

Araştırma Makalesi/Research Article

**RECOMMENDATIONS FOR AUTHORIZED ADMINISTRATION
ORGANIZATION IN THE MINING OPERATION PERMIT PROCESS IN
TURKEY**

**TÜRKİYE'DE MADEN İŞLETME FAALİYETLERİ İZİN SÜRECİNDE YETKİLİ
İDARE YAPILANMASI İÇİN ÖNERİLER**

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ABSTRACT: Issuing permits needed to conduct mining activities in Turkey requires bureaucratic procedures involving many public institutions. In Turkey, even after obtaining the operation permit, the application of asking opinion to other institutions, except authorized ministries, is ongoing. This situation is not only legally contradictory to the Mining Law but also provides a status that the mining investors cannot start production even though they have received all the required permits. In addition, the elapsed time for mining operation permits leads to delay in mining production activities and even to a considerable loss of mining investments. In this table, a number of questions were asked to the mining enterprises using the "Survey Monkey" program to identify problems with authorized institutions on permitting processes. When the answers given to these questions are evaluated collectively, the majority of the mining enterprises think that having more than one institution in the permit process eliminates the predictability in the sector. In this direction, the management of all mining operation permit processes by an Authority to be established under a single roof will prevent the loss of mining investments and accelerate all the processes related to mining.

Keywords: Law, operation, permit, mining, legislation, license, investment.

ÖZ: Türkiye'de maden işletme faaliyetleri yapılabilmesi için gerekli izinlerin verilmesi birçok kamu kurumunu ilgilendiren bürokratik işlemleri gerektirmektedir. Türkiye'de, işletme izni alındıktan sonra dahi yetkili Bakanlıklar dışında diğer kurumlara görüş sorulması uygulaması devam etmektedir. Bu durum hukuken Maden Kanunu'na aykırılık teşkil etmekle kalmayıp, maden yatırımcılarının istenen izinlerin tümünü aldığı halde üretime başlayamadığı bir tablo ortaya çıkarmaktadır. Ayrıca maden işletme izni alınana kadar geçen süreler, maden üretim faaliyetlerinin gecikmesine ve hatta önemli derecede maden yatırımlarının kaybedilmesine yol açmaktadır. Oluşan bu tabloda, izin süreçleri konusunda yetkili kurumlar ile izin sürecindeki işleyiş hakkında sorunları tespit edebilmek amacıyla "Survey Monkey" anket programı kullanılarak maden işletmelerine birtakım sorular sorulmuştur. Bu sorulara verilen cevaplar toplu olarak değerlendirildiğinde, çoğunluğuyla maden işletmeleri, izin sürecinde birden fazla kurumun yetkili olmasının sektördeki öngörülebilirliği ortadan kaldırdığını düşünmektedir. Bu doğrultuda tüm maden

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işletme izin süreçlerinin tek çatı altında oluşturulacak bir Kurum tarafından yönetilmesi, maden yatırımlarının kaybedilmesini engelleyerek, madencilikle ilgili tüm süreçlerin hızlanmasını sağlayacaktır.

Anahtar Kelimeler: Hukuk, işletme, izin, maden, mevzuat, ruhsat, yatırım.

1. INTRODUCTION

In today's world, the most important problems of mining in many countries are the permissions and licenses to be taken. In a market where commodity prices change rapidly, delays in permits can cause serious damage to investor companies. Worse than this, it is possible that no permission can be obtained and companies can withdraw their investments. With the amendment of Law No. 5177, it was necessary to get permission from approximately 30 different institutions and organizations for a new mining project before the 2004 regulations made in the Mining Law No. 3213. Although this reform has reduced the bureaucratic burden, there is still a serious way to go in this area (Kahraman & Dessureault, 2012: 83). Indeed, the mining operating license and operation permit is issued by the Ministry of Energy and Natural Resources (MENR), but to be operational today, it is necessary to obtain the permissions from 15-20 different units of 8-10 various ministries. This situation discourages the investor from entering the sector and prevents our resources from gaining into the economy. Moreover, even after the operation permit has been obtained, some problems may arise in the production of the products. All these cases indicate that there is a gap in senior management, lack of coordination, and lack of communication between institutions in our mining.

For years, there have been prohibitions of other ministries that rendered the mining law and its regulations ineffective. Uncertainty, unfair competition, non-tariff barriers, and constantly changing legislation weaken trust in the administration (Köse, 2012: 82). As the Presidency Government System is in the process of creating all of its institutions, uncertainties are experienced in mining sector permit processes, and bureaucratic procedures are sometimes faced with great difficulties. Due to these effects, the mining sector has been diminishing unfortunately in the face of the overall growth figures that have been presented since 2012. The basis of this is that the investment environment is not improved and the barriers to the sector are not removed. This environment causes the sector to diminish. The reasons for this downsizing since 2013 are the followings; “*The Prime Ministry Circular, the reduction of the license security, the permitting procedures which take a very long time, restricted areas for mining, ignoring the priority of operating natural resources, etc.*” (Emiroğlu, 2018: 6).

Indeed, domestic and foreign capital inflows to our country's mining sector have decreased, and this is not due to lack of resources, but rather to obstacles in the process of permitting. Therefore, all permits need to be linked to an

administrative mechanism in which a fast and transparent implementation process is run. In this respect, a survey was carried out through the "Survey Monkey" Program for mining enterprises in May, June and July of 2018 to detect the mentioned legislation problems in the mining sector in our country and analyze the results¹.

In this study, permissions required from the mining enterprises and the institutions which are authorized in the permits and their effect on the permit process were mentioned firstly. Then, solution suggestions were proposed.

2. EFFECT OF LEGISLATIVE ARRANGEMENT ON MINING INVESTMENT

The mineral export in Turkey is aimed to reach 15 billion USD in 2023. To achieve this aim, measures should be taken quickly to reduce investment time and investment costs.

