

GUIDELINES ON THE BORROWING FOREST AREAS FOR EXPLOITATION PURPOSE

(Regulation of the Minister of Forestry No. P.14/Menhut-II/2006 dated March 10,2006)

THE MINISTER OF FORESTRY,

Considering:

- a. that Article 38 of Law No. 41/1999 on Forestry stipulates that exploitation of forest areas for interests of development outside forestry activities is realized through the issuance of license to borrow for exploitation purpose without changing the basic functions of the forest areas;
- b. that provisions on the borrowing of forest areas for exploitation purposes as regulated in Decree of the Minister of Forestry No. 55/Kpts-II/1994 jls Decree of the Minister of Forestry No. 41/Kpts-II/1996; No. 614/Kpts-II/1997 and No. 720/Kpts-II/1998 are deemed no longer suitable to development progresses so as to need amendment and adjustment;
- c. that in relation thereto, it is deemed necessary to re-stipulate provisions on the borrowing of forest areas for exploitation purpose by a regulation of the Minister of Forestry;

In view of:

1. Law No. 5/1990 on Conservation of Biological Resources and Their Ecosystems;
2. Law No. 24/1992 on Layout;
3. Law No. 20/1997 on Non-Tax State Revenue;
4. Law No. 23/1997 on Environmental Management;
5. Law No. 41/1999 on Forestry, as already amended by Law No. 19/2004;
6. Law No. 32/2004 on Regional Administration;
7. Government Regulation No. 47/1997 on National Territory Layout Plan;
8. Government Regulation No. 34/2002 on Forest Arrangement and Formulation of Forest Management Plan, Forest Area Utilization and Exploitation;
9. Government Regulation No. 30/2003 on State Forestry Public Corporation (Perum Perhutani);
10. Government Regulation No. 44/2004 on Forestry Planning;
11. Government Regulation No. 45/2004 on Forest Protection;
12. Presidential Decree No. 41/2004 on Licensing or Agreement in Mining Located in Forest Area;
13. Presidential Decree No. 187/M/2004 on the Establishment of the United Indonesia Cabinet;

14. Presidential Decree No. 9/2005 on Status, Tasks, Functions, Organizational Structures and Working Arrangement of State Ministries;
15. Decree of the Minister of Forestry No. 146/Kpts-II/1999 on Guidance for Reclamation of Ex-Mining in Forest Area;
16. Decree of the Minister of Forestry No. 32/Kpts-II/2001 on Criteria and Standards of Forest Area Validation;
17. Decree of the Minister of Forestry No. 70/Kpts-II/2001 on Stipulation of Forest Areas, Change in Status and Function of Forest Areas, already amended by Decree of the Minister of Forestry No. SK.48/Kpts-II/2004;
18. Decree of the Minister of Forestry No. P.13/Menhut-II/2005 on the organization and working arrangement of the Ministry of Forestry;

D E C I D E S :

To stipulate :

THE REGULATION OF THE MINISTER OF FORESTRY ON GUIDELINES ON THE BORROWING FOREST AREAS FOR EXPLOITATION PURPOSE

CHAPTER I GENERAL PROVISION

Article 1

Referred to in this regulation as:

1. Borrowing forest areas for exploitation purpose is the exploitation of part of forest areas by other parties in interests of development outside forestry activities without changing status, designation and function of the areas.
2. Compensation is an obligation of users/borrowers of forest areas to provide and give up land plot of non-reforested forest area for conversion into forest areas and a certain amount of fund used for becoming Non-Tax State Revenue (PNBP) of the Forestry Ministry.
3. Exploitation for Strategic Interests is exploitation of forest areas in interests of religion, security and defense, mining, development of electricity and technology installation of renewable energy, building of telecommunication network or waster installation network.
4. Exploitation for limited public interests is exploitation

of forest areas in interests of all layers of the society, covering public road and railway, drinking water or waste water channel, water resource management, water collecting basin, public facilities, telecommunication repeater, radio broadcasting station or television relay station.

5. Clear and Clean are a condition of the would-be compensation land having status clear and free from all ownership and management rights as well as imposition of other land title.
6. Minister is the Minister of Forestry.

Article 2

Borrowing forest areas for exploitation purpose is based on approval of the Minister.

Article 3

Borrowing forest areas for exploitation purpose aims at:

- a. restricting and regulating the use of part of forest areas in strategic and limited public interests outside the forestry sector without changing status, function and designation of the forest areas;
- b. avoiding enclave in forest areas.

