

EXPLOITATION OF PROTECTED FOREST AREAS FOR MINING ACTIVITIES
(Regulation of the Minister of Forestry No. P 12/MENHUT-II/2004 dated September 29,2004)

THE MINISTER OF FORESTRY,

(BN No. 7036 pages 9A - 10A) (Statute Book of 2004
No. 29, Supplement to Statute Book No. 4374);

Considering:

- a. that Government Regulation In Lieu of Law No. 1/2004 on the Amendment to Law No. 41/1999 concerning forestry stipulates that all mining licenses or agreements in forest areas already existing before the enforcement of Law No. 41/1999 on forestry are declared to remain effective until the licenses or agreements expire;
 - b. that Presidential Decree No. 41/2004 rules mining licenses or agreements in forest areas;
 - c. that in order to further implement Presidential Decree No. 41/1999 as meant in letter b, it is necessary to stipulate a regulation of the Minister of Forestry on exploitation of protected forest areas for mining activities;
- In view of:
1. Law No. 5/1990 on conservation of biological resources and their ecosystems (Statute Book of 1990 No. 49, Supplement to Statute Book No. 3419);
 2. Law No. 24/1992 (BN NO. 5331 pages 2A - 8A and so on) on lay out (Statute Book of 1992 No. 115, Supplement to Statute Book No. 3501);
 3. Law No. 23/1997 (BN No. 6092 pages 19A - 21A and so on) on environmental management (Statute Book of 1997 No. 68, Supplement to Statute Book No. 3699);
 4. Law No. 41/1999 (BN No. 6412 pages 1A - 6A and so on) on forestry (Statute Book of 1999 No. 167, Supplement to Statute Book No. 3888);
 5. Government Regulation In Lieu of Law No. 1/2004
 6. Government Regulation No. 34/2002 (BN No. 6828 pages 5A - 15A and so on) on forest arrangement and formulation of plan for management of forests, utilization of forests and exploitation of forests (Statute Book of 2002 No. 66, Supplement to Statute Book No. 4206);
 7. Presidential Decree No. 41/2004 (BN No. 7063 pages 16A - 18A) on exploitation of protected forest areas for mining activities;
 8. Decree of the Minister of Forestry No. 55/Kpts-1/1994 (BN No. 5545 pages 7A - 11A and so on) on guidelines on borrowing forest areas for utilization;
 9. Decree of the Minister of Forestry No. 146/Kpts-II/1999 (BN No. 6304 pages 8A - 10A) on guidelines in reclamation of former mining sites in forest areas;
 10. Decree of the Minister of Forestry No. 123/Kpts-II/2002 on the organization and working arrangement of the Ministry of Forestry;
 11. Decree of the Minister of Forestry No. SK.81/Menhut-II/2004 on the establishment of an integrated team in the framework of settlement of license to exploit protected forest areas for mining activities;

D E C I D E S :

To stipulate:

THE REGULATION OF THE MINISTER OF FORESTRY
ON EXPLOITATION OF PROTECTED FOREST AREAS FOR
MINING ACTIVITIES.

CHAPTER I
GENERAL PROVISION

Article 1

Referred to in this regulation as:

1. Exploitation of protected forest areas for mining activities shall be the use of protected forest areas for all kinds of activities in the mining sector without changing designation and main function of the forest areas.
2. License of activity in the protected forest areas shall be a license to undertake activities of feasibility study or mining exploration in the framework of exploitation of protected forest areas.
3. License to borrow protected forest areas for utilization shall be a license to use protected forest areas for activities of mining exploitation/production or construction for a specified period.
4. Reclamation of former mining areas in protected forests shall be efforts to improve or restore damaging land and forest vegetation arising from exploitation of protected forest areas for mining activities so as to be able to function optimally in accordance with their functions.
5. Minister shall be the minister in charge of forestry affairs.

CHAPTER II BASIS AND OBJECTIVE

Article 2

- (1) Exploitation of protected forest areas for mining activities shall be based on approval of the minister in the form of license of activity or license to borrow protected forest area for utilization with compensation.
- (2) The approval of the minister as meant in paragraph (1) shall only apply to 13 (thirteen) licenses or agreements in the mining sector with the names of companies and mining locations as contained in the attachment to Presidential Decree No. 41/2004.