In this respect, it is necessary to invest in the mining sector, which requires large capitals. For this reason, the country risk should be at an acceptable level, the investment environment should be in international standards, there should be a reliable investment environment, and there should be no license cancellation for unjustified reasons. Besides, laws and regulations should not be suspended, the rules should not be changed after the start of the investment, and there must be a legal guarantee covering all these (Köse, 2013: 48).

The risks faced by miners in the world and the issues they deal with are quite different from Turkey. This situation gives an idea of what Turkey and the world may face in the coming years (Oygür, 2015: 56). In 2014, Ernst & Young published a report on the ten main risks that the mining and metal industry might face in 2015. As Shown in Figure 1, in this report, it was reported that the traditional mining activities, which tend to focus on economic growth and high profit, and are primarily interested in technical risks and find solutions to these problems, are facing major problems considering the last years of 2008-2015, and this situation may continue in 2015 and beyond (Sezener, 2015: 88).

¹ The survey questions were answered by the relevant departments of the mining companies. The answers were transferred collectively to the survey program, regardless of which companies answered the survey and what responses were given to the questions. It is not known which company completed the survey; however, all individual responses of mining companies are seen in the survey program system.

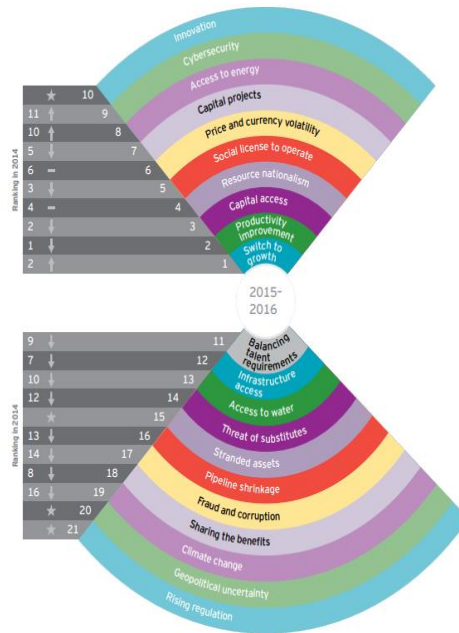


Figure 1: The ranking of the risks faced by mining investments in the world between 2014 and 2015-2016

Source: Oygür, V. (2015). Madencilğin Karşısındaki Riskler. *Madencilik Türkiye Dergisi*, 50, 56-58.

According to Oygür, asking for an opinion and asking for approval from authorized institutions has a similar meaning to the "nationalization" risk in world mining. In other words, according to the author, these risks can be evaluated in this category. Despite the completion of all procedures, the failure to provide the permits easily and in a timely manner means the prevention of mining operations (Oygür, 2015: 58).

The topic of "regulatory duplication", which can be seen in the mining investment risk ranking is one of the most significant risks affecting the mining investors in Turkey in recent years. The Fraser Institute conducted surveys for mining companies to determine the degree to which a country attracts the mining investments in the world (Investment Attractiveness Index). As shown in the Table 1, in the category of "Regulatory Duplication and Inconsistencies" (1), Turkey dropped into 74th place in 2017. In addition, Turkey dropped into 76th place in the category of "Uncertainty Concerning the Administration, Interpretation, and Enforcement of Existing Regulations" (2). However, especially in 2019, there was a rise in these categories.

Table 1: The Categories of the Regulations

Year	Category	2014	2015	2016	2017	2018	2019
Turkey/World	1	60 th /122	71 st /109	78 th /104	74 th /91	74 th /83	52 nd /76
Turkey/World	2	52 nd /122	35 th /10	73 rd /104	76 th /91	46 th /83	29 th /76

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Source: Stedman, A. & Green, K.P. (2020). Survey of Mining Companies 2019. Fraser Institute; URL-1 (Accessed date: 20th May 2020)

According to Topaloğlu, until 2018, the reason why Turkey has dropped to such low-level is because of the mining and legal policies pursued over the last 4-5 years (Topaloğlu, 2018a: 149). As a matter of fact, the recent changes in the Mining Law, the Forest Law, the Environmental Law, and the related regulations have made the sector unpredictable and brought almost all existing projects and new investments to a halt (TMD, 2018: 30). The following are among the factors that Turkey's rise in the rankings in 2019: The Prime Ministry Circular was removed by the new Presidential Circular. In addition, faster-permitting process applications were initiated by MAPEG electronically.

Before a serious investor invests hundreds of millions of Turkish liras in an area that will return 10 to 15 years later, investor looks at how predictable and manageable the risks in this area are. If there is no license assurance in mining and legal assurance is insufficient, there can be no serious development in mining. Indeed, the most critical problem in the mining sector in Turkey is license assurance (Köse, 2012: 80).

As it is emphasized above, although it is still highlighted in the bottom row for mining investors, the risks that have increased in the world in recent years are the legal risk and nationalization risk. The most common legal risk is the risk of an adverse change in the law (Pritchard, 2005: 6-7). According to De Sa, the primary “cornerstones” of a successful mining policy are a transparent legal and regulatory framework. To implement them, strong institutions and environmental management systems are required (De Sa, 2005: 493). Therefore, the legislation of the host country should always be carefully reviewed for its competence in securing license security across a wide range of areas (Pritchard, 2005: 7). Of course, it should not be forgotten that each country has its own national policy. The specification of national law is a specification of economic policy (Gu, 1985).

Especially because of the uncertainties and implementations in the aforementioned issues, investors can turn to other countries instead of Turkey at the stage of making mining investment. This situation shows that the administration should adopt an evaluation procedure that takes a short time in the mining operation

permit process in Turkey. In the 2019 survey conducted by the Fraser Institute, though Turkey's sequence increased, it is necessary for a stable application of administration in the permit application process.