CHAPTER II MODEL OF BORROWING FOR EXPLOITATION PURPOSE

Article 4

Borrowing of forest areas for exploitation purpose can be in the form of borrowing for exploitation with compensation or without compensation.

Article 5

(1) Borrowing of forest areas for exploitation purposes only can be realized for exploitation of forest areas with strategic goals and in limited public interests.

- (2) Exploitation of forest areas with strategic goals is designated to:
 - a. religious interest;
 - b. defense and security;
 - c. mining;
 - d. development of electricity and technology installation of renewable energy;
 - e. development of telecommunication network; or
 - f. development of water installation network.

(3) Exploitation of forest areas in limited public interests are designated to:

- a. public road and railway;
- b. drinking water and waste water channel;
- c. water resource management;
- d. water collecting basin;
- e. public facilities;
- f. telecommunication repeater;
- g. radio broadcasting station; or
- h. television relay station.

(4) Development outside forestry activities that can support the management of forests needs no the borrowing for exploitation purpose but can become part of the forest planning and management.

(5) The borrowing of forest areas for development outside the forestry activities as meant in paragraphs (2) and (3) can be realized with the provision as follows:

- a. the borrowing of forest areas for exploitation purpose is given selectively to only activities not causing serious damage and disappearing functions of the forests.
- b. Mining by a open pite system in protected forests is forbidden.

CHAPTER III OBJECT OF BORROWING OF FOREST AREAS

Article 16

Forest areas, which can be given license to use forest areas for exploitation purposes are areas of production and protected forests.

Article 17

In the case of the requested forest areas being located in working area of Perum Perhutani or already charged with Business License to Exploit Timber Forest Products (IUPHHK) in natural forests or Business License to Exploit Timber Forest Products (IUPHHK) in timber estate:

- a. technical consideration must be obtained from Perum Perhutani or there is a statement that licensee raises no objection. The technical consideration from Perum Perhutani or the statement as meant in letter a only can be given if the activity causes timber or non-timber production to loose maximally 10% of the forest management conservation plan and is accompanied by imposition of obligation on applicant to raise forest productivity in the forest management compartment.

- b. Reduction of the timber or non-timber forest production as meant in point b is regulated as follows:
- 1) < 30,000 hectares, maximally 10%;
 - 2) 30,000 - 50,000 hectares, maximally 6%;
 - 3) 50,000 - 70,000 hectares, maximally 4%;
 - 4) > 70,000 hectares, maximally 3%.

CHAPTER IV

PROCEDURES FOR SUBMITTING APPLICATION

Article 8

- (1) Application for borrowing forest areas for exploitation purpose is submitted by leaders of government institutions/executive directors of companies/chairpersons of cooperatives to the Minister with a copy made available to:
- a. The Secretary General of the Forestry Ministry;
 - b. The Head of the Forestry Planology Board;
 - c. The Director General of Forestry Production Development;
 - d. The Director general of Forest Protection and Nature Conservation;
 - e. The Director General of Land Rehabilitation and Social Forestry.
- (2) The application as meant in paragraph (1) is accompanied by:
- a. Forest Area Utilization Plan and action plan accompanied by site map and size of the requested forest area as well as the latest satellite image with minimal resolution 15 m;
 - b. Recommendation of local regent/mayor and governor on the basis of technical consideration from the institution in charge of forestry affairs;
 - c. Environmental impact analysis already ratified by the authorized institutions, unless otherwise activities are not required for formulating environmental impact analysis;
 - d. Technical consideration from Perum Perhutani or no-objection statement from holder of IUPHHK;
 - e. Statement of readiness to meet all obligations and bear all costs related to the application.

CHAPTER V

PROCEDURES FOR SETTLEMENT OF APPLICATION

Article 9

The Head of the Forestry Planology Board coordinates first-echelon concerned within the Forestry Ministry to give recommendation/consideration to the Minister.

Article 10

- (1) In the framework of forwarding technical consideration to the Minister as meant in Article 9, in the case of further study being needed, the Head of the Forestry Planology Board establishes an assessment team consisting of representatives of the first-echelon concerned and other related institutions.
- (2) The establishment of the Assessment Team as meant in paragraph (1) is realized by the Head of the Forestry Planology Board.
- (3) Result of the assessment is reported by the Chairman of the Team to the Head of the Forestry Planology Board and forwarded to the Minister to obtain a decision.
- (4) Costs arising from the establishment of the Assessment Team and activity are borne by applicant with the provision that the financing does not guarantee that the application must be fulfilled.

