Works, Housing, Energy and Mineral Resources. This SKPD does not only oversees one area, then it has been specified related to the existing field in the DPUP-ESDM DIY. Then in the Article 2 of the Governor Regulation of the Special Region of Yogyakarta No. 60 of 2015, it is explained that the composition of the Organizational Structure, consists of:

- a. Head of Department;
- b. Secretariat consisting of:
 - 1) General Sub-division;
 - 2) Financial Sub-division; and
 - 3) Program and Information Sub-division.
- c. Division of Housing consisting of:
 - 1) Sub-division of Housing Planning;
 - 2) Sub-division of Self-Help Housing and Formal Housing; and

⁴³ Department of Public Works, Housing, Energy and Mineral Resources (DPUP-ESDM) of the Special Region of Yogyakarta is one of the Regional Work Unit (SKPD) at the Provincial level by overseeing the Public Works, Housing Sector, Energy and Mineral Resources Sector which established under the Local Regulation of Special Region of Yogyakarta No. 3 of 2015 on the Institutional Government of the Special Region of Yogyakarta.

- 3) Sub-division of Area Development.
- d. Division of Water Resources consisting of:
 - 1) Sub-division of River Water Resources Planning
 - 2) Sub-division of Rivers and Other Water Resources; and
 - 3) Sub-division of Irrigation.
 - e. Division of Highways consisting of:
 - 1) Sub-division of Road and Bridge Planning;
 - 2) Sub-division of Road and Bridge Development; and
 - 3) Sub-division of Road and Bridge Maintenance.
 - f. Division of Human Settlements consisting of:
 - 1) Sub-division of Human Settlements Planning;
 - 2) Sub-division of Drinking Water and Environmental Sanitation;
and
 - 3) Sub-division of Building and Settlement Arrangement.
 - g. Division of Energy and Mineral Resources consisting of:
 - 1) Sub-division of Energy and Mineral Resources Planning;
 - 2) Sub-division of Energy; and
 - 3) Sub-division of Geology and Mineral Resources.
 - h. Technical Implementation Unit; and
 - i. Functional Groups.

The research was conducted by using interview and data retrieval method which was done in the Division of Energy and Mineral

Resources, with the informant that is Harry Dwi Wibowo, S.T. as a Mining Analyst at Sub-division of Geology and Mineral Resources.

The Division of Energy and Mineral Resources has the task to implement setting up, fostering and development in new renewable energy and energy conservation, electricity, mineral resources, geology, and groundwater. To focus further on the work direction of this division, then this division is subdivided into 3 (three) sub-division, i.e.:

- a. Sub-division of Energy and Mineral Resources Planning;
- b. Sub-division of Energy; and
- c. Sub-division of Geology and Mineral Resources.

The sub-division in charge of mining affairs resides in Sub-division of Geology and Mineral Resources. This subdivision has the task of implementing the planning and management of mineral resources. In addition to the duties of this sub-division, it refers to Article 33 paragraph (2) of the Governor Regulation No. 60 of 2015 on the functions of this sub-division, i.e.:

- a. Preparation of work programs;
- b. Preparation of technical policy materials;
- c. Mineral resources management planning;
- d. Research and development of mineral resources;
- e. Utilization of mineral resources;
- f. Development of general mining business;

- g. Preparation of determination materials of Mining Permits Area (WIUP) of non-metallic materials and rocks in the Special Region of Yogyakarta, and sea areas up to 12 miles;
- h. Preparation of determination materials of Mining Permits Area (WIUP) of metallic materials for domestic investment in the Special Region of Yogyakarta including sea areas up to 12 miles;
- i. Preparation of technical materials of Mining Permits of non-metallic minerals and rocks for domestic investment in the mining permits area of the Special Region of Yogyakarta including sea areas up to 12 miles;
- j. Preparation of technical consideration materials of People's Mining Permits for non-metallic materials and rocks commodities in the people's mining areas
- k. Preparation of technical consideration materials of Production Operation Mining Permits especially for processing and purification in the domestic investment;
- l. Preparation of technical consideration materials of Mining Services Permits and certificate of registration in the domestic investment;
- m. Preparation of basic commodity pricing materials of non-metallic minerals and rocks;
- n. Provision of mineral resources facilities and infrastructure;
- o. Development and utilization of mineral resources;
- p. Preparation of data and information on mineral resources;

