

## GUIDELINES ON THE LEASE OF FOREST AREA

(Regulation of the Minister of Forestry No. P.43/Menhut-II/2008, dated July 10, 2008)

WITH THE BLESSING OF THE ONE AND ONLY GOD  
THE MINISTER OF FORESTRY,

Considering:

- a. that based on Regulation of the Minister of Forestry No. P.12/Menhut-II/2004, the use of Conservation Forest Area for mining activities has been stipulated;
- b. that based on Regulation of the Minister of Forestry No. P.14/Menhut-II/2006 in conjunction with Regulation of the Minister of Forestry No P.64/Menhut-II/2006, guidelines on the lease of forest area have been stipulated;
- c. that with the stipulation of Regulation of the Minister of Forestry No. P.12/Menhut-II/2004 and Regulation of the Minister of Forestry No P.14/Menhut-II/2006 in conjunction with Regulation of the Minister of Forestry No P.64/Menhut-II/2006 as stated in letters a and b, it is necessary to make perfections on the dynamics of the use of forest areas for purposes outside of forestry activities by taking into account the preservation of natural resources;
- d. that with the stipulation of Government Regulation No. 2 Year 2008 concerning Types and Tariff on types of Non-Tax State Income originating from the use of forest areas for the purpose of development outside of forestry activities prevailing within the Forestry Department, it is necessary to make perfections on the imposing of Non-Tax State Income as a replacement of compensation of land;
- e. that based on the considerations referred to in letters a, b, and c, it is necessary to stipulate a regulation of the Minister of Forestry concerning Guidelines in Lease of Forest Area.

In view of:

1. Law No. 5 Year 1990 concerning the conservation of Biology Natural Resources and its Ecosystem (R.I. State Gazette Year 1990 No. 49, Supplement to Statute Book of the Republic of Indonesia No. 3419);
2. Law No. 20 Year 1997 (**BN No. 6101 pages 9A-14A and so on**) concerning Non-Tax State Income (Statute Book of the Republic of Indonesia Year 1997 No. 43, Supplement to Statute Book of the Republic of Indonesia No. 3687);
3. Law No. 23 Year 1997 (**BN No. 6092 pages 19A-21A and so on**) concerning Management of the Living Environment (Statute Book of the Republic of Indonesia Year 1997 No. 68, Supplement to Statute Book of the Republic of Indonesia No. 3699);
4. Law No. 41 Year 1999 (**BN No. 6412 pages 1A-6A and so on**) concerning Forestry, which had been amended by Law No. 19 Year 2004 (Statute Book of the Republic of Indonesia Year 1999 No. 167, Supplement to Statute Book of the Republic of Indonesia No. 3888);
5. Law No. 3 Year 2002 (**BN No. 6732 pages 1A-11A**) concerning State Defense (Statute Book of the Republic of Indonesia Year 2002 No. 3, Supplement to Statute Book of the Republic of Indonesia No. 4169);
6. Law No. 34 Year 2004 concerning Indonesia National Armed Forces (Statute Book of the Republic of Indonesia Year 2004 No. 127, Supplement to Statute Book of the Republic of Indonesia No. 4439);
7. Law No. 32 Year 2004 (**BN No. 6875 pages 15A-21A and so on**) concerning the Regional Government, which had been amended several times, lastly by Law No. 12 Year 2008 (Statute Book of the Republic of Indonesia Year 2008 No. 125, Supplement to Statute Book of the Republic of Indonesia No. 4437);
8. Law No. 26 Year 2007 (**BN No. 7599 pages 10A-30A and so on**) concerning Spatial Layout (Statute Book of the Republic of Indonesia Year 2007 No. 68, Supplement to Statute Book of the Republic of Indonesia No. 4725);
9. Government Regulation No. 30 Year 2003 concerning State Forestry Public Company (Perum Perhutani) Statute Book of the Republic of Indonesia (Statute Book of the Republic of Indonesia Year 2003 No. 67);