Article 11

- (1) Based on decision of the Minister as meant in Article 10, the Head of the Forestry Planology Board prepares a concept of letter of rejection or approval of the application.
- (2) In the case of an application being rejected, the Minister issues a letter of rejection of the application.
- (3) In the case of an application being approved, the Minister issues principal approval of the borrowing of forest areas for exploitation purposes, which contains obligations that the application must fulfill.
- (4) The obligations as meant in paragraph (3) are fulfilled by applicant in not later than 2 (two) years.

CHAPTER VI

OBLIGATION OF APPLICANT

Article 12

- (1) The obligations of applicants securing principal approval of the borrowing of forest areas for exploitation purposes without compensation are, among others:
 - a. bearing costs of measuring, mapping and pegging of border mark of the borrowed forest areas;
 - b. bearing cost of formulation of inventory of upright and paying compensation for the value of upright of the borrowed forest areas;

- c. making statement of readiness before a notary to undertake reclamation and reforestation in forest areas already not used anymore without waiting for the expiration of the borrowing period;
- d. making statement of readiness before notary to maintain security of the borrowed forest areas and surroundings;
- e. making statement of readiness before notary to avoid and prevent forest damage, erosion, landslide and forest fire in the implementation of activities in site;
- f. making statement of readiness before notary to facilitate central and regional forestry apparatuses to undertake monitoring and evaluation in site.

(2) The obligations of applicants securing principal approval of the borrowing of forest areas for exploitation purposes with compensation are, among others:

- a. providing and giving up clear and clean non-forest-area land plot to the Forestry Ministry as compensation for the exploited forest area;
- b. making statement of readiness before notary to implement reforestation and bear cost of reforestation of the compensatory land;
- c. bearing costs of measuring, mapping and pegging of border marks of the exploited forest areas and compensatory land;
- d. bearing cost of formulation of inventory of upright and paying compensation for the value of upright of the exploited forest areas;
- e. making statement of readiness before notary to maintain security of the borrowed forest areas and surroundings;
- f. making statement of readiness before notary to avoid and prevent forest damage, erosion, landslide and forest fire in the implementation of activities in site;
- g. making statement of readiness before a notary to undertake reclamation and reforestation in forest areas already not used anymore without waiting for the expiration of the borrowing period;
- h. making statement of readiness before notary to

facilitate central and regional forestry apparatuses to undertake monitoring and evaluation in site.

(3) In the case of requested forest areas being timber estate, the applicant:

- a. pays compensation for the value of upright to right holder or government for exempting it from right;
- b. pays forest royalty (PSDH) and reforestation fund (DR) to the government;
- c. In areas already charged with right, is subjected to the obligation to substitute Contribution to Forest Concession (IHPH)/Business License to Exploit Timber Forest Products (IUPHHK) already paid by concessionaire holder on the basis of the size of the exploited areas to the concessionaire holders in accordance with the tariff in force;
- d. Pays investment cost proportionally in accordance with the size of timber estate area, which is borrowed and the borrowing period.

(4) In the case of requested forest areas being natural forest, the applicant:

- a. pays compensation for the value of upright to the government;
- b. pays forest royalty (PSDH) and reforestation fund (DR) to the government;
- c. In areas already charged with right, is subjected to the obligation to substitute Contribution to Forest Concession (IHPH)/Business License to Exploit Timber Forest Products (IUPHHK) already paid by concessionaire holder on the basis of the size of the exploited areas to the concessionaire holders in accordance with the tariff in force;
- d. Pays investment cost proportionally in accordance with the size of timber estate area, which is borrowed and the borrowing period.

(5) Utilization of timber in the exploited forest areas as meant in paragraphs (3) and (4) is regulated in accordance with the provisions in force.

ARTICLE 13 (TO BE CONTINUES)

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[Continued from Business News No. 7361 - 7362 pages 27A - 30A]

Article 13

- (1) The compensatory land plot as meant in Article 12 paragraph (2) must meet the following requirements:
 - a. having clear status and free from right of other parties or free from all kinds of charge;
 - b. directly sharing border with forest areas;
 - c. located inside the same sub-river stream area (sub-DAS) or River Stream Area (DAS) and island;
 - d. able to reforestate conventionally.
- (2) Exploitation of forest areas on the site just can be realized after applicants fulfill the stipulated obligations.
- (3) Dispensation to activities of exploitation of forest areas on the site before the obligations are fulfilled can be given by the Minister for the following conditions:
 - a. settlement of impacts of natural disaster;
 - b. settlement of emergency activities for defense and security interests;
 - c. strategic projects whose postponement implies on state loss.