- q. Assessment of environmental management of the first public activities in the Special Region of Yogyakarta;
- r. Guidance, supervision, and control in the sub-division of energy and mineral resources;
- s. Monitoring and evaluation of mineral resources management;
- t. Implementation of monitoring, evaluation and preparation of program reports in the sub-division of geology and mineral resources; and
- u. Implementation of other tasks assigned by superiors in accordance with the duties and functions.

Refers to the duties and functions as mandated by the Governor Regulation No. 60 of 2015, Sub-division of Geology and Mineral Resources established a solution to the mining problems in the Special Region of Yogyakarta. As explained by Harry Dwi Wibowo, S.T. in an interview on March 29th, 2018, things are done to carry out the role as authorized for that matters, then Sub-division of Geology and Mineral Resources make efforts, i.e.:

a. Socialization

Socialization is an early step that is done to prevent the occurrence of violations related to mining business in the Special Region of Yogyakarta. This effort has been done by DPUP-ESDM to provide knowledge for mining business actors.

Socialization that is undertaken by DPUP-ESDM, in this case, is undertaken by the Sub-division of Geology and Mineral Resources, is related to the procedure of conducting mining activities in accordance with applicable provisions, on the importance of having a Mining Permits, if the mining business actors want to do the business, and about providing the information related to the process for obtain the permission.

Besides as a preventive effort against violations in the field of the mining business, this socialization is done for several reasons, including:

- 1) Finding mining business actors in the Special Region of Yogyakarta who do not have a Mining Permits, Exploration Mining Permits, or Production Operation Mining Permits but still carry on the mining activities, or in termed as Illegal Mining.
- 2) Mining business actors assume that the time required for the licensing process takes a long time. In general, this reason is a fundamental reason by the perpetrators of the People's Mining Permits. Which in their area of business is a mining area with a small scale, and it conducts the mining activities that do not require a long time to do these activities. It is because if they have to take care of the People's Mining Permits, in accordance with the procedures that have been set, they think that the

process will only harm them for taking too much of their time. It compared to directly do the mining activities without having to take care of the licensing process first.

b. Guidance

This effort is an effort in the step after socialization efforts have been implemented. Guidance effort is done with the target of the mining business actors who are in the process of licensing process. This guidance process is required because the licensing process has a limitation of the processing time.

The first step of the application of Mining Permits is the process of determining the Mining Permits Area. Then after obtaining a Decision Letter (SK), the next step is to go to the step of the Mining Permits (Exploration and Production Operation) and to get the permit, the mining business actor must have a letter of recommendation from the authorized institution.

DPUP-ESDM is one of the agencies that becomes the recommendation provider of the licensing process it has many other considerations that are required in the process of licensing. One of the reasons is to look at the Environmental Impact Analysis (AMDAL), to consider whether these areas are included in areas with potential minerals that can be mined, and also to consider whether the Mining Permits Area entered into the conservation area or not. Based on the rules for conservation, areas that are the

exceptions, cannot be mined for any reason. Particularly in the application of permits in the Mining Permits are for the river area, then the existence of the Main Office of River Basin Office / *Balai Besar Wilayah Sungai* (BBWS).⁴⁴

c. Supervision

Supervision of mining business activities in the Special Region of Yogyakarta becomes the duty and authority of Supervisory Body of Mining, Energy, and Mineral Resources / *Balai Pengawasan Pengendalian Pertambangan* (BP3ESDM). This agency is not only located at the level of province, but there are also many agencies in every regency in the Special Region of Yogyakarta. The task of this agency is to search for mining business activities that do not have permission. When they found it, they will be do socialization to the mining business actor related to the permissions of mining permits. In addition to the task of supervision on illegal mining activities, the agency is also tasked with supervision for mining activities that have a permit.