10. Government Regulation No. 44 Year 2004 concerning *Forestry Planning* (Statute Book of the Republic of Indonesia Year 2004 No. 146, Supplement to Statute Book of the Republic of Indonesia No. 4452);
11. Government Regulation No. 45 Year 2004 concerning *Forest Protection* (Statute Book of the Republic of Indonesia Year 2004 No. 147, Supplement to Statute Book of the Republic of Indonesia No. 4453);
12. Government Regulation No. 6 Year 2007 concerning *Forestry Pattern, Compilation of Forest Management Plan and the Utilization of Forests* (Statute Book of the Republic of Indonesia Year 2007 No. 22, Supplement to Statute Book of the Republic of Indonesia No. 4696), which had been amended by Government Regulation No. 3 Year 2008 (***BN No. 7676 pages 10A-25A and so on***) (Statute Book of the Republic of Indonesia Year 2008 No. 16, Supplement to Statute Book of the Republic of Indonesia No. 4814);
13. Government Regulation No. 38 Year 2007 concerning *Division of Government Affairs between the Government, Province Regional Government, and Regency/Municipality Regional Government* (Statute Book of the Republic of Indonesia Year 2007 No. 82, Supplement to Statute Book of the Republic of Indonesia No. 4737);
14. Government Regulation No. 2 Year 2008 (***BN No. 7652 pages 26A-30A***) concerning *Types and Tariff of Non-Tax State Income originating from the use of forest area for the purpose of development beyond forestry activities prevailing within the Forestry Department* (Statute Book of the Republic of Indonesia Year 2008 No. 15, Supplement to Statute Book of the Republic of Indonesia No. 4813);
15. Government Regulation No. 26 Year 2008 (***BN No. 7740 pages 10A-26A and so on***) concerning *National Region Spatial Layout (RTRWN)* (Statute Book of the Republic of Indonesia Year 2008 No. 48, Supplement to Statute Book of the Republic of Indonesia No. 4833);
16. Presidential Regulation No. 5 Year 2006 concerning *National Energy Policy*;
17. Presidential Decree No. 41 Year 2004 (***BN No. 7063 pages 16A-18A***) concerning *Permits or Agreements in the Sector of Mining Existing within Forest Areas*;
18. Presidential Decree No. 187/M Year 2004 (***BN No. 7128 pages 30A-31A***) concerning the Establishment of the United Indonesia Cabinet, which had been amended several times, lastly by Presidential Decree No. 31/P Year 2007;
19. Presidential Decree No. 9 Year 2005 (***BN No. 7182 pages 2A-23A***) concerning *Position, Duty, Functions, Organization Structure, and Work Procedure of State Ministries of the Republic of Indonesia*;
20. Decree of the Minister of Forestry No. 146/Kpts-II/1999 concerning *Guidelines for the Reclamation of Former Mines in Forest Areas*;
21. Decision of the Minister of Forestry No. 32/Kpts-II/2001 concerning *Criteria and Standard of Confirmation of a Forest Area*;
22. Decree of the Minister of Forestry No. 70/Kpts-II/2001 concerning *Stipulation of a Forest Area, Change of Status and Function of Forest Area*, which had been amended by Decision of the Minister of Forestry No. SK. 48/Kpts-II/2004;
23. Regulation of the Minister of Forestry No. P. 13/Menhut-II/2005 concerning *Organization and Work Procedure of the Forestry Department*, which had been amended several times, lastly by Regulation of the Minister of Forestry No. P. 15/Menhut-II/2008;

#### DECIDES :

To stipulate:

THE REGULATION OF THE MINISTER OF FORESTRY CONCERNING GUIDELINES ON LEASE OF FOREST AREA.

#### CHAPTER I

#### GENERAL PROVISIONS

#### Article 1

In this Regulation, what is meant by:

1. Lease of a forest area is the use of part of a forest area to another party for the purpose of development beyond forestry activities without changing the status, allotment and functions of the area.
2. Lease of a forest area that is non-commercial in nature is an activity for the purpose of development beyond forestry activities not for profit purposes and the lessee is not imposed with tariff for the use of said facilities.

3. Compensation is an obligation of a forest area lessee to provide and deliver a piece of land that is not a forest area or to pay an amount of fund treated as Non Tax State Income (PNBP) as a replacement of land compensation in accordance with Legislations.
4. Non-Tax State Income from the use of Forest area hereinafter referred to as PNBP is a Non-Tax State Income originating from the use of a forest area for the purpose of development beyond forestry activities prevailing within the Forestry Department as a replacement of land compensation in accordance with Legislations.
5. Condition of proposed compensation land that is said as clear and clean is a condition of a proposed compensation land for where-in its status is clear, not in conflict, *not under the control of un-rightful parties*, and not borne with right on certain land, and not managed by other parties.
6. Reclamation is an effort to correct or recover land and vegetations in a forest area due to the use of forest area so that it can function at an optimum in accordance with its allotment.
7. Width of forest area that is more than 30 % (thirty percent) is the width of a forest area in a province that is based on Decision of the Minister of Forestry on the appointment of a forest area of a province where-in the width of its forest area is more than 30 % (thirty percent) of the width of land of the province.
8. L1 is as meant in Government Regulation No. 2 Year 2008, i.e. the area disturbed by the use of forest area for supporting means and infrastructures having a permanent nature for the duration of the use of a forest area, and opening of active mines (ha) which further shall be charged with one (1) times the tariff of PNBP of the use of Forest area.
9. L2 is as meant in Government Regulation No. 2 Year 2008, i.e. the area disturbed by the use of forest area having a temporary nature which technically can be immediately reclaimed (ha), which further shall be charged with four (4) times the tariff of PNBP of the use of Forest area.
10. L3 is as meant in Government Regulation No. 2 Year 2008, i.e. the area disturbed by the use of forest area having a permanent nature which technically cannot be reclaimed (ha), which further shall be charged with two (2) times the tariff of PNBP of the use of Forest area until the area is returned.
11. Minister is the Minister charged with duties and responsibilities in the sector of forestry.

#### Article 2

Lease of forest area shall be performed based on a permit of the Minister.

#### Article 3

Lease of forest area is purported to:

- a. Limit and regulate the use of a portion of a forest area for strategic purposes or limited public interest outside of a forest sector without changing the status, functions and allotment of a forest area.
- b. To prevent the presence of enclaves within a forest area.