Article 14

- (1) Technique of reforestation of compensatory land plot, including kinds of plants is stipulated in accordance with the designation of forest areas.
- (2) Realization of reforestation of compensatory land plot is completed in not later than 2 (two) years after the compensatory land plot is given up.
- (3) Evaluation of the success of reforestation plants of compensatory land plots is executed upon a half circle of kinds of the stipulated plants and delivery of plants resulting from reforestation of compensatory land plot is executed at the end of circle (end of the contract/agreement period).
- (4) Delivery of plants resulting from the reforestation as meant in paragraph (2) is mentioned in Account of Delivery of reforestation plants in compensatory land plot from borrower to forest manager.

Article 15

Provisions on reclamation and criteria for the success of forest reclamation are regulated by a specific regulation of the Minister.

CHAPTER VII
COMPENSATION

Article 16

- (1) The borrowing of forest areas for exploitation purposes is realized by means of:
- a. providing and giving up compensatory area;
 - b. without providing or giving up compensatory area.
- (2) The borrowing of forest areas for exploitation purpose without compensation as meant in paragraph (1) letter b only can be given to non commercial activities realized and owned by government institutions in provinces where the size of forest area is more than 30% of the size of mainland of the said provinces.

Article 17

- (1) The borrowing of forest areas for exploitation purposes by compensation as meant in Article 16 paragraph (1) letter a is stipulated with the provisions as follows:
- a. in the case of the borrowing of forest areas for commercial exploitation purpose, applicants are obliged to provide and give up compensatory land plot as wide as twice of the size of the exploited forest area to the Ministry of Forestry, which is clear and clean and reforested;
 - b. in the case of the borrowing of forest areas for non-commercial exploitation purpose in provinces where the size of forest area is less than 30% of the size of mainland of the province, applicants are obliged to provide and give up compensatory land plot as wide as the size of the exploited forest area to the Ministry of Forestry, which is clear and clean and reforested;
 - c. in the case of the borrowing of forest areas for non-commercial exploitation purpose in provinces where the size of forest area is more than 30% of the size of mainland of the province, applicants are obliged to provide and give up compensatory land plot as wide as twice of the size of the exploited forest area to the Ministry of Forestry, which is clear and clean and reforested.

- (2) The compensatory land plot must be fulfilled by appli-

cants in not later than 2 (two) years as from the date of issuance of principal approval of the borrowing of forest area for exploitation purpose by the Minister.

- (3) In the case of applicants being unable to give up compensatory land plot in 2 (two) years, especially for the borrowing of forest areas for commercial exploitation purpose, the compensatory land plot can be substituted by the fund used as Non-Tax State Revenue (PNBP) of the Forestry Ministry with the amount accounting for 1% of the value of price per production unit of all production.
- (4) The provision as meant in paragraph (3) must be mentioned on the utilization of forest area.
- (5) Compensatory land plot to be received by the Forestry Ministry must be charged with a title of right on behalf of applicant and the right has been relinquished to become free state land designated to forest area.
- (6) Further implementation of the provision as meant in paragraph (5) is regulated by the Head of the Forestry Planology Board.
- (7) Utilization of forest area for the development of telecommunications networks (repeater, tower and others) is subjected to compensation in the form of fund used as PNBP of the Forestry Ministry whose value is stipulated in accordance with the value of land around the location of the borrowed land.

CHAPTER VIII
LICENSE TO BORROW FOREST AREA FOR
EXPLOITATION PURPOSE

Article 18

- (1) License to borrow forest area for exploitation purpose is issued by the Minister after all obligations in the principal approval are fulfilled.
- (2) Exception from the provision as meant in paragraph (1), license to borrow forest area for exploitation purpose is issued by the provision as regulated in Article 13 paragraph (3).

CHAPTER IX

PERIOD AND EXTENSION OF LICENSE TO BORROW
FOREST AREA FOR EXPLOITATION PURPOSE

Article 19

A license to borrow forest area for exploitation purpose is granted for a period of 5 (five) years, in accordance with the validity period of license/contract of activities outside the forestry affairs.