In conducting the supervision, if they find or receive the complaints related to violations such as the violations within the scope of mining business activities, BP3ESDM coordinates with the

⁴⁴ BBWS is technical implementation unit in the field of water resources, water resources development, utilization of water resources and control of water damaged on the river, which is at the bottom and is responsible to the Director-General of Water Resources.

police as a law enforcement apparatus authorized for preliminary investigation and investigation.

An example of BP3ESDM's successful supervisory role is in the year 2017 in the Gunungkidul Regency when they found many of people's mining activities but no one has permits and is registered in the DPUP-ESDM. Furthermore, the socialization efforts will be carried out by calling all the people's mining business actors who do the mining activities without permits, and in its socialization BP3ESDM explained about the licensing process up to the threat of sanction and criminal punishment that can be imposed to the people's mining business which do not have a permit. The result of the socialization gave a significant increase in the application of the People's Mining Permits (IPR) from the previous in 2015 to 2016 that no one requests related to the IPR, then in year 2017 to be recorded in February 2018 at least the number of the application of IPR coming from Gunungkidul Regency is 43 applications. With details of 20 applications is in accordance with the recommendations by DPUP-ESDM and 23 applications is not in accordance with the recommendations. It can be seen from data below related to IPR data since 2017 - February 2018:

Table 4.2
Application Data of People's Mining Permits in 2017 -
February 2018

Location	Total Request	Appropriate Recommendation	Inappropriate Recommendation
Kulon Progo Regency	13	2	10
Gunungkidul Regency	43	23	20
Sleman Regency	0	0	0
Bantul Regency	15	4	11
Cross-Regency	0	1	0
TOTAL	71	30	41

(Source: DPUP-ESDM of the Special Region of Yogyakarta)

Together with the role of DPUP-ESDM that DPUP-ESDM of the Special Region of Yogyakarta has undertaken to tackle the illegal mining, significant increases are shown from existing data of Mining Permits. The following is the application data for the submission of Mining Permits along with the numbers which are given recommendation (appropriate recommendation) and the number of files from submitted submissions (inappropriate recommendations):

Table 4.3**Data of IUP Application in the year 2015 – 2018**

Location	Total Request				Recommendation	File Back
	2015	2016	2017	2018		
Kulon Progo Regency	82	107	161	25	194	169
Gunungkidul Regency	37	2	28	0	51	17
Sleman Regency	12	58	64	8	74	65
Bantul Regency	22	22	16	0	35	25
Cross-Regency	0	0	10	1	23	2
TOTAL	655				655	

(Source: DPUP-ESDM of the Special Region of Yogyakarta)

Table 4.4**Data of Existing IUP in the year 2015 – 2018**

Exploration IUP		Production Operation IUP		Special IUP		
River	Land	River	Land	Sales	Processing	Carriage
98	90	24	31	33	7	4
TOTAL						
188		55		44		

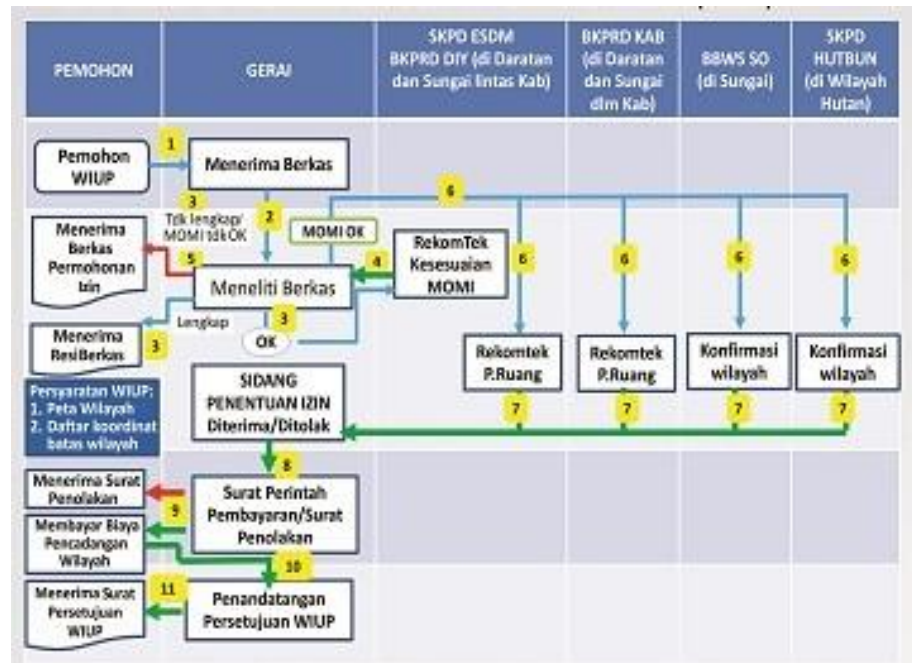
(Source: DPUP-ESDM of the Special Region of Yogyakarta)

