

## DESIGN ACTION FIGHTING ILLEGAL MINING IN THE FOREST OF STATE

Nunuk Nuswardani  
Faculty of Law,  
University Trunojoyo 69162 , Indonesia  
E - mail : nooq.fh@gmail.com

Wartiningsih  
Faculty of Law,  
University Trunojoyo 69162 , Indonesia  
E - mail : wang\_0262@yahoo.co.id

### ABSTRACT

*Ideology control of natural resources by the state under Article 33 of the Constitution of 1945. Explanation in several laws on natural resources management are still many problems arise. In this case the Law No. 41 Year 1999 on Forestry regulates the ban on mining operations in forest areas. However, the norm conflict arises when there is a decree of 2004 which added 1 transition rules (Article 83A) at the Forestry Law. The substance of this decree gives legal certainty to mining companies that are exploiting the forests in Indonesia. This is very detrimental to the state. As a result, the level of practice to this day remains a lot of mining in protected forest areas. FGD and showed, it occurred because of illegal mining by the public misperception about the assumption that forests are exploited heritage. The solution is carried out by way of, among other things: establish the Task Force on Integrated Monitoring mining activities in forest areas and after completion of this study are expected no change in behavior and the way people view the use of forests. With hope, in the long term solutions of this research can prevent the misuse of forests and granting of mining in protected forests are increasingly exacerbate deforestation in Indonesia.*

Key words: Design of action, Handling, Mining, Forest protection, Perhutani.

### A. Introduction

Forestry Law regulates the central government authority to determine the state forests and forest use plan. Meanwhile, Article 15 paragraph (1) of the Forestry Law gave signs that the country's authorities must consider the spatial plan. Management and utilization of forest to authorize the Ministry of Forestry / Forest Service at the provincial level, the Forest Service carry out the tasks of the forestry administration. While the implementation of basic tasks and functions of the Forest Management Unit (FMU) such that the implementation of forest management at the site level / field. On the other hand, since the issuance of Law No. 22 of 1999 as amended by Act No. 32 of 2004, Act 12 of 2008 and Law No. 2 Year 2013 on Regional Government based Autonomy, giving authority to local governments to rogue-use natural resources in their area , It is an opportunity for the Government of Regional to develop the potential of its natural resources, including the potential for mining goods.

Opportunities issuance of mining permits by the local government is often problematic. For example: in the reference area of this study, namely the island of Madura, the issuance of mining permits in forest areas is carried out without coordination with the Perum Perhutani as Authorized Forest Management be named *Kuasa Pengelolaan Hutan (KPH)* (interview with head of KPH Madura, 15 April 2014). It is potentially detrimental to the country. Functions and damaged forest areas, state revenues should be obtained from the forest, is lost.

Madura area data show that the forest area on the island of Madura enough to dominate the region. From the island of Madura approximately 5,168 km<sup>2</sup>, KPH Madura, as part of the work unit Perhutani Unit II East Java manage the forest area of 47121.2 hectares, which covers the administrative area:

1. Bangkalan;
2. Sampang;
3. Pamekasan;
4. Sumenep and islands [of data DG of Forestry Planning, Ministry of Forestry, Institute of forest area stabilization (BPKH) XI Java and Madura].

In detail the division of functions of forests in Madura is as follows:

Table 1 :Broad Based Forest Area Forest Function

Forest Function	Area	Percent Region
Production Forest	24367.80 ha	( 51.71 % )
Protected Forest	21981.00 ha	( 46.65 % )
Other forests	772.40 ha	( 1.64% )
Natural asylum	-----	

At the pre- study , found there are at least 70 ( seventy ) points throughout the forest Madura mining activities are 'not clear' existence, in the forest area under the authority Perum Perhutani KPH Madura. Based on this reality there is a fundamental question that can be asked , namely :

1. Is the mining activities in the forest area actually exist and 'illegal' ?
2. If the mining activities 'unlicensed' , why Perhutani office KPH Madura felt 'cheated' and 'helpless' ?
3. Design of action whether that can be used to combat activities mining 'not clear' that his existence ?

## B. Methods

This research is empirical law by observation on the facts of the study sites and data related to forest management in accordance with the location data in accordance with the legislation and has been confirmed jointly between government and society , so that the design and the method is a combination of legal research methods normative and empirical legal research as a support .