Article 3

Regulation of exploitation of protected forest areas as meant in Article 2 shall aim at restricting and

regulating the use of protected forest areas for mining activities.

CHAPTER III LICENSING PROCEDURES

Part One Exploration Phase Article 4

- (1) Applications for exploitation of protected forest areas in the exploration phase shall be submitted to the minister by the highest leader of the mining companies as meant in Article 2 paragraph (2) with a copy made available to the Minister of Energy and Mineral Resources, Secretary General of the Ministry of Forestry, the Head of the Forestry Planning Board, local governor and regent/mayor.
- (2) The applications as meant in paragraph (1) shall be accompanied by:
 - a. map of location and size of forest areas requested for exploration with the minimum basic map scale of 1:250,000;
 - b. license or agreement in the mining sector;
 - c. plan for exploration activities in the protected forest areas.
- (3) Based on the applications as meant in paragraph (1), the Head of the Forest Planning Board on behalf of the Minister of Forestry shall issue license to undertake exploration activities in the protected forest areas.

Part Two Exploitation Phase Article 5

- (1) Applications for exploitation of protected forest areas in the exploitation phase shall be submitted to the minister by the highest leader of the mining companies as meant in Article 2 paragraph (2) with a copy made available to the Minister of Energy and Mineral Resources, State Minister for Environment, Secretary General of the Ministry of Forestry, Head of the Forestry Planning Board, local governor and regent/mayor.
- (2) The applications as meant in paragraph (1) shall be

accompanied by:

- a. map of location and size of the requested forest areas with the minimum basic scale of 1 : 100,000;
- b. license or agreement in the mining sector;
- c. plan for exploitation of protected forest areas;
- d. statement of readiness to meet the required obligations and bear costs arising from the applications in accordance with the stipulated guidelines, ratified by notary;
- e. Environment Impact Analysis (AMDAL) already ratified by the authorized institution;
- f. Recommendation of local régent/mayor and governor.

(3) Based on the applications as meant in paragraph (1), the Head of the Forestry Planning Board shall coordinate the implementation of technical study of the integrated team in the framework of the issuance of license to borrow protected forest areas for utilization.

(4) The implementation of activities of the integrated team shall be financed by applicants.

(5) Based on results of the study as meant in paragraph (3), the Head of the Forestry Planning Board shall convey technical considerations to the minister not later than 15 (fifteen) working days as from the date of receipt of the report on the results of the study.

(6) Based on the technical consideration of the Head of the Forest Planning Board as meant in paragraph (5), the Minister shall issue borrowing approval to applicants as the basis for fulfilling the stipulated obligations.

Article 6

(1) The Forestry Planning Board and provincial and regional/municipal forestry institutions shall monitor and evaluate the fulfillment of the obligations as meant in the borrowing approval already issued, minimally once in one year.

(2) The Head of the Forestry Planning Board shall convey results of the monitoring and evaluation as meant in paragraph (1) to the minister.

(3) Based on the results of the monitoring and evaluation as meant in paragraph (1), the Minister shall issue a decision on license to borrow protected forest areas for utilization after applicants fulfill the obligations mentioned in the borrowing approval.

CHAPTER IV

OBLIGATIONS OF APPLICANTS/LICENSEES

Part One

General

Article 7

(1) The obligations of applicants in the exploration phase as meant in Article 4 paragraph (2) shall be as follows:

- a. paying compensation for the value of the felled uprights;
- b. formulating plan of activities in forest areas;
- c. maintaining security of the borrowed forest areas and holding responsibility for negative impacts arising from mining activities on surrounding environments;
- d. reclamation and reforestation of forest areas being former locations of exploration activities;
- e. conveying report periodically, every three months, to the minister;
- f. making statement of readiness to meet all obligations, ratified by notary.