From the data in the table above, it can be seen that the number of applications related to mining permits from 2015 to 2018 is 655 applications. It can be noted that not all submitted requests get a recommendation by DPUP-ESDM. Meanwhile, the

qualification in the recommendation by DPUP-ESDM can be seen through the following licensing process:

Figure 4.7

The Process of Recommendation of Mining Permits Area



(Source: DPUP-ESDM of the Special Region of Yogyakarta)

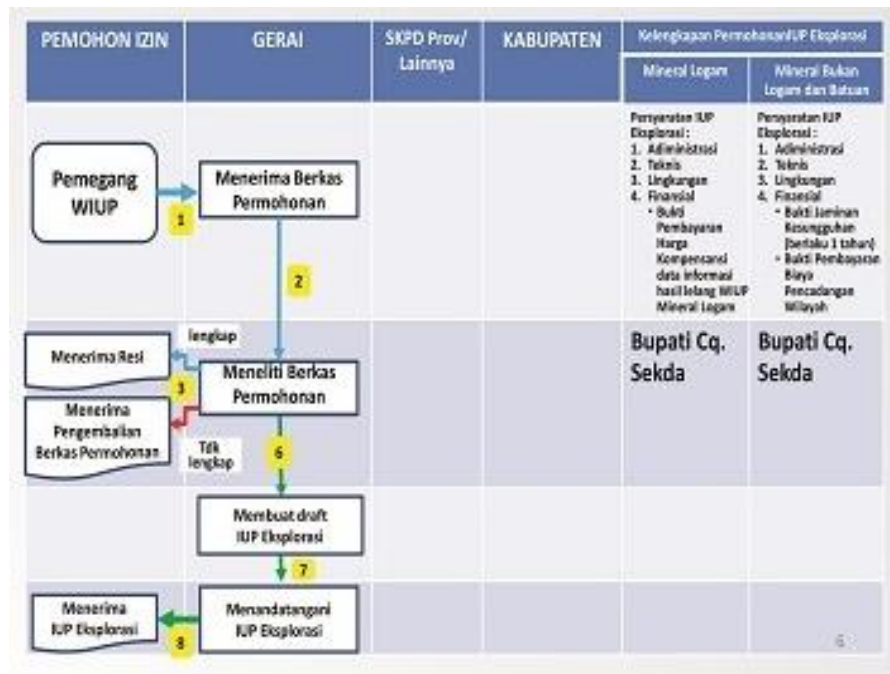
From the above process, it can be seen that the recommendation related to WIUP is not only from DPUP-ESDM of the Special Region of Yogyakarta but also from Coordinating Body of Regional Spatial Planning / *Badan Koordinasi Penataan Ruang Daerah* (BKPRD) at Provincial and City / Regency Level, BBWS, if the proposed WIUP is in river area. The recommendation also came from the Department of Forestry and Estate Crops / *Dinas*

Kehutanan dan Perkebunan (DEPHUT) if the proposed WIUP is in the forest area. IUP Certificate cannot automatically be issued if one of the recommendation provider did not give the recommendation.