On the normative legal research methods : Results of this study aims to provide an input to the process of drafting legislation (revised Forestry Act or other legislation ) related to forest management , determining the boundaries of socialization , and the continuity of cooperation with the community in the form of CBFM . Therefore , this study included in the category Law Reform Research. In accordance with the nature of normative legal research , then approach the problem using the approach of legislation and conceptual approaches .

The focus of this research focused on the study of primary legal materials and secondary law . The primary legal materials in the form of legislation , such as the Regional Government Law , Forest Law , Regulation of the Minister of Forestry and other legal rules . Secondary legal materials , ie materials that support the primary legal materials such as text books , articles from journals / magazines of scientific and research results in the fields of law , including a website on the internet .

Legal material which has been analyzed by the steps of : analyzing Perhutani forest management , determining the boundaries of state land and the existence of CBFM and sustainability of cooperation. Forestry Law and other regulations less once give a definition or explanation for such matters . Accordingly, analyzed also some regulations related to forest management and CBFM in the district by Perhutani.

Analysis of the procedures , mechanisms and legal product realization legislations carried out taking into account the principles , theories and practices related laws . This is due : although the legislation of Forestry has issued and enforced , but against forestry legislation is still necessary to study in terms of jurisprudence in order to obtain a qualified legal product ' process legal product ' .

How to obtain primary data is the technique of in-depth interviews (depth interview) with respondents and other informants in accordance field of research. Secondary data were obtained through the study of documents. Through the interview, the data will be extracted as complete. Not only about what is known, what is experienced research informants, but also what is behind the views and opinions of informants.

Interview techniques used here in are semi-structured interview, which is a list of questions on the subject to allow for variations in questions that are tailored to the situation when the interview was conducted. To get the desired data to fit, then the interview guides and tools such as sound recording device (tape recorder) and the photo tool prepared before the interview was conducted. The qualitative data collected in the process of data collection will be presented in exposure (description) deep and focused. In this case, will be verified qualitative data related to the research topic.

The materials that have been collected classified, systematized (Saptomo, 2007) by Mark van Hoecke (Sidhartha, 2000) divided into three levels, namely:

*First*, the technical level. At this level of activities in the form of associations systematization and structuring of legal materials intended solely to facilitate the parts Which can be started and at the same interpretation can be used as a tool to build a legal argument;

*Secondly*, the level of teleological. At this level the systematization of activities such as the rearrangement of the thoughts, notions, and the rules it contains collective normative charge that there is a qualitative relationship law and norms of collective purpose that is growing and the demands of society;

*Third*, the external level. At this level the systematization of activities such as the integration of legal material into society. Through the systematization of legal materials will facilitate the interpretation to produce a new concept. Furthermore, the third level is described by systematic and teleological interpretation method, and analyzed qualitatively, by referring to the theoretical framework, concepts, results of previous studies, and the views of relevant experts. Thus, in the end can be found action design mining operations are 'unclear' existence.

## C. Results and Discussion

### 1. Legal Issues in Regional Research

Results of previous studies show that, over the years, the public has the perception that forest land is state land that is free for anyone who utilize. Moreover, if in the forest there are minerals that have been done and became hereditary land to make a living for the people. On the other hand, as Authorized Perhutani forest management (KPH), is a State-Owned Enterprises (SOE) is a company regardless of the country.

The community should know and understand that Perhutani is a government institution that is authorized to manage and use state land at the site level / field. Perhutani real mission is:

1. Mission profit, and
2. The social mission.

Perum Perhutani has the mission Perhutani office profit because there is a profit target to be achieved in the framework of forest management. Perum Perhutani also has a social mission through the Joint Forest Management (CBFM), ie granting permission to people to use the forest in a way other than planting crops (intercropping), thus providing the results to the family income.

At the time of implementation of social missions are frequent misunderstandings, community actors CBFM was already utilizing state land "free" to be used by anyone. The cause of the misunderstanding at first, the public actors who already use the land CBFM the country for many years, carried down through the generations, which is then perceived by the descendants of the perpetrators of CBFM as a land inheritance. This is a consequence of the existence of CBFM implementation, that permit the use of these areas include:

- (1) Only orally on the local community;
- (2) Written but only by the village chief;
- (3) It has been through a formal process, although still in the process that permits to

Province through district.