(2) The obligations of applicants in the exploitation phase as meant in Article 5 shall be as follows:

- a. paying compensation for the value of the felled uprights;
- b. providing and giving up other land to the Ministry of Forestry as companies for the borrowed protected-forest areas;
- c. bearing costs of measuring, mapping and pegging of border marks and settlement of account of border arrangement, as well as costs of inventory of the borrowed protected-forest areas and compensation land;
- d. formulating working plan for exploitation of forest areas for five years and specified in annual basis, containing among others, mining activities and supporting facilities, land reclamation and conservation, utilization/felling, forest protection and conservation of biological resources and cluster plan

- approved by the Head of the Forestry Planning Board on behalf of the minister;
- e. paying fund of guarantee for reclamation;
- f. financing and applying reforestation to the compensation land;
- g. maintaining security of the borrowed forest areas and holding responsibility for negative impacts arising from mining activities on surrounding environments;
- h. undertaking reclamation of the borrowed protected-forest areas on the basis of the working plans for exploitation of the approved forest areas as meant in letter d;
- i. conveying report every three months to the Minister;
- j. in the case of licensees being subjected to administrative sanction in the form of revocation of license, the licensees must continue completing activities of reclamation in the borrowed forest areas;
- k. making statement of readiness to meet all obligations, ratified by notary.

Part Two
Value of Upright
Article 8

- (1) The Forestry Planning Board shall make inventory of upright potential in the areas to which license to borrow is issued.
- (2) Based on the results of inventory of upright potential as meant in paragraph (1), licensees shall pay compensation for the value of the uprights to the state through the Ministry of Finance.

Part Three
Compensation for Leasehold
Article 9

- (1) License to borrow protected forest areas shall be subjected to compensation in the form of the obligation to provide and give up land outside forest area to be used for forest area.
- (2) The requirements for compensation land shall be:
 - a. having clear status and right on behalf of the applicants;

- b. free from the imposition of mortgage right;
- c. free from dispute;
- d. directly sharing border with forest area; and
- e. located in the same river stream area/sub-river stream area of regency/city as the borrowed areas;
- f. fulfilling technical requirements for becoming land.

(3) In provinces where forest areas account for less than 30% of the mainland area, the compensation area shall be twice of the borrowed forest area.

(4) In provinces where forest areas account for 30% of the mainland area or more, the compensation area shall be equal to the borrowed areas.

Article 10

The costs of measuring, mapping, pegging of border marks and settlement of account of border arrangement as well as costs of inventory of the borrowed protected-forest areas and compensation land shall be in accordance with the provisions in force.

Article 11

- (1) Reforestation of the compensation land shall be done in accordance with the provision in force.
- (2) Delivery of plants resulting from reforestation in the compensation land shall be done in the fourth year after the institution in charge of forestry affairs in the said regency/city evaluates.
- (3) The delivery of plants resulting from reforestation as meant in paragraph (2) shall be mentioned in account of delivery of reforestation plants in the compensation land from licensees to the relevant regental/municipal government.

Part Four
Reclamation
Article 12

Provisions on reclamation and criteria for the success of forest reclamation as meant in Article 7 paragraph (2) letter h shall be in accordance with the provisions in force.

Article 13

- (1) In the case of forest areas formerly used for mining activities being unable to restore into forest, licensees shall be subjected to additional compensation in the form of production sharing with the ratio stipulated in accordance with the law in force.
- (2) The fund obtained from the production sharing as meant in paragraph (2) shall be used for restoring reclamation land of forest areas through trial run activities and other supporting activities.

Part Five

Working Plan for Exploitation of Forest Area

Article 14

- (1) Licensees shall formulate five-year working plans for exploitation of forest areas, specified by annual working plan.
- (2) The working plan as meant in paragraph (1) shall contain the planned mining activities specified in blocks, mining road development plan as well as plans for reclamation, land conservation, utilization/felling, forest protection and conservation of biological resources.
- (3) The working plan as meant in paragraph (2) shall be approved by the Head of the Forestry Planning Board.