### CHAPTER II

#### FORM OF FOREST AREA LEASE

#### Article 4

Lease of a forest area can be in the form of:

- a. Lease of forest area for the purpose of development beyond forestry activities having a non-commercial nature in provinces where the width of its forest area is more than 30% (thirty percent) of the province land width, with a PNBP compensation on the use of forest area as of Rp. 0,00 (zero rupiah).
- b. Lease of forest area for the purpose of development beyond forestry activities in provinces where the width of its forest area is more than 30% (thirty percent) of the province land width, with a PNBP compensation on the use of forest area.
- c. Lease of forest area for the purpose of development beyond forestry activities in provinces where the width of its forest area is less than 30% (thirty percent) of the province land width, with a compensation in the form of land that is not a forest area.

### Article 5

- (1) Lease of forest area for the purpose of development beyond forestry activities covers:
- a. Religious purposes;
  - b. Defense and Security;
  - c. Mining;
  - d. Development of electricity and renewable energy technology installations;
  - e. Development of telecommunication nets;
  - f. Development of water installation nets;
  - g. Public roads, railroads;
  - h. Channels of clean water and/or waste water;
  - i. Irrigation;
  - j. Water containment basins;
  - k. Public facilities;
  - l. Telecommunication repeaters;
  - m. Radio transmission stations;
  - n. Television relay stations;
  - o. Sea/air traffic safety means.
- (2) For the development of roads, canals, or the like not categorized as public roads as meant in paragraph (1) letter g among others for the purpose of transporting farm yields or others, it can be processed with a lease of forest area.

### Article 6

- (1) Development activities beyond forestry activities within Perum Perhutani work area able to support the management of forest, does not require any lease of forest area, but it can be a part of the management of Perum Perhutani forest management.
- (2) The activities meant in paragraph (1) must firstly receive an approval of the Minister which shall be followed up by cooperation between Perum Perhutani and the applicant.

## CHAPTER III

### OBJECT OF FOREST AREA LEASE

#### Article 7

- (1) Forest areas that can be provided with lease of forest area permit are only production forest areas and Conservation Forest Areas.

- (2) In Conservation Forest Areas, it is prohibited to carry out open pattern mining.
- (3) Open pattern mining in conservation forests is applicable only for 13 (thirteen) permits as stipulated in Presidential Decree No. 41 Year 2004 pursuant to Law No. 19 Year 2004.
- (4) Provisions and procedures on lease of forest area for open pattern mining in conservation forests as meant in paragraph (3) shall be as regulated in this Regulation.

### Article 8

- (1) In forest areas obliged to possess a permit in the field of forestry or Perum Perhutani work area, the lease of forest area for development outside of forestry, can be accounted for 10 % (ten percent) at a maximum of the permitted area or work area.
- (2) The definition referred to in paragraph (1), is not applicable for lease of forest area for state defense and sea/air traffic safety.

## CHAPTER IV

### PROCEDURE FOR THE SUBMISSION OF APPLICATION

#### Article 9

- (1) Application for the lease of forest area may be submitted by:
- a. Cooperatives;
  - b. Foundations;
  - c. State Owned Business Enterprises (BUMN) / Region Owned Business Enterprises (BUMD);
  - d. Private Business Enterprises;
  - e. Government Agencies.
- (2) The application for the lease of a forest area meant in paragraph (1) shall be submitted by the Head of Government Agencies/Management of Companies/Management of Cooperatives/Management of Foundations to the Minister, with copies to:
- a. Secretary General of the Forestry Department;
  - b. Head of Forestry Planning Body;
  - c. Director General in charge of Forestry Production Management;

d. Director . . . . .

- d. Director General in charge of Forest Protection and Nature Conservation;
- e. Director General in charge of Land Rehabilitation and Social Forestry ;
- f. Head of Forest Area Stabilization Board.

(3) The application referred to in paragraph (1) must be accompanied with KK/KP/PKP2B/SIPD/Permits/ other Agreements that had been issued by the official pursuant to its authority, except for activities not obliged to have a permit/agreement.

(4) The application referred to in paragraph (1) must be accompanied with:

- a. Work plan on the use of the forest area attached with map of the location with a 1 : 50.000 or the largest scale of the location with information of the width of the applied forest area and newest satellite imaging with a resolution detail as of 15 (fifteen) meters or a resolution detail as of more than 15 (fifteen) meters in the form of digital and hard copy signed by the applicant and stating the source of the satellite imagery;
- b. Recommendation of the Regent/Mayor for permits related with the lease of forest area issued by the Governor;
- c. Recommendation of the Governor for permits related with the lease of forest area issued by the Regent/Mayor and the Government;
- d. AMDAL (Analysis of Environmental Impact) having been legalized by the agency having the authority, except for activities not obliged to compile AMDAL, in accordance with prevailing provisions;
- e. Technical consideration from the President Director of Perum Perhutani, if the applied area is a work area of Perum Perhutani;
- f. Permit or agreement of related non-forestry sectors, except for activities not obliged to possess permit / agreement.
- g. Statement on ability to fulfill all obligations and to bear all costs related with the application;
- h. For mining activities issued by the Governor or Regent in accordance with its authority, a consideration from the Director General in charge of Coal

Mineral and Geothermal of the Department of Energy and Mineral Resources is required.

#### Article 10

Application for the lease of forest area for state defense and sea/air traffic safety means shall be submitted by the Minister provided with duties and responsibilities in the sector concerned to the Minister accompanied with requirement in the form of work plan on the use of the forest area.