After the process of filing a recommendation for WIUP and the applicant has reached the final steps of the process by having received the Approval Letter of WIUP, the next process is the process of issuing Exploration IUP. The time period granted by the DPUP-ESDM for the applicant to immediately process the Exploration IUP is 5 (five) days from the issue of Decision Letter of WIUP. If the applicant does not make the issuance of Exploration IUP after the predetermined deadline, then the Decision Letter of WIUP owned by the applicant does not apply again. The reason for time limitation of that process is for the licensor to know whether the applicant is seriously doing the orderly rules to do the mining business. The following is the process of Exploration IUP issuance:

Figure 4.8

The Issuance Process of Exploration Mining Permits



(Source: PUP-ESDM of the Special Region of Yogyakarta)

In the process of the issuance of Exploration IUP above, it can be seen that in the process, the WIUP holders receive application files from KP2TSP (One Stop Integrated Service Office).⁴⁵ Exploration IUP is a granted business license to undertake general investigation, exploration and feasibility study steps.⁴⁶ In

⁴⁵ KP2TSP (One Stop Integrated Service Office) is an integrated service place in one unity of the process starting from the request stage until the completion of the service product through one door, where the basic rules related to PTSP (One Stop Integrated Service) are in the Presidential Regulation of the Republic of Indonesia No. 97 of 2014 on the Implementation of One Stop Integrated Service.

⁴⁶ "IUP Eksplorasi", <https://yulianusajempau.wordpress.com/2016/01/07/izin-usaha-pertambangan-iup-dan-persoalannya/>, accessed on 13 April 2018 (02.52).

the process of licensing to be prepared for the applicant of Exploration IUP, there are several steps that must be done by the applicant, i.e.:

- 1) The applicants are given the authority to socialize to residents around its WIUP related exploration activities to be undertaken
- 2) The applicants are required to undertake research and exposure to DPUP-ESDM related to:
 - a) Search for resources to be mined or called an exploration of natural resources
 - b) Feasibility Study

Many reserves of minerals that they found, then many are allowed to be mined. This limitation aims to limit excessive excavation of mineral deposits as they may cause adverse effects on the environment for the future, for such limitations have been regulated in Governor Regulation of Special Region of Yogyakarta No. 46 of 2015.

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- c) Community development and empowerment plan

The exposure related to the community development and empowerment plan aims to determine what contribution will be given by mining companies to empower the surrounding community in order to promote the community around the mining area.

- d) Development of infrastructure supporting production operations
- e) The post-mining land reclamation plan

To exposure related to such matter shall be done because reclamation is a mandatory activity that has been regulated in law to reforest the post-mining environment. Reclamation is also undertaken to avoid the risks that may occur in the post-mining land that is still left without being re-greened. Furthermore, based on the Government Regulation No. 78 of 2010 concerning Reclamation and Post-mining, it is mentioned that if mining entrepreneurs do not fulfill their obligations (including post-mining reclamation obligations), there are 3 (three) forms of sanctions that can be imposed, i.e. written warnings, temporary suspension of activities, or revocation of IUP, IUPK or IPR. Affirmed. The sanction will not eliminate the obligation of IUP scheme to conduct reclamation and post-mining despite the revocation of IUP itself.⁴⁷

After all the exposures have been done, furthermore, if all documents of Exploration IUP application have been completed and got a recommendation, then the Decision Letter of Exploration IUP