Perum Perhutani found CBFM program often can not run properly and the problem arises because people are always "resistant" to the existence of Perum Perhutani. The public's understanding was that the authority Perum Perhutani for the management and utilization of state-owned forest land is considered "nuanced" invaders. It can be seen from the history of the long existence of Perhutani until the conflicts that continue to this day (Nurjaya, 2008).

Forests in Indonesia, is managed by two (2) institutions namely: the Ministry of Forestry and Perum Perhutani. Authority of the Ministry of Forestry is the management of forests in the areas of administration, as well as implementation of education training. While the authority Perhutani office have profit mission of the newly formed based on Government Regulation No. 17 up to 30 of 1961 on the Establishment of the State enterprises, which can be planted, cutting, selling forest products for the benefit of the country.

The existence of Perum Perhutani and forest management initiated by the Bureau of Forestry formed pd date May 26 1808. Regulation forest management in Java and Madura called *Boschordonantie en voor* Java Madura (Forestry Law for Java and Madura) and Forest Reglement 1865. To ensure the implementation of reforestation and management using modern forestry technology then in 1873 the Forestry Division to form the forestry territorial organization based Statute N0. 215-1873 mk Java forest area is divided into 13 Regional Forests. For the sake of planning work part forest planning units called Section widely prescribed Forests 4000-5000 hectares respectively.

Reglement amended by the 1865 Forest Forest Reglement 1874: one of the provisions determine: teak forests are managed on a regular basis and set up with measurement, mapping and staking pal-pal boundaries and divided the territory of the forest districts. 1874 Forest Reglemen updated with Boschreglement 1897. (Forest Management in Java and Madura). Based on the July 30, 1913 Ordinance 1987 Boschreglement replaced by Reglement for Pemangkuan Java and Madura 1913 applicable in 1914.

In anticipation of the development of science, the Reglement for Java and Madura 1913 Pemangkuan replaced by Boschordonantie en voor Java Java Madura 1927. Boschordonantie voor en Madura in 1927 was replaced with Boschordonantie en voor Java Madura in 1932, replaced by Boschordonantie en voor Java Madura in 1932, replaced by Boschordonantie voor Java en Madura 1935, replaced by Boschordonantie en voor Java Madura in 1937.

At Dai Nippon Japanese occupation (1942-1945) ordered all employees of the Forestry department to carry out their duties and expressed Boschordonantie en voor Java Madura in 1927 remain valid. After the return of the sovereignty of Indonesia December 27, 1949, based on Government Regulation No. 26 In 1952, the Forestry Division is authorized to control and manage the state's lands designated as forest area. The authority is reinforced through Government Regulation No. 8 of 1953 on Control of State lands that during the Dutch colonial government regulated in Decree of the Governor General dated January 25, 1919 No. 33 (Gazette 1911 No. 110) (Excerpted from Nurjaya, 2008).

With the existence of these regulations, as well has obviously also the boundaries of land since the Dutch time was defined as state land. However, land ownership is not socialized to forest communities, giving rise to misunderstanding. In this case there is

socialization and communication is lost between the Government represented by Perum Perhutani with people who have incorrect perceptions both about the status of the land, the procedure must be done through a permit and where Perum Perhutani.

Land or the area that has been determined as a limit order that any state land, has largely been confirmed by the signing of a letter of confirmation limit state land by the Government (in this case Perhutani), village officials, and the local district. Thus, when people use the state land in addition to its usefulness, it is done by a society called the action illegal.

Indeed, at the time of the determination of forest boundaries Regulation obliges the Government to involve the community, (in this case) of the Head and several related SKPD and Regent Regional having to socialize and clicking communicate measurement results and state land boundary confirmation letter to the community. Community involvement here is intended to mngembalikan community rights if it is proved that the person concerned has historically does have rights over the land before the arrival of the invaders (the Netherlands and Japan).

## 2. Solution to the Problem of Forest Land Use Law

In the era of independence, the Government should not position themselves as the party opposed to the society especially act as "invaders" against its own people, but the Government as an institution that is more pro-people. Therefore, the misunderstanding of state-owned public land users, so it is a big responsibility and a job to be pioneering the return of public confidence in the Government and was willing to solve the problem by sitting together to make a deal.

The fact that happened on the ground, people often difficult to communicate, Perhutani as forest managers dilahan state can not negotiate to users of forest land for mining. On the other hand, even if the public expressed 'own' the land, but the people are not able to show proof of ownership of land, only the statements of witnesses in the environment that the land had indeed done the family for generations.