#### Article 11

(1) Application for permit to use forest area for survey activities, for general research activities, and exploration activities shall be submitted by the Head of Government Agencies/ Management of Companies/Management of Cooperatives/Management of Foundations to the Minister, with copies to:

- a. Secretary General of the Forestry Department;
- b. Head of Forestry Planning Body;
- c. Director General in charge of Forestry Production Management;
- d. Director General in charge of Forest Protection and Nature Conservation;
- e. Director General in charge of Land Rehabilitation and Social Forestry;
- f. Head of Forest Area Stabilization Board.

(2) The application referred to in paragraph (1) must be accompanied with KK/KP/PKP2B/Permit/other agreements issued by officials in accordance with its authority, except for activities not obliged to possess permit/agreement.

(3) The application referred to in paragraph (1) must be accompanied with:

- a. Work plan on the use of the forest area attached with map of the location with a 1 : 50.000 or the largest scale of the location with information of the width of the applied forest area, signed by the applicant;
- b. Recommendation of the Regent/Mayor for permits related with the lease of forest area issued by the Governor;

- c. Recommendation of the Governor for permits related with the lease of forest area issued by the Regent/Mayor and Government;
- d. Technical considerations from the President Director of Perum Perhutani if the requested area is a Perum Perhutani work area;
- e. Permit or agreement of related non-forestry sectors, except for activities not obliged to possess permit / agreement.
- f. Statement on ability to fulfill all obligations and to bear all costs related with the application.
- g. For mining activities issued by the Governor or Regent/Mayor in accordance with its authority, a consideration of the Director General in charge of Coal Mineral and Geothermal of the Department of Energy and Mineral Resources is required.

#### CHAPTER V

#### PROCEDURE FOR THE SETTLEMENT OF APPLICATION

##### Article 12

- (1) Head of Forestry Planning Body shall coordinate Echelon-I officials concerned with the coverage of the Forestry Department to provide recommendations/technical considerations to the Minister to make a decision.
- (2) The technical considerations on lease of forest area meant in paragraph (1) is as follows:
  - a. For Conservation Forest area, the technical considerations shall be given by the Director General in charge of Forest Protection and Nature Conservation;
  - b. For production area forest, shall be given by the Director General in charge of Forestry Production Management;
  - c. For Perum Perhutani work area, the technical considerations shall be given by the President Director of Perum Perhutani;
  - d. The technical considerations referred to in letters a and b are responses to the copy of the application submitted by the applicant.

##### Article 13

*In the context of providing the technical considerations*

referred to in Article 12 to the Minister, particularly for open mines in conservation forest as meant in Article 7 paragraph (3), the following stages must be carried out:

- a. An integrated study by a Study Team where-in its elements shall consist of elements of related Echelon-I work units and elements of other related agencies;
- b. Formation of the Study Team referred to in letter a shall be performed by the Minister;
- c. Recommendation of the study result shall be reported by the Team Chairman to the Head of Forestry Planning Body and shall be forwarded to the Minister for a decision;
- d. Costs arising due to the formation of the Study Team and its activities shall be borne on the applicant, on condition that such costs shall not be binding.

##### Article 14

- (1) In the event the application for the lease of a forest area is rejected, the Minister shall issue a rejection letter on said application.
- (2) In the event the application for the lease of a forest area is approved, the Minister shall issue a principle approval letter on the forest area lease, covering obligations to be fulfilled by the applicant, with a term of 2 (two) years and extendable.
- (3) In the event the application for the lease of forest area is for survey activities, general research and exploration for activities outside of forestry is approved by the Minister, the Head of Forestry Planning Body on behalf of the Minister shall issue a permit approval letter for activities within the forest area containing obligations to be fulfilled by the applicant, with a term of 2 (two) years and extendable.

#### CHAPTER VI

#### OBLIGATIONS OF THE APPLICANT

##### Article 15

- (1) If the Minister approves the principle agreement on the forest area lease referred to in Article 14 paragraph (2), the applicant shall:
  - a. Bear the costs of the borders of the lease of the forest area;