3. MINING OPERATION PERMIT PROCESS

Permits related to mining are given in accordance with the laws of the relevant ministries and institutions, mining law and provisions of the regulations. In this respect, the relevant Ministries and institutions should consider both the mining legislation and provisions of their own regulations when evaluating the *permit* process. The legislation that works in order of importance in obtaining mining rights is as follows:

- Mining Law and its regulations,
- Environmental Law and its regulations,
- Forest Law and its regulations,
- The relevant legislation on the property (Expropriation Law, etc.),
- Construction Law and its regulations,
- Provisions of other legislation in which up to 20 permits are specified.

Mining operations can lead to noise, dust, pollution, and other risks. For this reason, the mines should be operated with specific *permits* and controls. The Mining Law identified the *permits* to be granted by the relevant ministries, directorates, and local governments, taking into account the environmental, sanitary, economic, and social impacts of mining enterprises. Permits in mining operations and authorized institutions that give these permissions are shown below.

Table 2: Permits in Mining Operations and Authorized Institutions

	Permits to be obtained	Authorized institution
1	Mining Operating License	General Directorate of Mining and Petroleum Affairs (MAPEG)
2	Positive Document of Directorate General of Environmental Impact Assessment, Permit, and Inspection	Ministry of Environment and Urbanization (MEU)
3	Mining Operation Permit	MAPEG
4	Waste Storage Permit	MEU
5	Pre-Emission and Emissions Permits	Ministry of Health
6	Land Use Permit	Provincial Directorate of Agriculture
7	Land Use Permit	Land Holder
8	Forest Permit	Ministry of Agriculture and Forestry (MAF)
9	Site Selection Permit	MAPEG
10	Facility Permit	MEU

11	Rangeland Removal	MAF
12	Positive Opinion of the Ministry of Culture and Tourism	Ministry of Culture and Tourism
13	Business License and Work Permit	Municipal and Provincial Special Administrations
14	Business Declaration	Social Insurance Institution, Ministry of Labor, Tax Administration
15	Reconstruction Permit	MEU or Municipality
16	Building Permit	MEU or Municipality
17	Electricity License	Turkish Electricity Distribution Corporation
18	Water License	General Directorate of State Hydraulic Works (GDSHW) or Municipality
19	Explosives Storage Building Permit	Ministry of Interior and MEU
20	Explosive Authorization License	Ministry of Interior
21	Other Permits	Military, GDSHW et al.

Source: TBMM, (2010). Madencilik Sektöründeki Sorunların Araştırılarak Alınması Gereken Önlemlerin Belirlenmesi Amacıyla Kurulan Meclis Araştırma Komisyonu Raporu.

As can be seen in the Table 2, it is not enough to obtain an operating license to bring the mines to the surface. To start production, many licenses and permits should be obtained. The overlap of the aforementioned legislation, the high number of authorities to which the permits will be obtained, and the uncertainties in the permit criteria lead to problems. The long duration of these bureaucratic procedures slows down the permitting process. After getting the license for a mining operation, the permitting process which has been issued until the start of production activity has been given below.



Figure 2: Operation permit process (representative)

Source: TÜMMER, (2017). Madencilik Faaliyetleri İzin Süreçleri (Sunum).

As shown in Figure 2, this lengthy process leads to delays in mining production activities and even to a significant loss of mining investments. This can only be achieved through a competent governance structure that will allow the mining operation activities to be completed in a much shorter period.

4. AUTHORITIES OF ADMINISTRATIONS AND ADMINISTRATIVE STRUCTURE IN THE MINING OPERATION PERMIT PROCESS

Mining administrations play an important role in the application of mining law by issuing mining regulations and other regulatory procedures and conducting individual transactions defined as bureaucratic works. Granting permission to mining requires bureaucratic procedures that concern many public institutions (Topaloğlu, 2012: 219).

In Turkey, the MENR and the General Directorate of Mining Affairs (MIGEM) are authorized to grant permission to mining operations. However, many ministries such as the MEU and its sub-units, MAF, Ministry of Culture and Tourism and their sub-units, and also the Governorship and Municipality, which are local administrative organizations can be decisive with their decisions on "permits."

In the *permit* process, which is the biggest problem of mining investors and has an investment project, obtaining *permission* from a large number of different institutions creates high losses both materially and in terms of time. This situation is particularly difficult for small investors and even leads to the abandonment of mining projects. As a result, production falls on a country basis, and the country's

economy is damaged (Özel, 2006: 207-208).

The issue of the “regulatory duplication” in the ranking of the risks faced by world miners occurs in our country, with the duplication of legislation and very frequent changes in almost every year. Thus, according to Oygür, mine operators are not only troubled by risks around the world but also, they are obliged to maintain their investment and operations with difficulty in the presence of economic and administrative obstacles raised by the bureaucracy in Turkey (Oygür, 2015: 58). Therefore;

- Ensuring that the state effectively secures the obtained mining rights,
- Sustaining the operations of mining investors in safety and security,
- Granting the necessary permits for mining operations in an accelerated manner,
- Establishment of investment confidence requirements required for domestic and foreign capital inflows in the sector,
- Minimizing the negative intervention of the state in the sector to the permitting process and,
- An *administrative structure* is required, which provides practical and economic efficiency in resource utilization and distribution and provides the necessary planning and coordination needs in the integration of the sector with other sectors (TÜMMER, 2010).

Each institution should not have separate mining legislation. All kinds of permits, control, supervision, management, and stopping of their activities should be carried out from a single institution (Tütüncü, 2010: 528). Progress has been made in this way over the last few years. However, a more transparent and fast-moving *administrative structure* should be established during the authorization process.

4.1. Authorization of the MAPEG for Mining Operation Permits

When a favorable economic ore is found in the mines, the mining activities related to the grant and control of the licenses, and the examination of the projects are carried out by the MENR and the MIGEM. Recently, the MAPEG has been established as a subsidiary of the MENR and "The Presidential Decree on the Relevant Institutions and Organizations related to Ministries and the Organization of Other Institutions and Organizations" that entered into force on July 15, 2018. The duties, authorities, and responsibilities of this organization, which will assume the powers of the MIGEM, are regulated by the mentioned Decree.