Activities that have been carried out by the research team is the acquisition of data and information of the locations of major mining affordable (by road), mining that does not endanger the safety of researchers and considered to represent the condition of the land that is being discussed, inter alia :

1. The village of Batu Putih, Subdistrict Batu Putih Daya, Sumenep;
2. Village Lesong Daya, District of Batumarmar, Pamekasan;
3. Village Pangilen, District of Sampang, Sampang;
4. Village Buleng, District of Sampang, Sampang;
5. Village Glisgis Dalpenang West Village, District of Sampang, Sampang;
6. Jaddih village and village Parseh, sub-district Socah, Bangkalan.

Based on the results of research in these locations indicates that offenders who claimed to be "owners" of mining exploration mining was doing this because of the family inheritance. There were started already 50 years ago. At the time of this research report is made, at the location of the mining village of Batu Putih Daya, Batu Putih, Sumenep conflict so that the community village of Batu Putih 3 (three) employees hostage Perhutani KPH Madura duty at that location. This is done by the community because they did not receive 3 (three) citizens detained by police (they thought) was reported by KPH related Madura mining in forest land.

A phenomenon that occurs at the site of mining in forest areas can be seen when examined respondents interviews that have been conducted in Sumenep, Pamekasan, Sampang and Bangkalan. Answers can be grouped into three (3) types of respondents including:

- Respondent 1: skipper, miners or miners who are on the side;
- Respondent 2: officials of the village (village chief, village secretary, village officials or other government officials);
- Respondent 3: communities surrounding the mine.

The answers of the respondents often stated: do not know, in this case there is a possibility that:

- Respondents really do not know the answer, or
- Respondents know the answer, but do not dare answer the truth.

It can be understood that, the Madurese have a very strong fraternal relations, in addition, the public will be silent (no reply) when the figures become a role model in the region forbade him to answer.

The answers to the questionnaire given can be summarized as follows :

Table 2.: Respondents answer : Sumenep

No	Question	Respondents answer		
		respondents 1	respondents 2	respondent 3
1.	Are there special arrangements about the forest and mining?	know and understand , but dismissed by Perhutani	Learned as cut no socialization	Nothing

2.	Minerals mine what? How did the early involvement in this mining?	White stones , originally belonged to himself	White stone , just knowing that people now ask for permission	White stone , do not know
3.	How did the submission of the permit? Given by whom?	No because it belongs kelurga	As the chief, I just signed the public requesting permission	Do not know , who knows the Village Head
4.	BUMN contents of the permit? About anything ?	Nothing	Ask permission to conduct mining	Do not know
5.	When is the end of the mining permit this? Is there a plan for development?	No , hanging there / unread land.	Unlimited	Did not understand
6.	Are there any officials who have been here? Anyone ?	There are at closure by Perhutani	There are , of Perhutani that lay people are being mined	Never, Perhutani
7.	How does the intensity of these activities? Every day? How many hours / days?	7-8 hours / day	8 hours / day	Every day
8.	Have there been any data collection or supervision over this mining?	No , only the village head only	Ever from Perhutani	Nothing
9.	Is this mining district has a cooperation agreement with the officials.? If "yes" in what form?	Nothing	No	No
10.	Is this mining has the cooperation with other institutions? If 'Yes' in what form?	By middlemen , directly with the buyer	No, only with middlemen	Nothing
11.	What has mining places other than here?	No	Do not know	Do not know
12.	The results sent to the mine where? Anyone who is mired in the transaction?	Middlemen and buyers	Middleman , a price which is cheap	middleman
13.	Are there mining constraints? What constraints ?	A tool that is simple and rain which affects the quality of the stone	public response	Barriers rain
14.	If there is a possibility of closure? What is your opinion ?	If you can not shut because the one of livelihood	Once closed it becomes unsafe communities	Never closed karen livelihood
15.	What are your expectations eye out these activities?	Expand again so interchangeable increase revenue	Do not complicated because public income from these activities .	To thrive , so that revenues increase
16.	Other information related to forests and mining?	Indeed, at the moment where mining is not closed society many pets who die .	Said first state-owned land , forestry asked permission to plant teak trees etc . After the big trees , the forestry claims as Perhutani	-----

Source : primary data (processed )