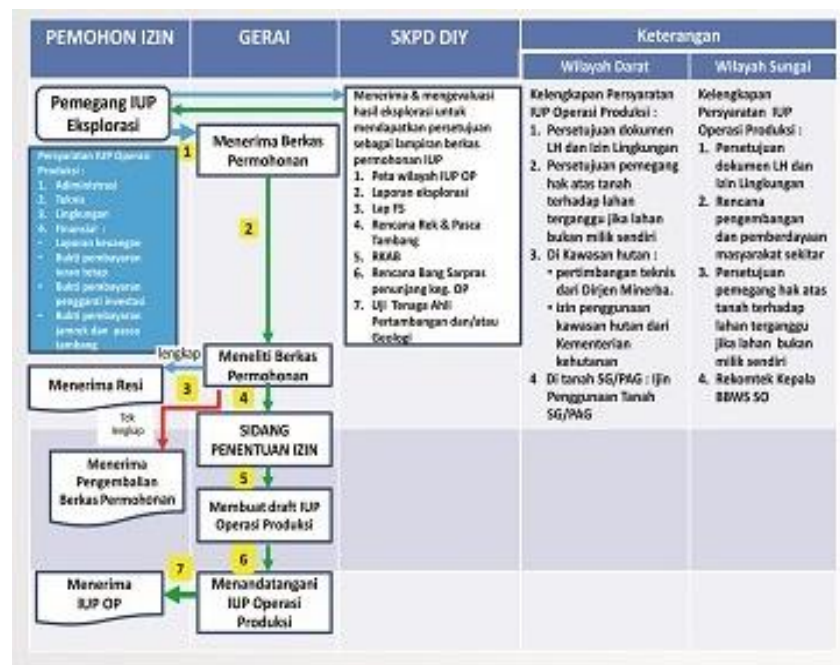
⁴⁷ “Reklamasi dan Pascatambang”, <https://yulianusajempau.wordpress.com/2016/01/07/izin-usaha-pertambangan-iup-dan-persoalannya/>, accessed on 13 April 2018 (03.06).

will be issued. But, true mining activities will not get it until the exploration stage. Subsequently, there is a process of filling the Production Operation IUP, in which Production Operation IUP is the Permit granted for construction, mining, processing and refining activities, as well as transportation and sales in the field of mining. This type of IUP is provided to enterprises, cooperatives or individuals as an increase from exploration activities.⁴⁸

As for the process of Exploration IUP has its own steps, to obtain the Production Operation IUP also applied a separate licensing process, as it is seen in the figure below:

Figure 4.9

The Issuance Process of Production Operation Mining Permits



⁴⁸ "IUP Operasi Produksi", <http://www.hukumpertambangan.com/izin-usaha-operasi-produksi/prosedurpemberian-izin-usaha-pertambangan-iup-operasi-produksi/>, accessed on 13 April 2018 (03.26).

(Source: DPUP-ESDM of the Special Region of Yogyakarta)

The Article 46 of the Law No. 4 of 2009 stipulates that every holder of Exploration IUP is guaranteed to obtain Production Operation IUP as a continuation of its mining business activities. This government guarantee, however, will only take place in the event that the holders of Exploration IUP fulfill their obligations as stipulated in the Exploration IUP. It can be seen in the process flow in the figure above, where the applicant in the Production Operation IUP submission is the holder of Exploration IUP by completing the documents that become the requirement for completeness.

C. The Law Enforcement in Tackling Illegal Mining in The Special Region of Yogyakarta

Law enforcement is a legal effort conducted by law enforcement authorities, in this case, is the Police, as in Article 13 of the Law No.2 of 2002 on the National Police of the Republic of Indonesia stated that one of the main duties of the Police of the Republic of Indonesia is law enforcement in Indonesia.

Law enforcement in the case of Illegal Mining must continue to be enforced, in that the reasons for this illegal mining are the increasing economic need and the expected profitability of the mining business, making these mining entrepreneurs do unauthorized mining activities

because they only think of economic benefits without wanting to take care of the mining permits.⁴⁹

The task of enforcing the law also applies to the enforcement of cases against illegal mining prevention in the Special Region of Yogyakarta. Whereas in law enforcement efforts, there are two efforts that can be done, i.e. prevention, investigation and prosecution. These efforts are made by looking at the right circumstances to carry out the effort.

1. Prevention Efforts

Prevention of an offense is the way the community reacts to the phenomenon of violation or crime. It is then within the scope of prevention that there are limits on prevention of violations as an endeavor which includes all measures which include a special purpose to minimize the scope of an offense, through the efforts of giving influence to potential people who can become an offender to society.⁵⁰

Prevention efforts attempted to provide understanding, legal counseling, mentoring, solving and expected to rise legal awareness, legal obedience so as to rise legal order.