- b. Bear the costs of inventorying of trees;
  - c. Perform reclamation and reforestation on the forest area that is no longer used without having to wait the termination of the term of the lease of the forest area;
  - d. Perform forest protection;
  - e. Provide facilities to forestry officers both from the Central and Region while performing monitoring and evaluation in the field;
  - f. Bear all costs due to the presence of the lease of the forest area.
  - g. considering that the fulfillment of the obligations in letters (c), (d), (e) and (f) are performed after the issuance of the lease of forest area permit, then the applicant is obliged to draw up a statement in the appearance of a notary.
- (2) If the applicant receiving the principle agreement on forest area lease with a land compensation for the lease of forest area in provinces where the width of its forest area is less than 30 % (thirty percent) of the province land width, other obligations besides the obligations referred to in the above paragraph (1) are:
- a. Provide and deliver non-forest area land to the Forestry Department that is clear and clean as compensation of the leased forest area;
  - b. Bear the costs of confirmation of forest area originating from land compensation;
  - c. Perform and bear reforestation costs on the land compensation.
- (3) In the event the applicant receiving the principle agreement on forest area lease in provinces where the width of its forest area is more than 30 % (thirty percent) of the province land width, other obligations besides the obligations referred to in the above paragraph (1) is to pay PNBP for the use of Forest Area in accordance with Legislations.
- (4) If the applied forest area is a natural forest, then other obligations besides the obligations referred to in paragraph (1) and paragraph (2) or paragraph (3) above are:
- a. To pay Forest Resources Royalty (PSDH) and Reforestation Funds (DR) which shall be paid to the Government in accordance with prevailing provisions;
  - b. In areas having been borne with utilization permit, the borrower shall be imposed with an obligation to pay the Permit Contribution that had been paid by the holder of the utilization permit based on the width of the area being used in accordance with prevailing provisions.
  - c. To pay investment costs of forest management or forest utilization to the management or holder of utilization permit due to the use of forest area according to the width of cultivated forest area being leased and the term of the lease of the forest area.
- (5) If the applied forest area is a cultivated forest or reforestation area, then other obligations besides the obligations referred to in paragraph (1) and paragraph (2) or paragraph (3) above are:
- a. To pay indemnifications of tree values to the holder of utilization permit or to the Government for those not borne with permit pursuant to planting costs sources;
  - b. To pay PSDH to the Government in accordance with prevailing provisions;
  - c. To pay Permit Contributions having been paid by the holder of utilization permit based on the width of the area used in accordance with prevailing provisions;
  - d. To pay investment costs of forest management or forest utilization to the management or holder of utilization permit due to the use of forest area according to the width of cultivated forest area being leased and the term of the lease of the forest area.

#### Article 16

Obligations of an applicant receiving an approval permit for activities in a forest area for survey activities, general research and exploration activities outside of forestry sector are as follows:

a. To . . . . .

- a. To make a report on the fulfillment of obligations stipulated in the permit for activities in the forest area periodically every six (6) months to the Minister;
  - b. To pay indemnifications of tree values of cultivated forest and PSDH or to pay PSDH and DR for trees damaged/cut in natural forest in accordance with prevailing provisions;
  - c. To pay investment costs of forest management or forest utilization to the management or the holder of utilization permit or provincial/regency services in charge of forestry due to the use of forest area according to the width of the cultivated forest area being leased and the term of the lease of the forest area;
  - d. Not to build any permanent constructions;
  - e. Perform forest protection;
  - f. Perform reclamation and rehabilitation on opened/used forest area;
  - g. Provide facilities to forestry officers both from the Central and Region while performing monitoring and evaluation in the field;
  - h. To make a statement letter on fulfilling all obligations in the appearance of a Notary.
- d. Can be re-forested conventionally;
  - e. Nullification/cancellation of right on land compensation from the land-book in the agencies having the authority; and
  - f. Recommendation of the Regent/Mayor or the Governor or National Land Body in accordance with its authority respectively.
- (2) On the proposed compensation land provided by the applicant as meant in paragraph (1), a field check shall be made to value its technical feasibility by a Team coordinated by Provincial Forestry Service, and the result there-of shall be set forth in a Report on Technical Feasibility of the proposed land compensation.
  - (3) Based on the Technical Feasibility Report referred to in paragraph (2), the Minister shall issue an approval on the proposed land compensation.
  - (4) The proposed land compensation that had been approved by the Minister as meant in paragraph (3) shall further be transferred physically in the field set forth in a Physical Field Transfer Report with the following arrangement:
    - a. In the event the leased forest area is within the work area of Perum Perhutani, the transfer shall be performed between the applicant and Perum Perhutani as basis for the management of the forest.
    - b. In the event the leased forest area is not in Perum Perhutani work area, the transfer shall be performed between the applicant and the provincial service in charge of forestry.
    - c. In the event the leased forest area is not a work area of Perum Perhutani, but the land compensation borders with Perum Perhutani work area, the transfer shall be performed between the applicant and Perum Perhutani as basis to perform the management of the forest.
    - d. The Physical Field Transfer Report contains, among others, the following matters:
      - Width and location of the transferred land compensation based on measurement of the Land Affairs Office (kadastral).

#### Article 17

The utilization of wood as a result of the lease of forest area permit referred to in Article 15 paragraph (4), Article 15 paragraph (5) and Article 16 shall be regulated in accordance with Legislations.

#### Article 18

- (1) Requirements of proposed compensation land for a forest area is as follows:
  - a. Clear status, not in conflict, not under the control of parties having no right, and not managed by other parties;
  - b. Situated directly bordering with a forest area;
  - c. Located in the same Sub-DAS; if unable to be met, entitled to be transferred within the same DAS; if it still cannot be met, it is entitled to be transferred to the area of other DAS in the same island or other islands in the same province;

- Physically, the delivered land compensation shall be in a clear status, not in conflict, not under the control of parties having no rights there-to, not borne with certain rights on the land, and not managed by other parties.
  - The Forestry Department has the right to execute management activities on the delivered land compensation.
  - Shall attach copies of valid proof of the transfer of right from the land owner to the user of the forest area, and evidences of the release of right on the land to be a forest area.
- (5) Based on the physical field transfer report referred to in paragraph (4), it shall further be followed with a transfer of documents of the land compensation from the applicant to the Head of Forestry Planning Body in the name of the Minister, and further to process the confirmation of the forest area originating from the land compensation.
- (6) Field activities on the leased forest area may be performed after the issuance of the lease permit.