MAPEG is a separate legal entity (with a supplementary budget) that is

different from the MIGEM. It was established without sufficient staff and infrastructure. Topaloğlu believes that it may be beneficial for this organization to evolve to the Ministry of Mining and Petroleum Affairs (Topaloğlu, 2018c). MAPEG's vision is "*a safe future in energy and natural resources*," and its mission is "*to make the highest contribution to the welfare of the country by evaluating energy resources and natural resources in an efficient and environmentally sensitive manner*" (<http://www.migem.gov.tr/>).

Among the tasks of the MAPEG², especially two are about the permits which constitute the subject of the study.

The organization structure of the MAPEG is almost exclusively based on granting the mining license. Therefore, according to Tamzok, the staff of this Organization is snowed under with their work. They are engaged in bureaucratic procedures that must be carried out by the Ministry of Finance, such as following the dispatch slip or the state's right. They also carry out many duties given to them by many laws (Tamzok, 2016). However, according to Kayadelen, since the MAPEG grants permission related to mining laws, follows the mining operations in the license areas and keeps the mining register, it cannot make other investigations to the extent expected (Kayadelen, 2010).

The solution of many problems in the mining sector, including those mentioned above, would have been possible by re-designing and organizing the existing Directorate General of Mining structure, which was formed many years

² All the tasks of the MAPEG have been determined as follows (the ones mentioned in Article 1 and Article 4 are about the permissions):

1. To grant licenses related to mining rights and to follow the mining operations in these license areas,
2. To take measures to support the production of operations and provide financial means to promote exploration and production of mines,
3. To take measures to ensure that the mining operations are carried out in line with the country's needs, benefits, safety and developing technology and to make suggestions for encouragement,
4. To carry out the mining operations in accordance with the principle of environmental and resource protection, to follow in cooperation with the relevant institutions and to take the necessary measures,
5. To determine the fundamentals of search, production, stocking and marketing policies necessary for the best utilization of mineral resources in the country,
6. To follow the country and world mining activities, and to compile, evaluate and publish the information,
7. To keep mining register, and to make a general inventory of mines,
8. To perform similar tasks to be given by the MENR (URL-2).

ago, in line with the current needs of the sector (Tamzok, 2016). Including those mentioned above, with the decision of the MENR, about 40-50 employees from the MIGEM staff have been transferred to the General Directorate of Mineral Research and Exploration. As a result, there has been a decrease in the number of MIGEM staff. As of December 2018, after the decision of its establishment, the total number of employees of the MAPEG is 451³. With its newly established, the number of the MAPEG employees will increase due to the new ones from the General Directorate of Petroleum Affairs.

Sometimes, the mining license areas and forest areas may overlap. In such cases, under the provisions of the Mining Law as well as the provisions of the Forest Regulations, the mining investor must obtain the required permits from the Ministry of Forestry and Water Affairs. To reveal the overlapping field and technical information regarding these permits, the MAPEG is contacted.

While the MAPEG, which has many duties especially in all kinds of mining licenses/permits ranging from 10-15 thousands of all mines in our country, has only 451 employees, the mentioned ministry, including Regional Directorate of Forestry under the MAF which is responsible for the protection of forests, has almost 37 thousand employees (This number is about 250-300 thousand with sub-contracting staff). This table brings to mind the question of whether the MAPEG is able to carry out all the mining activities in the country with a very low number of employees compared to the Regional Directorate of Forestry under the MAF⁴.

Besides, it was stated in the Law No. 7020 published in 2017 that project and planning will be done by the MAPEG primarily for the declaration of the mining region. These and many other tasks will be able to increase the workload with the limited staff in the center without provincial organizations, and sufficient personnel and specialized staff to make project and planning with the current state

³ In 2010, MIGEM had 296 personnel in the civil service staff (Yıldırım, 2010: 344).

⁴ Indeed, the Report of the Parliamentary Commission on the Determination of the Measures to be Taken by Investigation of the Problems in the Mining Sector of the Turkish Grand National Assembly is as follows: “*the MIGEM appears like a General Directorate view due to the inadequacy of the number of specialist staff, mostly due to reasons arising from the Establishment Law and non-institutionalization... Its staff appears like a supervisor who carries out licensing, monitoring, inspection, reporting, and actively conducting audits at the site and imposes criminal sanctions on the law... MIGEM carries out surveillance services of 45 thousand licensed areas spread throughout Turkey. Each week, at least 35-40 delegations are sent to the audit, and in spite of the insufficiency of the number of personnel, an average of 5 thousand mining sites are audited annually*” (TBMM, 2010: 253-254).

of the MAPEG.

At this point, Topaloğlu points to the fact that structuring the mining administration according to the principle of decentralization in developing countries constitutes a good management example (Topaloğlu, 2011a: 128). In the past, it was determined to establish a provincial organization within six months in the Mining Law No. 6309, which entered into force in 1954, but these organizations have not yet been established. The establishment of these organizations will not only ensure the follow-up of the mining projects but also the unjust situations in the permitting process will end. The opening of the authorized units by the MAPEG will also prevent the loss of time of the miners.

According to Tufan, Regional Directorates to be established should be equipped with adequate staff and equipment, and investment ministries and supervision elements should be assigned within the governorships. Tufan also suggested that Regional Directorates should be authorized for licensing and permits and he reminded that it is impossible to manage the whole mining sector from the capital in an area with a wide geography like our country⁵ (Tufan, 2015: 13). Indeed, in particular, the establishment of the provincial organization of the MAPEG could, in practice, reduce the disruptions encountered by mining operators. However, the fact that these organizations are within the governorship or that the governorship takes part in the decisions and studies taken and may authorize them may cause some problems since governorships do not have the knowledge to make an objective evaluation and manage these organizations. If these organizations are within the governorate, the governorships may disrupt the decisions and activities of the MAPEG organizations for political reasons. Any consideration of this should be taken into account.