Article 20

(1) Application for extending the borrowing of forest area is submitted in not later than 6 (six) months before the expiration of the license, addressed to the Head of the Forestry Planology Board with a copy made available to the Minister.

(2) The extension of the borrowing of forest areas as meant in paragraph (1) only can be considered after activities of exploitation of the forest areas and fulfillment of obligations are evaluated.

(3) Authority to issue the extension of the borrowing of forest areas for exploitation purposes is given by the Head of the Forestry Planology Board.

CHAPTER X

MONITORING AND EVALUATION

Article 21

(1) Monitoring is executed minimally once in one year, coordinated by the Head of Provincial Service in charge of forestry affairs with the members consisting of representatives of the Forest Area Stabilization Center, River Stream Area Management Center, Provincial Environmental Impact Controlling Board, and Regental/Municipal Service in charge of Forestry Affairs.

(2) Evaluation is executed minimally once in 5 (five) years, coordinated by the Head of Provincial Service in charge of Forestry Affairs with the composition of Team consisting of the Forest Area Stabilization Center, River Stream Area Management Center, Related Technical Executing Unit of the Forestry Ministry, Provincial Environmental Impact Controlling Board, and Regental/Municipal Service in charge of Forestry Af-

fairs under supervision of the Forestry Planology Board.

(3) Costs of the monitoring and evaluation as meant in paragraphs (1) and (2) are borne by holders of license to borrow forest areas for exploitation purpose.

(4) Further implementation of the provisions as meant in paragraphs (1) and (2) is regulated by the Head of the Forestry Planology Board.

Article 22

If results of evaluation of the application of obligations in the borrowing of forest areas found that the borrowers do not fulfill their obligations, the relevant will be subjected to sanction in accordance with the provisions of legislation in force.

CHAPTER XI

NULLIFICATION OF LICENSE TO BORROW FOREST
AREA FOR EXPLOITATION PURPOSE

Article 23

(1) Principal approval or the borrowing of forest areas for exploitation purpose becomes null if:

- The period expired;
- Principal approval is revoked by licensor as sanction imposed on licensee;
- Principal approval is given back by licensee by a written statement to licensor before the period of principal or expiration.

(2) The sanction as meant in paragraph (1) letter b is subjected if:

- The forest area is not exploited in accordance with the provisions mentioned in approval and/or the borrowing of forest area;
- The borrowing of forest area is transferred to other party without approval from the Minister; or
- The exploited forest area is abandoned before expiring.

(3) The sanction in the form of revocation is imposed after the licensee is warned by the Head of the

Forestry Planology Board three times at a time interval of 30 (thirty) working days as from the date of receipt of the warning.

- (4) Nullification of the principal approval or the borrowing of forest areas as meant in paragraph (1) does not exempt licensee from the obligations to:
- a. pay wholly financial liabilities as well as meet other obligation stipulated by the licensor;
 - b. implement the stipulated provisions in connection with the expiration of the license in accordance with the provisions in force.
- (5) When the license becomes null, the planted plants become state asset while the existence of facilities and infrastructures already built is decided by the licensor with the consequence that the financing arising from is borne by borrower of forest area.
- (6) The Minister can nullify license to borrow forest area on the basis of certain considerations.

CHAPTER XII
TRANSITIONAL PROVISION

Article 24

- (1) Exploitation of forest area already followed by agreement on the borrowing of forest areas for exploitation purpose remains effective until the period of the borrowing expires, while the extension is executed in accordance with the provisions in this regulation.
- (2) Approval of the borrowing of forest area already existing before the stipulation of this regulation and not yet followed up by agreement on the borrowing remains effective and is further processed in accordance with the provisions as ruled in this regulation.
- (3) In the case of forest areas changing in function from production forest to protected forest, the borrowing of forest area already existing before the stipulation of this regulation still continues with the function as production forest until the period of the borrowing agreement expires.

CHAPTER XIII
CONCLUSION

Article 25

With the stipulation of this regulation, Decree of the Minister of Forestry No. 55/Kpts-II/1994, Decree of the Minister of Forestry No. 41/Kpts-II/1996, Decree of the Minister of Forestry No. 614/Kpts-II/1997 and Decree of the Minister of Forestry No. 720/Kpts-II/1998 are declared null and void.

Article 26

The regulation comes into force as from the date of stipulation.

Stipulated in Jakarta
On March 10, 2006
THE MINISTER OF FORESTRY
Sgd
H.M.S. KABAN, SE. M.Si

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