Table 3: Respondents answer : Pamekasan

No	Question	Respondents answer		
		respondents 1	respondents 2	respondent 3
1.	Are there special arrangements about the forest and mining?	Do not know	Do not know	Nothing
2.	Minerals mine what? How did the early involvement in this mining?	White stone , family .	White stone , the principle of family	White stone , do not know
3.	How did the submission of the permit? Given by	Only permission to the local community	No permission	Do not know , who knows the Village

	whom?			Head Do not know
4.	BUMN contents of the permit? About anything ?	only Lesan	-----	
5.	When is the end of the mining permit this? Is there a plan for development?	There is no expiration	-----	Did not understand
6.	Are there any officials who have been here? Anyone ?	There is never any official reply here	Nothing	Never , Perhutani
7.	How does the intensity of these activities? Every day? How many hours / days?	No boundaries	Not every day depending buyers / no	every day
8.	Have there been any data collection or supervision over this mining?	Has not been	only supervision	Nothing
9.	Is this mining district has a cooperation agreement with the officials.? If "yes" in what form?	No cooperation	No cooperation	No.
10.	Is this mining has the cooperation with other institutions? If 'Yes' in what form?	Nothing	Nothing	Nothing
11.	What has mining places other than here?	Nothing	Nothing	Do not know
12.	The results sent to the mine where? Anyone who is mired in the transaction?	Middlemen who come here	Middlemen who come here	middleman
13.	Are there mining constraints? What constraints ?	Rain because of poor quality if it rains	Rainy season	barriers rain
14.	If there is a possibility of closure? What is your opinion ?	Hopefully not closed	If closed it is no longer income	Never closed karen livelihood
15.	What are your expectations eye out these activities?	Hopefully not closed	The Government is expected to fall directly	To thrive , so that revenues increase of
16.	Other information related to forests and mining?	-----	-----	-----

Source : primary data (processed )

Table 4: Respondents answer : Sampang

No	Question	Respondents answer		
		respondents 1	respondents 2	respondent 3
1.	Are there special arrangements about the forest and mining?	Do not know	Do not know , because it had no rules on permits	Nothing
2.	Minerals mine what? How did the early involvement in this mining?	White stone , do not know	White stone , since 1998	White stone , do not know
3.	How did the submission of the permit? Given by whom?	Do not know , the boss right there	Permits were up the process to the Province	Do not know , who knows the Village Head
4.	BUMN contents of the permit? About anything ?	Do not know	ID card , through the consent form is forwarded to the Provincial District .	Do not know
5.	When is the end of the mining permit this? Is there a plan for development?	Do not know	Do not know yet because up the process , there is a development plan	Did not understand
6.	Are there any officials who have been here? Anyone ?	Do not know	Ever on Licensing	Never , Perhutani
7.	How does the intensity of these activities? Every day? How many hours /	Do not know	8 hours / day	every day

8.	days? Have there been any data collection or supervision over this mining?	Do not know	Nothing	Nothing
9.	Is this mining district has a cooperation agreement with the officials.? If "yes" in what form?	Do not know	Initially familial form	No.
10.	Is this mining has the cooperation with other institutions? If 'Yes' in what form?	-----	No , it should be directly sold to the public	Nothing
11.	What has mining places other than here?	-----	No	Do not know
12.	The results sent to the mine where? Anyone who is mired in the transaction?	Do not know	Directly to the buyer	middleman
13.	Are there mining constraints? What constraints ?	Do not know	The rainy season , the stone becomes dirty so not sell	barriers rain
14.	If there is a possibility of closure? What is your opinion ?	Do not know	Do not be closed , because the main livelihood	Never closed karen livelihood
15.	What are your expectations eye out these activities?	-----	Developing and licensing smoothly	To thrive , so that revenues increase of
16.	Other information related to forests and mining?	-----	-----	-----

Source : primary data (processed )

Table 5: Respondents answer Bangkalan

No	Question	Answer respondents 1,2,3
1.	Are there special arrangements about the forest and mining?	Do not know
2.	Minerals mine what? How did the early involvement in this mining?	Bedel ( white stone ) , only limited approval
3.	How did the submission of the permit? Given by whom?	Just sign permit application of miners
4.	BUMN contents of the permit? About anything ?	Do not know
5.	When is the end of the mining permit this? Is there a plan for development?	Do not know
6.	Are there any officials who have been here? Anyone ?	Never
7.	How does the intensity of these activities? Every day? How many hours / days?	Uncertain
8.	Have there been any data collection or supervision over this mining?	Has never been
9.	Is this mining district has a cooperation agreement with the officials.? If "yes" in what form?	Only administrators, who know
10.	Is this mining has the cooperation with other institutions? If 'Yes' in what form?	Do not know
11.	What has mining places other than here?	Do not know
12.	The results sent to the mine where? Anyone who is mired in the transaction?	Do not know
13.	Are there mining constraints? What constraints ?	Do not know
14.	If there is a possibility of closure? What is your opinion ?	The public will be idle
15.	What are your expectations eye out these activities?	-----
16.	Other information related to forests and mining?	-----

