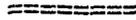


FORESTRY



DEPARTMENT OF FORESTRY

**DECREE OF THE MINISTER OF FORESTRY
NO. 292/KPTS-II/1995 ; DATED JUNE 12, 1995**

R E

FOREST AREA SWAPPING

THE MINISTER OF FORESTRY,

- Considering :**
- a. that in principle the use of forest areas must be in conformity with their function and designation as stipulated in Act No. 5 of 1967 on Basic Stipulations on Forestry and Act No. 5 of 1990 on the Conservation of Biological Natural Resources and their Ecosystem;
 - b. that to accommodate the interest of development which is strategic in nature or is concerned with the limited interest of the public and which compels the use of forest areas, the use of forest areas must be settled by means of swapping;
 - c. that the stipulation on swapping which is regulated in the Decree of the Minister of Agriculture No. 178/Kpts/Um/4/1975 on the General Guidelines on the Change in Forest Area Boundaries jis the Decree of the Minister of Forestry No. 164/Kpts-II/1994 and the Decree of the Minister of Forestry No. 419/Kpts-II/1994 on the Guideline on Forest-Area Swapping must be adjusted to the present circumstances.
 - d. that in connection with the above-mentioned matter it is deemed necessary to stipulate A Guideline on Forest Area Swapping in a Decree of the Minister of Forestry.
- Bearing in mind :**
1. Act No. 5 of 1960 on the Basic Regulation of Agrarian Principles;
 2. Act No. 5 of 1967 on Basic Stipulations on Forestry;
 3. Act No. 5 of 1990 on the Conservation of Biological Natural Resources and their Ecosystem;
 4. Act No. 24 of 1992 on the Spatial Layout Arrangement;

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5. Government Regulation No. 21 of 1970 jo Government Regulation No. 18 of 1975 on Forest Concessions and Forest Produce Collection Rights;
6. Government Regulation No. 33 of 1970 on Forest Planning;
7. Government Regulation No. 28 of 1985 on Forest Protection;
8. Government Regulation No. 36 of 1986 on State Forestry Public Corporation;
9. Government Regulation No. 7 of 1990 on Timber Estate Concessions;
10. Presidential Decree No. 15 of 1984 jo Presidential Decree No. 53 of 1993 on the Organizational Structure of Ministries;
11. Presidential Decree No. 32 of 1990 on the Management of Protected Forests;
12. Presidential Decree No. 55 of 1993 on Land Appropriation for the Implementation of Development in the Interest of the Public;
13. Presidential Decree No. 96/M/1993 on the Establishment of Development Cabinet VI;
14. Decree of the Minister of Forestry No. 399/Kpts-II/1993 on the Guideline on Forest Confirmation;
15. Decree of the Minister of Forestry No. 677/Kpts-II/1993 on the Organizational Structure and the Working System of the Ministry of Forestry.

Observing : The Presidential Directive dated February 3, 1994.

H A S D E C I D E D :

To stipulate : **THE DECREE OF THE MINISTER OF FORESTRY ON THE GUIDELINE ON FOREST-AREA SWAPPING.**

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CHAPTER I

GENERAL PROVISIONS

Article 1

Referred to in this Decree as :

1. Forest areas shall be certain areas which the Ministry of Forestry has stipulated to be maintained as permanent forests.
2. Forest-area swapping shall be an activity of giving up a permanent forest in the interest of development outside-the forestry sector, which is made up for by turning a place of land in substitute into a forest area while the activity of giving up the permanent forest area cannot be carried out by means of relocating the function of converted production forests into permanent production forests.
3. The act of giving up a forest area shall be an act of giving up a permanent forest area in the interest of development outside the forestry sector.
4. Land in substitute shall be a non-forest-area place of land which shall be turned into a forest area as a substitute for a given-up permanent forest area.
5. A limited public interest shall be the interest of the entire community with respect to which has development shall be implemented and owned by Government agencies and shall not be used to seek after profits, in the areas of defence and security facilities, the construction of public roads, water disposal sewages, dams, reservoirs and other irrigation structures, harbours or airports or terminals , public cemetery facilities, public safety facilities, telecommunications repeaters, radio broadcasting stations and television relay stations along with their supporting facilities.
6. A strategic project shall be a project which is established in the interest of the development exerting a great influence on national economic progress and public welfare and enjoying the Government's priority and for which, owing to the nature of the project, there shall be no location other than a forest area.
7. Occupation shall be an act of occupying a forest area by the community without a permit from the Minister of Forestry.
8. An enclave shall be a piece of land owned by a third party and located in a forest area.

CHAPTER II

THE PRINCIPLE, BASIS AND OBJECTIVE OF FOREST-AREA SWAPPING

Article 2

Basically the act of swapping forest areas must not reduce the existing extent of permanent forest areas.

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Article 3

The act of forest - area swapping shall be implemented on the basis of an approval from the Minister of Forestry.