Recently, significant improvements have been made in the MAPEG, considering the aforementioned criticisms. MAPEG has made some explanations in this regard. In the statement, it was stated that approximately 24000 works in the MIGEM were reduced to zero as of September 2017 by providing improvements in services and service provision. In addition, it was stated that all the bureaucratic processes within the MAPEG would be carried out electronically and in a transparent infrastructure, and e-mine project works, which will enable the workflow to accelerate, are actually started as a result of the contract signed with

⁵ According to Tufan, administrative, technical and financial control should be provided and regional directorates should be established with the help of Local Government Law. Permits, licenses, and project work of mining enterprises should be within the competence of Regional Directorates. The author proposes that all regional enterprises should be closely monitored by these Regional Directorates (Tufan, 2015: 13).

TURKSAT and will be implemented soon (Madencilik Türkiye Dergisi, 2018a: 14).

4.2. Authorized Administrative Structure of Mining Operations Permit Process

Many public institutions in Turkey are authorized for granting mining permits. Thus, this situation has brought along bureaucracy and a lack of consistency and coordination among the ministries.

For instance, some mining enterprises cannot start the operation because the forest administration does not allow them, but relevant institution/ministry can penalize since they didn't start mining operation. Or, some institutions can declare a protected area, which can ban certain areas into mining (e.g., a miner gets a license and then searches, but then he learns that the relevant municipality has declared that area a protected area) (Kayadelen, 2009). Such situations are still happening today as in the past. Also, problems continue in expropriation practices. There are different applications in every city related to business license and work permit. Besides, there is a lack of coordination in the site and prohibited area implementations. In almost every institution authorized in the permitting process, even in various directorates, implementation differences occur.

Taking this table into account, it is necessary to establish an administrative structure that can act in harmony with the sector to create a mining sector that can contribute to national income and employment at the highest level (İMMİB, 2008: 58). More recently - for example - it is aimed to create a more efficient license-permit system within the European Union (EU). At this point, the "one-point solution system" is designed in the permits. In other words, there will be a ministry that will provide all the coordination between different ministries, so that the industry will not have to go to various authorities to obtain approximately twenty different permits. This was thought to improve the mining industry in the EU (TMD, 2011a: 39). Indeed, similar in Turkey, it has been expressed for years by many authors and sections that it is appropriate to put the principles of monopoly management into effect by establishing a separate "Ministry of Mines" that will quickly realize the mining permit procedures and provide an organization (Topaloğlu, 2019: 46; 2011a: 128; 2011b, 33; TMD, 2011b: 8). In this respect, a survey question was asked by using the "Survey Monkey" Program to understand the preferences of mining enterprises during the mining operation permit process.



Figure 3: The preference of the mining operation permit process

According to Figure 3, (77.9% of) mining enterprises mostly responded saying, “*As the sole competent and responsible authority in the permit process, all the permissions should be granted by the “Ministry of Mining” to be established.* A small percentage of the mining enterprises (16%) is of the opinion that “*the permissions should be granted by a senior authority established within the MENR as the sole competent and responsible authority.*” A tiny percentage (5.5%) is of the opinion that the *existing mining operation permit system should continue.* In the individual responses appearing in the survey questions, it is emphasized that the Ministry of Mining or at least a senior authority established within MENR (such as the Under Secretariat of Mining)⁶ should absolutely be established as the sole competent and responsible authority in the permit process of the mining operators. Other opinions of the mining operators are as follows:

⁶ In this context, with the Presidential Decree published on January 17, 2020, it was decided to establish the "Natural Resources Department" within the MENR (Madencilik Türkiye Dergisi, 2020: 8). After this decision, it is hoped that there will be positive reflections on mining permits.

- In the administrative structure mentioned above, all ministries should have authorized representatives in the section on licenses, and the permit process should be shortened by signing on site.

- Of course, the lack of qualified and competent staff should be eliminated in such an organization. In addition, due to the limited authority of bureaucrats and the delay in signature returns from the senior authorities during the signature stages, there is a blockage in the processes. This should also be taken into account.

- With the establishment of the Ministry of Mining or similar structures mentioned above, carrying out all issues such as permit processes, controls, receiving mortar within this establishment (provided that other ministry officials are also concurrent) keeps mining operators from separately wandering other ministries or institutions and thus, investments can be carried out quickly and without interruption.

- Without forgetting that Turkey is very rich in terms of mineral diversity, it needs a Ministry of Mining. Or it will be appropriate to grant permissions with the approval of a Technical Committee to be established within General Directorates or MENR in order to shorten the permit processes⁷.

- Above all, all permit processes should be combined and released in a single session with the participation of relevant institutions.

- The permit process will undoubtedly be shortened if there is only one competent authority in the permit process. For example, even when obtaining a forest permit, the permit process will result without getting the opinions of institutions such as the opinion of GDSHW, the opinion of National Parks, the opinion of the Ministry of Culture and Tourism.

Above, various opinions on the administrative structure during the mining operation permit process were shared. And in Turkey "restrictions," "fields subject to permission" and requesting an opinion from other authorized public institutions in the permit process despite obtaining the permit for operation continue. The resulting problems and solution suggestions are examined in the following section.

4.3. Restrictions, Fields Subject to Permission and Requesting for Opinion from Other Institutions After Receiving Operation Permit

After the recent period in terms of forest and nature protection legislation in Turkey, with the 2014/1 Ecosystem Circular, restrictions have been imposed on the laws and regulations in force. The issues, which violate the Mining Law and Mining Regulations, arising from the implementation of this Circular cause the

⁷ At this point, Günay proposes that the final permits of mining projects should be given by the "National Mining Council" as a scientific and autonomous structure and thus making efforts to develop medium and small size mining (Günay, 2017).

underground resources to remain idle and cause bureaucracy. See, (TMD, 2018: 33).