#### Article 19

- (1) The Minister can provide a dispensation for the performance of activities on leased forest areas.
- (2) The dispensation referred to in paragraph (1) shall be with the following requirement:
- a. For the extension of leased forest area agreement where-in the fulfillment of requirements must be conformed to this Regulation or the extension of a lease agreement/permit still operational in the field but the extension of the leasing process is not yet issued;
  - b. For activities performed by BUMN or BUMD ;
  - c. For activities the payment there-of originates from APBN or APBD;
  - d. For activities of BUMS, the funding there-of is shared with the Government;
  - e. For national vital projects or objects;
  - f. For clean water, oil & gas, electricity and telecommunication projects.

- (3) The dispensation referred to in paragraph (1), will be given after the fulfillment of the obligations referred to in Article 15 except for land compensation, on condition that a statement on the ability to fulfill the land compensation in the appearance of a Notary.
- (4) The provision of dispensation for handling activities of natural disasters and state defense is entitled to be given without waiting for the fulfillment of the obligations referred to in Article 15.
- (5) Dispensation will be provided for a term of one (1) year and extendable in accordance with the time period of the principle approval or the time required for the settlement of land administration on the land compensation.
- (6) Holders of dispensation permit are obliged to compile a work plan on the settlement of the fulfillment of obligations.

#### Article 20

- (1) Technicalities of the reforestation of land compensation, including the types of plants is determined in accordance with the management function and plan, or utilization plan of the forest area, or reforestation plan compiled by the applicant under the guidance of the local Regional Bureau of River Basin Area Management (BP-DAS).
- (2) Realization of the reforestation of the land compensation must be completed in two (2) years at the latest after the delivery of the land compensation meant in Article 18 paragraph (4).
- (3) Evaluation of the success of reforestation plants on the land compensation shall be made at half of the cycle time of the type of stipulated vegetation, and the transfer of plants that are the yield of the reforestation of the land compensation shall be made at the end of the cycle or end of lease of forest area permit/agreement.
- (4) Transfer of the plants that are results of the reforestation meant in paragraph (2) shall be set forth in a Report on the Transfer of Reforestation Plants on the land compensation from the holder of leasing permit to the forest management/holder of utilization permit or to the provincial/regency service in charge of forestry.

(5) In the event the land compensation will become Perum Perhutani work area, then the reforestation of the land compensation shall be performed by Perum Perhutani in accordance with prevailing provisions.

#### Article 21

- (1) Reclamation on planned areas shall be performed immediately after the completion of mining activities on L1 and L2 or after the completion of the use of the forest area and before the expiry of the lease of forest area permit.
- (2) Re-vegetation in reclamation activities shall be made with a planting interval as of 4 X 4 meters or closer using forest vegetation types.
- (3) Evaluation on the success level of re-vegetation within reclamation activities shall be made on the third year after plantation, with the following provisions:
  - a. Success percentage shall be a minimum of 80 % (eighty percent) of the number of planted crops;
  - b. Percentage of healthy plants shall be a minimum of 80 % (eighty percent);

c. Evaluation shall use the census method.

- (4) Evaluation on the success level of re-vegetation within reclamation activities meant in paragraph (3) shall be performed by:
  - a. For mining sectors, by the Forest Area Stabilization Board (BPKH), by including elements-elements of BP-DAS, Monitoring Board of Production Forest Utilization (BP2HP), Department of Energy and Mineral Resources/ Provincial Mining Service, and must be set forth in a Report.
  - b. For non mining sectors, by BPKH by including BP-DAS and BP2HP, and must be set forth in a Report.
- (5) For the performance of reclamation activities in Perum Perhutani work areas, permit holders shall cooperate with Perum Perhutani in accordance with Legislations.

CHAPTER VII.....

( To be continued )

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## **GUIDELINES ON THE LEASE OF FOREST AREA**

(Regulation of the Minister of Forestry No. P.43/Menhut-II/2008, dated July 10, 2008)

[Continued from Business News No. 7765 pages 20A-29A]

### CHAPTER VII

#### FOREST AREA LEASE PERMIT

##### Article 22

- (1) Permit for forest area lease will be issued by the Minister after the fulfillment of all of the obligations in the principle approval are in accordance with prevailing provisions.
- (2) As an exception to the provision referred to in paragraph (1), the permit for forest area lease can be issued under the conditions referred to in Article 19.

##### Article 23

- (1) Permits for survey activities, for general research activities, and for exploration activities on activities outside of forestry, principle approval, and lease of forest area permit, may be transferred to another party or for a change of name after receiving a written approval from the permit issuer.

- (2) The transfer of permit or change of name referred to in paragraph (1), is performed by submitting an application to the Minister with required accompanying documents.

### CHAPTER VIII

#### RIGHTS OF LEASE PERMIT HOLDERS

##### Article 24

A holder of forest area lease permit has the right to occupy and manage as well as to carry out activities related with lease of forest area activities.

### CHAPTER IX

#### LAND COMPENSATION

##### Article 25

- (1) Lease of forest area using the land compensation method is executed by:
  - a. Providing and delivering a land compensation or;
  - b. Paying the PNBP for the use of forest area.