Article 4

- (1) The act of forest-area swapping shall be aimed at accommodating the interest of development which is strategic in nature or is concerned with public interest and the implementation of which compels the use of forest areas without reducing the extent of the forest themselves.
- (2) Forest-area swapping is permitted only for the following :
 - a. The construction of projects in the limited interest of the public implemented by government agencies;
 - b. The construction of strategic projects;
 - c. The elimination of enclaves in the framework of facilitating forest area management;
 - d. The settlement of the occupation of land belonging to a forest area without a permit from the Minister of Forestry;
 - e. The repair of forest area boundaries.
- (3) The Minister of Forestry shall submit to the President to obtain his decision applications regarding forest areas for purposes other than those referred to in paragraph (2).

CHAPTER III

FOREST AREAS WHICH CAN BE SWAPPED

Article 5

Basically forest areas which can be swapped shall be permanent forest areas which serve as production forests.

CHAPTER IV

THE PROCEDURE FOR SUBMITTING APPLICATIONS

Article 6

- (1) An application for forest-area swapping shall be submitted to the Minister of Forestry through
 - a. The Head of a local Provincial Office of the Ministry of Forestry as far as this is concerned with areas out side the working territory of state-owned forestry company Perum Perhutani and a copy shall be submitted to the First-Level Region Forestry Service or the Head of the Technical Executive Unit concerned.
 - b. The President Director of Perum Perhutani or the Head of a local Unit of Perum Perhutani, as far as this is concerned with the working territory of Perum Perhutani and a copy shall be submitted to the Head of a local Regional Office of the Ministry of Forestry.
- (2) The Head of a Regional Office of the Ministry of Forestry as referred to in paragraph (1) letter a shall pass on the said application along with technical considerations to the Minister of Forestry within an interval of 15 (fifteen) working days as from the date of the receipt of the said application, with copies being submitted to :
 - a. The Secretary General of the Minister of Forestry;
 - b. The Director General of Forest Inventory and Use System;
 - c. The Director General of Forest Concession, as far as this is concerned with production forest areas on which there are Forest Concessions or Timber Estate Concessions.
- (3) The Head of a Unit of Perum Perhutani as referred to in paragraph (1) letter b and receiving the application for forest-area swapping shall pass on the application along with technical considerations to the President Director of Perum Perhutani within an interval of 15 (fifteen) working days as from the receipt of the application with a copy being submitted to the Head of a local Regional Office of the Ministry of Forestry.
- (4) The President Director of Perum Perhutani shall pass on the application as referred to in paragraph (1) letter b and paragraph (3) along with technical considerations to the Minister of Forestry within an interval of 15 (fifteen) working days as from the receipt of the application, with copies being submitted to the Secretary General of the Ministry of Forestry and the Director General of Forest Inventory and Use System.

CHAPTER V

THE PROCEDURE FOR THE SETTLEMENT OF AN APPLICATION

Article 7

- (1) The Secretary General shall coordinate technical suggestions/consideration from relevant Echelon I officials within the Ministry of Forestry in connection with the application as referred to in Article 6.

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- (2) Relevant Echelon I officials shall convey the technical suggestions/consideration to the Secretary General within an interval of 20 (twenty) working days as from the receipt of the application.
- (3) The Secretary General shall convey the technical suggestions and consideration to the Minister of Forestry within an interval of 20 (twenty) working days as from the receipt of the technical suggestions/consideration from the relevant Echelon I officials in order to obtain further decision.

Article 8

- (1) In the event of field data still being needed, field inspection and studies may be conducted.
- (2) Field inspection and studies as referred to in paragraph (1) shall be conducted by a team which shall be set up by the Secretary General on behalf of the Minister of Forestry.
- (3) The result of the said field inspection and studies shall be submitted by the team chairman to the Minister of Forestry through the Secretary General at the latest 30 (thirty) working days after the implementation of the field inspection and studies.
- (4) Within an interval of 15 (fifteen) days as from the receipt of the report on the result of the field inspection and studies from the team chairman, the Secretary General shall pass on the result of the said field inspection and studies to the Minister of Forestry in order to have his decision.

Article 9

- (1) The Minister of Forestry shall, within an interval of 15 (fifteen) working days as from the receipt of the suggestions and consideration coordinated by the Secretary General as referred to in Article 7 paragraph (3) or the report of the team's result as referred to in Article 8 paragraph (4), make a decision on the said application.
- (2) The Secretary General shall, within an interval of 10 (ten) working days as from his receipt of a decision of the Minister of Forestry as referred to in paragraph (1), prepare the draft of a letter of approval or rejection to be signed by the Minister of Forestry.
- (3) The Minister of Forestry shall sign an approval or a rejection of the said application with an interval of 10 (ten) working days from his receipt of the draft of a letter of approval or rejection from the Secretary General.

CHAPTER VI

APPLICATION REQUIREMENTS AND APPLICANT'S OBLIGATIONS

Article 10

An application for forest-area swapping must be complete with :

- a. A location map, the extent of the area and the objective of the application;

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- b. A statement regarding the ability to fulfil the prevailing laws set forth in the letter of application or in the form of a separate statement;

Corporate data for an applicant in the form of a statutory body;

- d. A recommendation from the Governor/Head of First-Level Region.