It cannot be understood to give a positive answer to one of the two permissions of the same mining company and to give a negative response to the other in rangeland, business license and work permit and forest permits (Madencilik Türkiye Dergisi, 2018b: 16). Indeed, for example, in terms of agricultural legislation, different practices on Soil Conservation Regulation and Rangeland Regulation cause the investments to be delayed or not done. Although the amendment of the Regulation on Improvement of Olive Cultivation, Wild Breeding has been canceled, it is still not possible to make mining investment within 3 kilometers of the olive groves because no new arrangement has been made in this regard. With the Olive Law, mining operations are restricted in an extensive area, and a solution must be found.

Thus, a significant amount of added value, which can be created by mining, can be prevented by non-rational reasons. To expand on the topics mentioned above, for example, mining may not be allowed in a region because it is a hunting area. The same applies to rangelands and forest areas. Where it is rangeland can be subjectively determined the area where even the grass does not appear can be defined as the forest area (Kayadelen, 2009). Municipalities are also able to produce non-objective problems in license permits due to voting concerns.

Although a positive opinion is received from all the relevant institutions and organizations in the report formats, organized in the scope of EIA Regulation, Annex-1 or Annex-2, and operations, for example, after the procedures are concluded, opinion is requested from many similar institutions in the permit process for the areas belonging to the forest. However, mining licenses are given in a timely manner, and forest permits which are within the scope of compulsory leave from other institutions are obliged to be taken within three years after obtaining the operating license. The EIA decision is added when applying for forest permit. In taking an EIA, a final decision is made by taking the opinions of all the necessary institutions. Therefore, based on the opinions of the institutions in the EIA process, new opinions should not be requested from the same institutions repeatedly during the acquisition of forest permits (TMD, 2018: 31).

In this table, the administrations should not be biased, influenced by the negative approaches of environmentalist movements and should evaluate the mines in an environmentally sensitive manner by considering their benefits as a resource to the sector. Specifically, public institutions are less likely to face such problems in their production permits without showing the sensitivity shown by mining investors.

Some of the public institutions and enterprises, later, declare the areas which have an operating license and operation permit as a protected area, national park, water collection basin and even a picnic area as they wish, and block the mining operations in these areas (Onur, 2008: 42). Indeed, some of the licenses granted by MAPEG are later invalidated due to problems such as protected area, historical artifacts. However, mining operators should not face any problems after obtaining operating licenses (Öneç, 2008: 64). In addition to these, with the exception of required permits, in some provinces, a preventive practice, such as restricted areas, is implemented through the appropriate opinion of the governorship in order to grant the operation permit (Yeşilyurt, 2015).

Before the determination of national parks announced in our country, nature conservation areas and protected areas are made, it would be more appropriate to check the region for mining and to make a decision accordingly. This is because the destroyed area resulting from illegal dwellings in forest areas or from raw material production permits is hundreds of times that of the forest area used for mining operations. Moreover, in the first-mentioned destroyed area, recycling and reclamation operations requested after mining operations are not asked -to the extent required by the mining sector- from other sectors (Öneç, 2008: 64), therefore, nature is destroyed due to other sector operations outside of mining.

In the past, before the Law No. 5995 amending the 2010 Mining Law No. 3213, due to the fact that the mines have to be operated where they are located, and they do not have the choice of alternative places like other industrial facilities, permission conditions of mining to be made in areas with different characteristics were left to the Regulation to be issued by the Council of Ministers. In Article 5 of this Regulation, although it is stated that the opinion of MENR will be taken in the regulation of legislation affecting mining operations to be taken by ministries and public institutions and organizations, these organizations made the legislative arrangements that negatively affect mining operations and make mining operations almost impossible without respecting the opinion of MENR. Therefore, in the regulations that issued by ministries and public institutions and organizations that affect mining, it was proposed that no restrictions should be imposed other than the restrictions set forth in the mining permit regulation and the ones that were already imposed to be removed. Also, it was stated that the authorities should urgently be warned to take the positive opinion of MENR about the regulations to be issued by the Ministries and public institutions and organizations (İMİB, 2008: 54-55).

In the following period, according to the last sentence of the article 7 of the first paragraph of the mining law, any restriction related to the mining operations is identified to be regulated by the Law, except for the Mining Law. According to the

article 7 of the seventh paragraph of the Mining Law, to engage in mining operations in areas subject to authorization, it is mandatory to obtain the necessary permits according to the provisions of the Law. However, after the operating license has been issued by MAPEG, in case the operating license area becomes "subject to authorization" according to other laws, operations are continued by fulfilling the obligations identified by the relevant laws. In this case, vested rights must be taken into consideration, which can be evaluated under the license law. According to other laws, areas subject to authorization are determined by taking the opinion of MAPEG.

According to Yeşilyurt, Circular no. 2014/1 of the MAF dated March 3, 2014 constitutes an apparent contradiction to the rules of this Law. Public administrations may make regulations under the names such as notification and circular other than the bylaws and regulations related to their duties. However, there is a "hierarchy of norms" among these regulations. Regulatory processes cannot constrict or restrict the use of a right in a way not foreseen in the upper norm. As stated above, in the mining law, it was taken under the rule that the restriction on mining operations can only be regulated by law, and the process of bringing the areas where mining operations are carried out into a "subject to authorization area" can be determined by the law and the opinion of MAPEG. As a result, in the face of these clear provisions, while implementing the Circular No. 2014/1, MAF acted manifestly both to the Mining Law and did not take the opinion of the MAPEG into account (Yeşilyurt, 2015: 106).

In fact, the most important regulation affecting mining within all these arrangements was the Prime Ministry Circular No. 2012/15.