Source : primary data , answer the same category (processed )

There are two main answers from the questionnaire, namely:

1. miners and communities around the mine site assume no problem with their work as miners, because the land is state land that can be utilized by anyone;
  2. miners and communities around the mine site does not want the mining lands is closed and even to be developed.
- Opinions and desires of the community that mining land in the forest continue to operate irony with the allotment of forest land itself. It may be caused by a policy of natural resource management in Indonesia a lot of overlap and conflict norm especially in forest and mining resources. Many occur mining activities carried out in protected forest areas, whereas the Forest Act expressly prohibit such activities in Article 38 paragraph (4).

Therefore protected forests are areas with principal functions as a protection buffer system to govern the life of the water, preventing floods, controlling erosion, preventing sea water intrusion and maintaining soil fertility (Article 1 point 8). However, if observed and attributed to the provisions of Article 83A of the Forestry Law there is a conflict described by Philip M. Hadjon and Tatiek Sri Djatmiati (2005) as a 'conflict of norms'. Section two is an additional set forth in Law No. 19 of 2004, which represents a change of Act No. 41 of 1999 on Forestry. Between Article 38 paragraph (4) and Article 83A there is a conflict of norms, which can be observed as follows:

- Norms that one in Article 38 paragraph ( 4 ) Forest Act 19 of 2004 states :  
" In the protected forest areas is prohibited mining with a pattern of open-pit mining " .
- Norms other legislation (Law of Forestry same) in Article 83A set :  
"All the permits or agreements in the field of mining in forest areas that had existed before the enactment of Law No. 41 of 1999 on Forestry shall remain valid until the expiration of license or agreement concerned" .

The existence of the phrase " especially for investors who already have a license or agreement before the entry into force of the Act " juridical consequences are for mining companies that will operate in a protected forest area is allowed . This is the norm conflict , between the norms contained in Article 38 paragraph (4) with the norms contained in Section 83A of the Forestry Law. Thus , the ban on open-pit mining in protected forests is a problem because in fact many companies that undertake mining activities in protected forest areas with open pit mining or exploitation pattern (Y. Arizona , 2008) . This happens at the site of the study, which appeared from photographs of the location of research clearly damaging to the environment, because non-renewable, as follows :



Protected Forest Rescue Advocacy Team (TAPHL) has filed a constitutional review to the Constitutional Court. One of the Constitutional Court decision is rejected TAPHL to cancel Law 19/2004 on the establishment Government Regulation in Lieu of Law No.1 Year 2004 (Perppu 1/2004) on the amendment of Law No. 41/1999 on Forestry to become Law. In this case there are at least six mining companies should be banned from open mining in protected forests, but because at the time of enactment of the Forestry Law has not completed his permission, then its existence is precisely to gain legitimacy Perppu No.1 Year 2004.

The six companies are: Weda Bay Nickel (Canada), Gag (Australia), Pelsart Kencana Mine (Australia), Antam (Indonesia), Sorikmas Mining (Australia), and the Sacra Raya (Indonesia). Constitutional Court Decision No. 033 / PUU-III / 2005 on the one hand states that open-pit mining have a big impact on the environment and the people, but provide for exceptions to these companies to continue mining activities in protected forests opening. If consistent with the arguments of the applicant, means of Law No. 19 of 2004 on Forestry should be repealed because it threatens the lives of many people and this contradicts (unconstitutional) of the 1945 Constitution, particularly Article 33 paragraph (3) (BPHN, 2006).

Based on the ruling of the Constitutional Court , the research team believes the conflict of norms is still going on today , so it needs to be filed constitutional review in order to avoid the interpretation that is different and detrimental to the country , as well as further compound the destruction of forests in Indonesia due to the fact that there still are mining in the region protected forest.