CHAPTER VIII

PERIOD AND EXTENSION OF LICENSE

Part One

Exploration Phase

Article 15

- (1) License of activities in the protected forest areas shall apply for one year as from the date of signing of the license and can be extended.
- (2) The extension of the license of activities in the protected forest areas as meant in paragraph (1) shall be submitted not later than three months before the license ends.
- (3) The application for extension of the license as meant in paragraph (2) shall be accompanied by report on results of exploration already executed.

Part Two

Exploitation Phase

Article 16

- (1) License to borrow protected forest areas shall apply for 5 (five) years as from the date of signing of the license and can be extended.
- (2) The extension of the license as meant in paragraph (1) shall be submitted not later than 6 (six) months before the license expires.
- (3) The extension of the license as meant in paragraph (2) shall be based on results of the evaluation as meant in Article 17.

CHAPTER IX

MONITORING AND EVALUATION

Article 17

- (1) Monitoring shall be applied to the realization of obligations which must be fulfilled by holders of license to borrow forest areas as meant in Article 7.
- (2) Monitoring shall be executed by forestry institution concerned in region and coordinated by provincial service in charge of forestry affairs.
- (3) The monitoring as meant in paragraph (1) shall be done at least once in one year.
- (4) Results of the monitoring as meant in paragraph (2) shall be reported to the minister with a copy made available to the said licensee, Minister of Energy and Mineral Resource, State Minister for Environment, Secretary General of the Ministry of Forestry, Head of the Forestry Planning Board, Director General of Forest Protection and Natural Conservation, Director General of Land Rehabilitation and Social Forestry, local governor and regent/mayor.

Article 18

- (1) Evaluation shall be done central forestry institution together with regional forestry institution in the framework of returning the borrowed forest areas or extension.
- (2) The evaluation as meant in paragraph (1) shall be

done at least 3 (three) months before the license expires.

- (3) Provisions on monitoring and evaluation shall be further regulated by the Head of the Forestry Planning Board.

Article 19

The costs of monitoring and evaluation shall be borne by holders of licenses to borrow protected forest areas.

CHAPTER X RETURNING OF BORROWED PROTECTED-FOREST AREAS

Article 20

- (1) Protected forest areas already completed to be borrowed or used for mining activities shall be returned to the minister.
- (2) The return of the protected forest areas as meant in paragraph (1) shall be based on results of evaluation.

CHAPTER XI SANCTION

Article 21

- (1) Holders of licenses to borrow protected forest areas failing to meet the obligations shall be subjected to administrative sanction.
- (2) The administrative sanction as meant in paragraph (1) shall be in the form of:
- suspension of activities in the field;
 - revocation of license.

Article 22

- (1) The administrative sanction in the form of suspension of activities in the field as meant in Article 21 paragraph (2) letter a shall arise from the failure of licensee to meet one or more of the stipulated obligations.
- (2) The imposition of the administrative sanction as meant in Article 21 paragraphs (1) and (2) letter a shall be effective until the licensees meet the obligations.

Article 23

- (1) The administrative sanction in the form of revocation of license as meant in Article 21 paragraph (2) letter b shall be imposed because the licensees:
- fail to meet the provision as meant in Article 7 paragraph (2) for one year;
 - use the borrowed forest areas by ways contravening the license.
 - Transfer the borrowed forest areas partly or wholly to other parties without written approval of the minister;
 - Are subjected to the criminal sanction as meant in Article 78 of Law No. 41/1999.
- (2) The revocation of license arising from the violation as meant in paragraph (1) letters a, b and c shall be done after the licensees are warned three times at a time intervals of 30 (thirteen) days respectively, as from the date of receipt of the warning.
- (3) The revocation of license on the basis of the reason as meant in paragraph (1) letter d shall be done after the court decision having permanent legal power comes.

CHAPTER XI MISCELLANY Article 24

Mining activities shall be executed by using appropriate and environmentally sound technology.

CHAPTER XII CONCLUSION Article 25

The regulation shall come into force as from the date of stipulation.

Stipulated in Jakarta
On September 24, 2004
THE MINISTER OF FORESTRY
Sgd
MUHAMMAD PRAKOSA

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