Article 11

- (1) If the application as referred to in Article 6 is approved by the Minister of Forestry, an applicant shall have the following obligations :

- a. To prepare and surrender a land in substitute, within a maximum period of 2 (two) years as from the issuance of the letter of approval;
- b. To pay compensation for the value of plant units and Forest Produce Contribution (IHH) levies on crop forests or IHH and Reforestation Funds (DR) levies for the plant units natural forests;
- c. To pay compensation for all facilities and infrastructures existing in the forest area applied for;
- d. To pay for the expenses on boundary arrangement for both the forest area applied for and the land in substitute, charges on the reforestation of the land in substitute and other expenses arising in connection with the process of the said forest-area swapping;
- e. To draw up and sign a Swapping Agreement or an Official Report on Swapping;
- f. To see to the elimination of the right of a third of a party on the land in substitute in the land book kept by an authorized government agency.

- (2) In the event of the plant unit being granted to a holder of a timber utilization permit, the holder of the timber utilization permit (IPK) shall be obligated to pay IHH and DR as referred to in paragraph (1) letter b pursuant to the prevailing laws.

- (3) The stipulation on the compensation of the value of plant units shall be separately regulated.

Article 12

- (1) The land in substitute as referred to in Article 11 paragraph (1) letter a must fulfill the following requirements :

- a. Its status is clear and it is free from other parties' rights or free from all kinds of levies.
- b. Its location directly borders on a forest area;

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- c. It is situated in the same Sub-DAS (sub river basin) or DAS area or in a different DAS area in the same Province/First - Level Region or in a different province on the same island;
 - d. It can be reforested in an conventional way;
 - e. Priority shall be given to a place of land fulfilling the protected forest criteria.
- (2) Specially with regard to coastal/mangrove forest areas, these must be exchanged with coastal land which may be turned into a mangrove forest.
- (3) The activities of using a forest area applied for in the new field may be carried out after the applicant has fulfilled the obligations as referred to in Article 11 paragraph (1) and Article 12 paragraph (1).

CHAPTER VII

THE RATIO OF FOREST-AREA SWAPPING

Article 13

- (1) The ratio of forest-area swapping is determined as follows :
- a. For development in the limited interest of the public carried out by the government it shall be 1 : 1;
 - b. For the construction of strategic projects within an impact on national economic progress and public welfare which the Government gives priority to it shall be 1 : 2;
 - c. For the settlement of disputes in the form of forest area occupation or enclaves it shall be 1 : 1;
 - d. For swapping as referred to in Article 4 paragraph (3) it shall be at least 1 : 3.
- (2) To determine the swapping ration as referred to in paragraph (1) letter d a Team of Assessors shall be set up with membership to be composed of among others representatives of the Ministry of Finance, the Office of the State Minister of Agrarian Affairs/National Land Agency, the Ministry of Home Affairs/Regional Administrations concerned and the Ministry of Forestry.
- (3) To determine the nature of the construction of stategic project as referred to in paragraph (1) letter b, an assessment shall be made by the Team as referred to in Article 8 paragraph (2).

CHAPTER VIII

SWAPPING AGREEMENTS AND OFFICIAL REPORTS ON SWAPPING

Article 14

- (1) A Forest-Area Swapping Agreement or an Official Report on Forest-Area Swapping shall be drawn up and signed by the applicant along with :
 - a. the Minister of Forestry in cases strategic in nature;
 - b. the Head of a local Regional Office of the Ministry of Forestry with respect to other purposes;
 - c. the President Director of Perum Perhutani or an official he assigns for a forest area included within the working territory of Perum Perhutani.
- (2) The model or form of a Swapping Agreement and an Official Report on Swapping as referred to in paragraph (1) shall be as attached.

CHAPTER IX

SANCTIONS

Article 15

An Agreement on forest-area swapping may be cancelled by the Minister of Forestry if a licence holder :

- a. Does not fulfill the stipulations or obligations within a stipulated interval;
- b. Transferring the right obtained from the said swapping agreement to another party without the approval of the Minister of Forestry.

CHAPTER X

TRANSITIONAL PROVISION

Article 16

An application for forest-area swapping the process of which has not been concluded when this decision comes into force shall continue to be processed pursuant to the Decree of the Minister of Forestry No. 164/Kpts-II/1994 jo. Decree of the Minister of Forestry No. 419/Kpts-II/1994.

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CHAPTER XI
CLOSING PROVISIONS

Article 17

With the enforcement of this decree :

- a. the Decree of the Minister of Agriculture No. 178/Kpts/Um/4/1975 on a General Guideline on the Change in Forest Area Boundaries, as far as it is concerned with forest-area swapping;
- b. the Decree of the Minister of Forestry No. 164/Kpts-II/1994 jo Decree of the Minister of Forestry No. 419/Kpts-II/1994 on a Guideline on Forest-Area Swapping;

shall be declared null and void.

Article 18

This decree shall take effect as from the date of stipulation.

Stipulated at : JAKARTA
On : June 12, 1995

THE MINISTER OF FORESTRY

signed
DJAMALUDIN SURYOHADIKUSUMO