In terms of licensing mining activities in forest areas , in addition to the required permit shall also include a permit leasing forest area . Leasing of forest areas is the use of a portion of forest land to other parties for the sake of development outside forestry activities without changing the status , the designation and functions of forest areas. Some of the provisions relating to the license are :

1. Article 50 paragraph (3) of the Forestry Law stipulated that every person is prohibited exploration of the forest before getting permission from the competent authorities, namely the Ministry of Forestry;
2. Article 2 of Regulation of the Minister of Forestry Number: P.A3 / Menhut-II / 2008 on Guidelines Borrow and Use kawas forests that lend use of forest areas on the basis of permission of the Minister;
3. Article 7 of the Regulation of the Minister of Forestry Number: P.A3 / Menhut-II / 2008

Borrow and Use of Guidelines for Forest area stipulates that forest areas can be given permission to borrow and use in the region is only production forests and protected forest areas addition This article also specifies that the protected forest areas are prohibited from mining to open pit mining pattern.

Value philosophy contained in a permit is the permit issuer to allow the applicant to perform certain actions were actually banned. Thus permit leasing forest area aims to restrict and regulate the majority of forest areas for strategic interests or the public interest is limited outside the forestry sector without changing the status, functions and designation of forest areas. Also aims to avoid enclave in forest areas (WGT, 2012).

In fact, land-tenure conflicts in the field is still a lot going on. Working Group on Forest-Land Tenure states that in 2010, noted the case number of 85 conflicts over natural resources in forestry in 6 (six) provinces. Conflict is most common among:

- people and companies (91.14%),
- public conflict with the central government (7.93%),
- community with local government (0.45%),
- people with SOE (0.42%),
- community by the community (0.06%). (WGT, 2012)

Land-tenure conflicts are defined as controls or has the natural resources associated with its legal status is then, of course, also related to licensing problems. Based on the type of mineral, mining in Indonesia is divided into 3 (three) categories:

1. Group A includes strategic minerals such as oil, natural gas, Aspel, coal, uranium and other radioactive materials. Class A mineral exploitation is carried out by a State enterprise was the only foreign company is involved as a partner;
2. Group B includes vital minerals such as gold, silver, diamonds, copper, bauxite, lead, zinc and iron. Exploitation of class B can be done either by a foreign company or Indonesia;
3. Class C, the minerals are generally considered to have a level lower interest than A and B. The exploitation of minerals C This group can be carried out by the Indonesian company or companies individuals.

The presence of mining " not clear " its presence in 70 ( seventy ) points in the forest area Perum Perhutani KPH indicate malfunction Madura license properly . The actual licensing function should be placed as an instrument of control and supervision . Weak instruments licensing will lead to economic and social costs are high to be borne by the entire community (Sutedi , 2010)

Law No. No. 4 Year 2009 on Mineral and Coal Mining (Mining) , which replaced Law No. 11 Year 1967 on Basic Provisions of Mining , also Dayaless to overcome the chaotic management of the mine . In fact , regarding these licensing , Local Government and the Central Government are involved in a dispute over the division of authority.

In the regional administration at this time, the perception of the concept of domination and exploitation often misinterpretation. Local governments perceive that the mineral or natural resources of the region belongs to the people in the area. In fact, should wherever minerals are located are owned by all the Indonesian people together (Mayasari, 2012).

The issue of mines , should be resolved internally between the central and local organs of state as a single entity to realize the common prosperity of the Indonesian nation. Thus, the need to reform the legal system that regulates mining so that legal disputes related inter disharmony, inefficiency Mining Permit issuance, and the phenomenon of exploitation of mineral resources in the area could be addressed immediately.

In this framework, this study conducted to match the design of mitigation actions management of forest resources and minerals arbitrarily , but can go hand in hand without having to " turn off" one another . Both forest and mineral resources mining is a gift of God that must be managed in a sustainable manner for the sake of prosperity .