MAPEG halted all license and operation permits with the Prime Ministry Circular. Thus, one of the sectors most affected by the General Assembly was the mining sector. It has been identified that in this sector, foreign investors to overcome major challenges and take considerable risks in the investment process stop their investments or start to leave from Turkey because they cannot get their licenses due to the Circular mentioned above. Similarly, domestic investors also tried to transfer their licenses (URL-3; TMD, 2014). As a result, the Circle has deeply affected the mining industry. Since almost all stages of the mining concern the public immovable properties, asking for Prime Minister's opinions before each transaction prior to each transaction has caused a loss of time and capital. The circular application has been carried to the judiciary in recent years (Egemen, 2015: 575). Indeed, there are hundreds of cases opened after the Prime Ministry Circular numbered 2012/15 (Topaloğlu, 2018c).

This application clearly contradicts the article 7 of the first paragraph of Mining Law No. 3213, “...*Except for this Law, any restriction on mining operations shall be regulated by law.*” The individual applicant had filed a lawsuit for cancellation of both the Circular and the request for granting a search license based on it in the Council of State with the allegation that the circular is unlawful. The 8th Chamber of the Council of State stopped the execution of the Circular in terms of mining licenses on November 11, 2015 with the decision numbered E.2014/7883 during the two-year trial. After this date, the transactions related to mining law were started to be carried out fully with the permission of MENR. In other words, besides license transfers, the opinion of MENR is also requested in operation permits. However, after the decision of the Council of State, the authorized administrations continued to request opinions about the issue from the Presidency of Economic, Social and Cultural Affairs of the Prime Ministry in the granting of these permissions.

It was not known which criteria were used by the Presidency as mentioned above to decide whether or not to issue a license or under which legislation the Presidency examined the issue. The issue was not limited to the Mining Law, the Prime Ministry's opinions were also requested in cases such as the allocation of rangelands and forestry permits (Yeşilyurt, 2014: 139). In accordance with the Law No. 6592, which entered into force on February 18, 2015, in the Mining Law No. 3213, although the approval of the Ministry is required in the license transfer, and royalty transactions, the operating license, operation permit, and license extension requests of the license holders are listed by the relevant branches within one month and submitted to MENR for an opinion. The opinion of the Ministry is given within 3-12 months. According to Kömürder, at this point, as stated in the Mining Law, the application of requesting the approval of MENR only for the license transfer and royalty claims but not requesting the opinion of MENR for the requests for which a ministerial approval is not required in the Law will eliminate the time loss and ensure that the investments are not delayed by accelerating the permit and license obtaining processes (Kömürder, 2016: 8). Because, the resubmission of the operations of license holders, which are already approved in terms of licensing law, to the approval of the Ministry, causes repetition in the process and significant time losses in the operations (Demirkan, 2017: 2).

It was mentioned before that the provisions of the Circular on mining for forests, rangelands, and similar public immovables continues although the Prime Ministry Circular has been stopped by the Council of State in terms of mining permits. Such ownership permits, which are necessary for mining operation permit, should be excluded from the scope of the Prime Ministry Circular (Demirkan,

2017: 2). As a matter of fact, now the opinion of MENR was requested, not that of Prime Ministry. Following this table, The Prime Ministry Circular was annulled with the Presidency Circular No. 2018/8 on September 12, 2018. Thus, following the Prime Ministry Circular, the permitting processes in the new period are determined to be carried out by the commissions formed under the deputy minister in the ministries and the related public institutions and organizations, and under the chief executive in other public institutions and organizations. The application and results of the permits shall be notified to the Presidency by the committees as mentioned above in January, April, July, and October of each year.

In the present case, in applications for necessary permits for mining operations, the applicants who fulfill the requirements set out in the laws and regulations do not receive their permits for a very long time even though everything is complete. At this point, TÜMMER suggests that the regulation should be made in order to accelerate the proceedings due to the security investigation and not to re-submit new licenses, operating licenses, operation permits, transfer transactions, and extension projects unless there is a change in the ownership structure of the license holders who have previously got a positive result from the security investigation, and not to request an opinion from the Presidency again for the property (forest/rangeland) permissions in these areas (TMD, 2018: 29; TÜMMER, 2018: 1)

According to Topaloğlu, it should be first determined whether the new Presidency Circular should be applied to the necessary permit processes within the framework of Mining Law No. 3213. As a matter of fact, only the license transfers out of approximately ten permit process identified in the Mining Law are explicitly approved by MENR in accordance with the provisions of article 5/II of the Mining Law No. 3213. Other permits determined in the Mining Law were excluded from the scope of the Prime Ministry Circular, in accordance with the above-mentioned decision of the 8th Chamber of the State Council No. E.2014/7883. According to Topaloğlu, even though the Prime Ministry Circular has been abolished, the principle stated in the decision mentioned above of the Council of State "*mining licenses are not subject to any authorization unless explicitly regulated in the Act*" applies to the new Presidency Circular (Topaloğlu, 2018b: 35).

On the other hand, according to Article 104 of the Constitution amended on January 21, 2017, which reorganized the authority of the President, all executive power was given to the President. In this respect, there is no violation of the Constitution and the law by the President to make arrangements regarding the disposals of the ministries which are directly connected to him. With the Presidency mentioned above Circular, the Prime Minister, as the head of the

execution, determined that the final decision is made by means of a special commission when making disposals such as permits, allocations, and sales for the immovable properties of the public institutions which belong to him. With this Circular, the organization of the permitting process of the administration is determined. Although it is identified in the Presidential Decree that the relevant commissions shall notify the permit applications and the results to the Presidency four times a year, Topaloğlu emphasizes that the notification here is for information purposes only -as in the Prime Ministry Circular- not for approval purposes (Topaloğlu, 2018b: 35).