- (2) Lease of forest area without providing and delivering land compensation may be given only for:
- a. Non-commercial activities performed and owned by Government agencies, in provinces where the width of its forest area is more than 30% (thirty percent) of land width of the related province; or
  - b. State defense interest; or
  - c. Sea/air traffic safety means.

#### Article 26

- (1) The leasing of forest area by land compensation as referred to in Article 25 paragraph (1) letter a is regulated with the following provisions:
- a. For lease of forest areas for commercial purposes in provinces where the width of its forest area is less than 30 % (thirty percent) of the province land width, the applicant must provide and deliver land compensation that is clear and clean and re-forested to the Forestry Department in a width of two (2) times the width of the forest area to be used.
  - b. For the use of forest area that is non-commercial in nature in provinces where the width of its forest area is less than 30% (thirty percent) of the province land width, the applicant must provide and deliver land compensation that is clear and clean and re-forested to the Forestry Department in a width of one (1) times the width of the forest area to be used.
- (2) Lease of forest area thru a compensation by paying the PNBP on the use of the forest area referred to in Article 25 paragraph (1) letter b is regulated with the following provisions:
- a. For lease of forest area for commercial purposes in provinces where the width of its forest area is more than 30 % (thirty percent) of the province land width, the applicant must pay the PNBP on the use of forest area in lieu of the land compensation.
  - b. For the use of forest area that is non-commercial in nature in provinces where the width of its forest

area is more than 30% (thirty percent) of the province land width, the applicant shall pay the PNBP on the use of forest area in lieu of land compensation at a tariff of Rp 0,00 (zero rupiah).

- (3) The provision of land compensation must be fulfilled by the applicant of the forest area lease within a period of two (2) years at the latest from the issuance of the principle approval on the forest area lease by the Minister.
- (4) For the lease of forest area by paying PNBP for the use of the forest area referred to in Article 4 letter b and Article 25 paragraph (1) letter b, the amount of the PNBP is calculated based on the following formula: PNBP = (L1 x tariff) + (L2 x 4 x tariff) + (L3 x 2 x tariff) Rp/Year.
- (5) Procedure on the imposing, collecting and using PNBP fund on the use of forest area shall be regulated separately.

#### CHAPTER X

#### TERM AND EXTENSION OF FOREST AREA LEASE PERMIT

##### Article 27

- (1) Term of the permit for forest area lease is 20 (twenty) years at the longest, and extendable in accordance with permitting in its field, and may be revoked by the Minister in the event of violations of provisions of Legislations.
- (2) Permits for survey activities, for general research activities, and for exploration activities on activities outside of forestry within a forest area is given for two (2) years and extendable in accordance with its sector work plan, and may be revoked by the Head of Forestry Planning Body on behalf of the Minister in the event of violations of provisions of Legislations.
- (3) Extension for the permit of forest area lease, and permits for survey activities, for general research activities and for exploration activities on activities outside of forestry, will be given based on results of an evaluation.

- (4) *Term of the lease of forest area for the purpose of state defense and sea/air traffic safety means as well as for public roads shall apply for the duration it is still used for said purposes.*

#### Article 28

- (1) *The issuance of an extension of the term of forest area lease is made by the Minister.*
- (2) *Application for the extension of a permit on forest area lease shall be addressed to the Minister with copies as referred to in Article 9 paragraph (2) and must be submitted six (6) months at the latest before the expiry of such permit.*
- (3) *Application for the extension of permits for survey activities, general research activities and exploration activities on activities outside of forestry shall be addressed to the Minister with copies as referred to in Article 11 paragraph (1) and must be submitted three (3) months at the latest before the expiry of the permit.*
- (4) *Application for the extension of a principle approval on the use of a forest area shall be addressed to the Minister, and shall be submitted three (3) months at the latest before the expiry of the approval.*

### CHAPTER XI

#### MONITORING AND EVALUATION

##### Article 29

- (1) *Monitoring and evaluation shall be performed on the principle approval, permit for survey activities, permit for general research activities and permit for exploration activities for activities outside of forestry and agreement or lease of forest area permit.*
- (2) *Monitoring activities shall be performed at least once a year coordinated by the Head of Provincial Service in charge of Forestry, with members consisting of elements of Forest Area Stabilization Board, River Basin*

*Area Management Board, Monitoring Board on the Utilization of Production Forest, and Regency/Municipality Services In charge of Forestry.*

- (3) *Evaluation activities shall be performed at least once in five (5) years coordinated by the Head of Provincial Service In charge of Forestry with Team composition consisting of elements of the Forest Area Stabilization Board, River Basin Area Management Board, Monitoring Board on the Utilization of Production Forest, related Forestry Department UPT and Regency/Municipality Services in charge of Forestry, with a verification from the Forestry Planning Body.*
- (4) *Costs for the monitoring and evaluation referred to in paragraph (2) and paragraph (3) shall be borne on the holder of principle approval, permit for survey activities, permit for general research activities and permit for exploration activities for activities outside of forestry, and agreement or lease of forest area permit.*
- (5) *Further provisions on the performance of the requirements referred to in paragraph (1) and paragraph (2) shall be regulated by the Head of Forestry Planning Body.*