**d. Conclusion and recommendations**

**1. Conclusion**

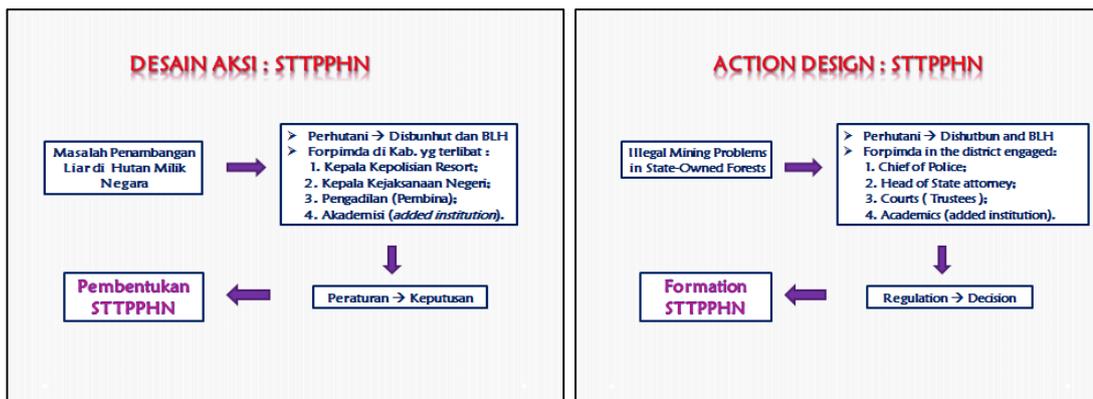
Based on the results and the analysis that has been done in this study can be concluded:

1. There is a incorrect perception of the status of the land, most realize that the forest area that they made the mine site is state land, which thus any "free" to exploit without having to go through a permit.
2. Misperception that the management of state land separated by Perum Perhutani KPH Madura as an institution at the site level/field in the management and utilization of state lands.
3. Results of FGD dialogue with officials, *Satuan Kerja Pemerintah Daerah* or SKPD (local government unit) in Madura, expect the results of this study may change the attitudes and behavior towards environmentally destructive mining.

**2. Recommendations**

1. It should be immediately established the Task Force on Integrated Monitoring Mining in forest in each district be named : *Satuan Tugas Terpadu Pemantauan Penambangan Hutan Negara* (STTPPHN). The formation of the task force is a form of support to Perum Perhutani Authorized Forest Management (KPH) Madura during this "alone" to face conflict with society;
2. It should be setting a clear, unified and 'enforceable' (implementable), so it does not happen again cases of mining in state forest;
3. Socialization to change people's behavior towards the utilization of state-owned forest land.

The recommendations contained in the model as follows :



**References**

Adrian Sutedi, 2010, *Hukum Perijinan dalam Sektor Pelayanan Publik*, Jakarta : Sinar Grafika  
 Ade Sptomomo, 2007, *Poko-pokok Metodologi Penelitian Hukum*, Surabaya : Unesa University Press  
 Asep Yunan Firdaus, 2012, *Kesatuan Pengelolaan Hutan & Hak Akses Masyarakat Terhadap Hutan*, Bogor : Working Group on Forest-Land Tenure (WGT) diakses dari <http://wg-tenure.org/wp-/uploads/2013/04/Buku-Saku-KPH-e-fileversion.pdf> tgl 10 April 2012.  
 B. Arief Sidharta, *Refleksi tentang Ilmu Hukum*, Bandung : Mandar Maju, 2000.  
 Ima Mayasari, "Kisah dan Fakta Menarik : Tambang Bukan Milik Daerah", Kompas, 30 Januari 2012.  
 I Nyoman Nurjaya, *Pengelolaan Sumber Daya Alam dalam Perspektif Antropologi Hukum*, Jakarta : Prestasi Pustaka Publisher, 2008.  
 Nunuk Nuswardani, *Model Pengelolaan Hutan Terpadu di 4 (Empat) Kabupaten di Jawa Timur*, Dp2M-Dikti, Jakarta, 2013.  
 Philipus M. Hadjon dan Tatiek Sri Djatmiati, *Argumentasi Hukum*, Gadjahmada University Press, Yogyakarta, 2005.  
 Sunarto, 2006, *Laporan Akhir Tim Pengkajian tentang Penambangan Terbuka dalam Kawasan Hutan Lindung*, BPHN diakses dari <http://www.tu.bphn.go.id/substantif/Data/ISI%20KEGIATAN%20TAHUN%202006/27pengkajianPERTAMBANGAN.pdf> tgl. 11 April 2014.  
 Yance Arizona, *Menyoal (Kembali) Pertambangan di Kawasan Hutan Lindung*, <http://yancearizona.files.wordpress.com/2008/06/menyoal-kembalipertambangan-di-dalam-kawasan-hutan-lindung.pdf> , 2008.