In this regard, Deputy Minister of the MENR, Mithat Cansız made a similar assessment. According to this announcement, it is expected that the permits pending for two years will accelerate in the new period and the mining sector will be affected positively in all areas due to the only Prime Ministry Circular (Aydın, 2018: 4). According to Topaloğlu, the permitting process in the current situation will be faster. Furthermore, a Presidential Circular (No. 2018/13), which could affect the mining sector, entered into force on October 11, 2018. According to this, public institutions cannot retard an issue to be solved within the scope of the legislation. This situation can make a positive contribution to the mining sector by preventing opinion requests from being overlapped (Topaloğlu, 2018c). It is of great importance for the mining industry that all conditions are fulfilled and procedures can be completed immediately. The mine investor should not wait for months. If the above-mentioned arrangement is applied, there is no doubt that in order for the mining investments to go into production, the operation permit process can be completed in a shorter period.

In accordance with the Mining Law, after obtaining an operating license, the license holder is granted an operation permit by obtaining an EIA certificate and other permits (such as ownership, business license and work permit). The operation permit shows that all the permits are taken and there is no obstacle to mine production for the mines in the mining license area. However, although Prime Ministry Circular 2012/15 was abolished in Turkey and it is thought there will not be a usurpation of power in the permit process, applications of requesting an opinion from other institutions are still in progress. This situation continues a table in which the mine production cannot start even though mining operators have permission to operate. The mining sector expects that this table changes in practice after the Presidency Circular.

In particular, it should be kept in mind that, until recently, the permits remain in the MENR approval for a long time or that it is not clear whether the permits are issued or not creates an investment risk. In this respect, in June and

July 2018 (before the Presidency of the Presidency was published), “After obtaining an operation permit, do you think you should request opinion from the Prime Ministry, the MENR or other ministries?” the mining enterprises were asked.

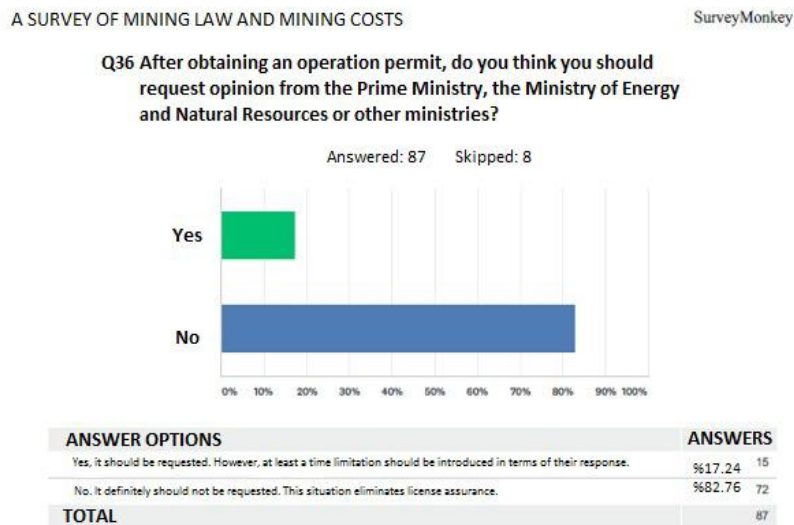


Figure 4: Requesting opinion after operation permit

As shown in Figure 4, the majority of 87 mining enterprises (83%) answered: “No. It definitely should not be requested. This situation eliminates license assurance.” Other respondents (17%) replied: “Yes, it should be requested. However, at least a time limitation should be introduced in terms of their response.” As a matter of fact, without any time limitation, or without a reasoned opposition, it is not the right approach to request opinions to any institution after obtaining the operation permit. On the contrary, the process of requesting an opinion should be completed before “the operation permit” is issued.

On the other hand, the loss of all mining investments after an adverse decision to be taken after obtaining opinions from other institutions in an area with a mining operation permit is contrary to the Mining Law. In fact, an area where mining operations cannot be made should not be allowed from the beginning, and this decision should be given by institutions having technical competence in this regard. Having an operating license means that the miner fulfills all procedures. The feeling of the need to request opinions from different institutions after obtaining an operation license may reveal that both the bureaucracy and politics are

in the permit process, which needs to be objective.

In fact, the license itself represents a view. At this point, the technical evaluations and opinions of the MENR before obtaining the operation permit should be sufficient, except for the security investigations to mining companies. Distrust of the mentioned Ministry assessment should not lead to unnecessary time losses.

4. CONCLUSION AND RECOMMENDATIONS

One of the biggest reasons for the lack of investments in mining, the loss of investments made or the decrease in the interest of investors in this sector is the unnecessary restrictions and practices imposed by the dozens of institutions authorized in mining activities, and bureaucracy that does not recognize the mining sector.

In particular, the fact that not only MENR but also many ministries and public institutions other than this ministry are authorized in the mining operations permit process delays the permit process in Turkey and thus leads to investment losses. The most important factors in the formation of this situation (such as MEU, MAF) are the legislation issued by other Ministries, not taking into account the opinions of MENR in these legislative amendments and restricting the application area of MAPEG with the practices. Although there is a mining operation permit, the applications of requesting an opinion from other institutions should be eliminated. Thus, foreseeable mining can be carried out.

In addition, reviewing the current legislation and practices related to mining with the tendency to orientate investments considering the principles of protection and use of investments and the positive reflection of bureaucracy are important. The MENR should be decisive in this regard. There is no doubt that MAPEG will play an important role in this new structuring. MAPEG has sufficient knowledge at this point. However, the technical staff is not sufficient for the time being.

In line with the expectation of the mining sector, in the mining operation permit process, an administrative structure that grants all the permissions by a newly established “Ministry of Mining” as the sole competent and responsible authority or a higher authority to be established within MENR provided that it will be the sole competent and responsible authority, with the participation of related institutions will enable all permit processes to be completed at once by combining them. Such an administrative structure in the permitting process will bring about a table in which the mining investments are carried out without delay, and the license is secured without loss of investment.

In this context, there is a great expectation that the applications of the Presidential Circulars/Decree mentioned in the study will have a positive reflection

in the mining sector. Thus, with the acceleration of the permit process, mining investors will increase their investments in Turkey and mining can rapidly improve in Turkey.

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