In the efforts to tackle against illegal mining crimes in the Special Region of Yogyakarta, prevention efforts are done by related SKPD. In this case, SKPD related to the prevention of illegal mining is the

⁴⁹ Seselia Jurniati, "Penegakan Hukum Pidana terhadap Pelaku Penambang Emas Tanpa Izin di Kecamatan Kuala Behe Kabupaten Landak Menurut Undang-Undang No. 4 Tahun 2009 Tentang Pertambangan Mineral dan Batubara", *Gloria Yuris Jurnal Universitas Tanjungpura*, III (January, 2014), p.4.

⁵⁰ Mohammad Kemal, *Strategi Pencegahan Kejahatan*, PT. Citra Aditya Bakti, Bandung, 2012, p.55S

Supervisory Body of Mining, Energy and Mineral Resources (BP3ESDM).

2. Investigation and Prosecution

In against illegal mining crimes in the Special Region of Yogyakarta, Investigation, and Prosecution efforts are done by:

- a. The Civil Servants Investigator (PPNS)
- b. Water Police

Then in order to prosecute the perpetrators of actions that are not in accordance with the existing legal rules, the Regional Police of the Special Region of Yogyakarta has an important role. With coverage to tackle existing illegal mining cases, the field in the police force that has authority in handling illegal mining cases is the Police's Directorate of Special Crime (DITRESKRIMSUS).⁵¹

In Article 139 of the Regulation of the Head of National Police of the Republic of Indonesia No. 22 of 2010 on the Organizational Structure and Working Task at the Regional Police Level, it explained that DITRESKRIMSUS has the duty of preliminary investigation and investigation of special crime, which is the purpose of special crime, coordination, operational supervision, and administration of civil servant's officer investigation in accordance with the legislation in

⁵¹ DITRESKRIMSUS is an abbreviation of the Police's Directorate of Special Criminal which is the main task force element for certain cases that have been classified into special crime at the provincial police level under the Regional Police Chief.

which specific criminal offenses are intended to be included in cases of illegal mining.

In addition, when police wanted to investigate the actors it used Law No. 8 of 1981 concerning the Criminal Procedures Code (KUHAP). All the process of the investigation that should be done was regulated in this law.

The Regional Police of the Special Region of Yogyakarta in this case, DITRESKRIMSUS, in order to fulfill the law enforcement, it has tasks to tackling the illegal mining, and so far, has made an act of investigation and prosecution. One of the efforts is carried out at the time of receipt of a report of the possibility of an illegal mining crime or the direct existence of the field findings due to the offense. Then, the thing done by DITRESKRIMSUS is the preliminary investigation.

The preliminary investigation is a series of investigative actions to search for and find an alleged criminal incident to determine whether or not an investigation is conducted in the manner prescribed in the Law.⁵²

After the preliminary investigation, the next step is investigations. The investigation is a series of investigative actions in respect of and in the manner prescribed in the Law to seek and collect the evidence, then with evidence, it makes it easier to find the criminal offense and to find the suspect.⁵³

⁵² Article 1 point 9 of Law No. 2 of 2002 on National Police of the Republic of Indonesia.

⁵³ *Ibid*, Article 1 point 13.

After the completion of the investigation, the police will delegate the case to the High Prosecutor's Office. The final steps in the handling of illegal mining criminal cases end in a decision issued by the prosecutor. The following is the case data that has been handled by DITRESKRIMUS:

Table 4.5

Data of Illegal Mining Cases in the year 2016 - 2018

Year	Location / Crime Scene	Number of Cases
2016	Gunungkidul Regency	2
	Kulon Progo Regency	2
	Sleman Regency	1
2017	Gunungkidul Regency	3
	Bantul Regency	1
	Sleman Regency	3
	Kulon Progo Regency	5
2018	Sleman Regency	1
TOTAL		18

(Source: DITRESKRIMSUS of Regional Police of the Special

Region of Yogyakarta)