#### Article 30

*If based on the result of an evaluation on the fulfillment of the obligations in the principle approval, the permit for survey activities, for general research activities and for exploration activities for activities outside of forestry, and agreement or lease of forest area permit, it is found out that the permit holders did not fulfill their obligations, they shall be imposed to sanctions in accordance with Legislations.*

### CHAPTER XII

#### NULLIFICATION OF FOREST AREA LEASE PERMIT

##### Article 31

- (1) *Permit Approval for survey activities, for general research activities and for exploration activities for activities outside of forestry, principle approval and lease of forest area permit shall be nullified if:*

- a. Term expired;
  - b. Revoked by the permit issuer as a sanction imposed to a permit holder;
  - c. Returned by a permit holder with a written statement to the permit issuer before the expiry date of the principle approval.
- (2) Sanctions meant in paragraph (1) letter b shall be imposed if:
- a. Not using the forest area or violated provisions stated in the permit for survey activities, for general research activities, and for exploration activities for activities outside of forestry, principle approval and lease of forest area permit;
  - b. Transferring it to another party and/or changing the name of permit for survey activities, permit for general research activities and permit for exploration activities for activities outside of forestry, principle approval and lease of forest area permit, without the approval of the Minister; or
  - c. Leaving the exploited forest area before termination.
- (3) The imposing of sanction in the form of revocation shall be imposed after the holder of permit for survey activities, for general research activities, and for exploration activities for activities outside of forestry, principle approval or agreement or lease of forest area permit was given a warning by the Head of Provincial Service in charge of Forestry for three (3) times consecutively with a consideration period as of 30 (thirty) working days from the receipt of the warning letter and its revocation shall be proposed by the Head of Provincial Service in charge of Forestry.
- (4) The nullification of permit for survey activities, for general research activities, and for exploration activities for activities outside of forestry, principle approval and agreement or lease of forest area permit, as meant in paragraph (1) does not relieve the obligations of the permit holder to:
- a. Settle the payment of all its obligations stipulated by the Minister.
  - b. Perform all stipulated provisions until the expiry of permit for survey activities, for general research activities, and for exploration activities for activities outside of forestry, principle approval and agreement or lease of forest area permit, in accordance with prevailing provisions.
- (5) When the agreement or the forest area lease permit as meant in paragraph (1) letter b and c, is nullified, the leased area must be reclaimed or the existence of means and infrastructures that had been constructed shall be decided by the Minister.
- (6) Permit for survey activities, for general research activities, and for exploration activities for activities outside of forestry, principle approval and agreement or lease of forest area permit with certain considerations may be cancelled by the Minister.
- (7) With the termination of the use of forest area, and the reclamation was evaluated as being successful, the Minister will then issue a Decision Letter on the Termination of the forest area lease permit, and the transfer of the leased forest area is regulated as follows :
- a. In Perum Perhutani work areas, the transfer is made between Perum Perhutani and the holder of the forest area lease permit;
  - b. In forest areas borne with forest utilization permit, it shall be made between the utilization permit holder and the holder of forest area lease permit;
  - c. In forest areas not yet managed and not borne with forest utilization permit, it shall be made between the Provincial Service in charge of Forestry and the holder of forest area lease permit.

## CHAPTER XIII

## TRANSITIONAL PROVISIONS

## Article 32

- (1) The use of forest area executed with an agreement on forest area lease shall remain valid until the expiration

of the lease term, whereas the extension thereof shall be carried out in accordance with provisions of this Regulation.

- (2) Further process on principle approvals on forest area lease existing before the stipulation of this Regulation and not yet followed-up with a lease agreement, shall be conformed to provisions of this Regulation.
- (3) Holders of principle approvals who had provided land compensation and had been processed with prevailing provisions before the stipulation of this Regulation, are declared as still valid and shall be processed in accordance with provisions prevailing then, except on the regulating of basis of right on the land compensation which shall follow Article 18 paragraph (1) letter e and Article 18 paragraph (4).
- (4) In the event of changes of functions of the leased forest area, and pursuant to Law No. 41 Year 1999 concerning Forestry it is prohibited, the lease agreement or permit for the forest area lease shall remain valid until the expiration of the agreement/permit term and the Minister may not extend the permit for the forest area lease.
- (5) An agreement on forest area lease not yet stating an obligation to provide land compensation or the obligation to re-forest the forest area outside of the leased area, the permit for the forest area lease shall be with an obligation to provide and deliver a land compensation or to pay the PNPS on the use of forest area for Provinces with a forest area width above 30% (thirty percent) of the province land width in accordance with provisions of this Regulation.
- (6) Provisions for parties that had possessed an agreement or lease of forest area permit concerning land compensation is regulated as follows :
  - a. A holder of an agreement or permit of forest area lease and had performed activities on the use of a forest area but had not yet provided land compensation shall be charged with PNBP on the use of the

forest area from the stipulation of provisions concerning PNBP on the use of the forest area in accordance with prevailing provisions;

- b. Holder of an agreement or permit of forest area lease having performed activities on the use of a forest area but not yet borne with a land compensation obligation, shall be charged with PNBP on the use of the forest area from the stipulation of the requirement on PNBP fund on the use of the forest area;
  - c. Holder of an agreement or permit of forest area lease charged with the obligation to provide a land compensation and had provided the land compensation is not borne with PNBP fund on the use of the forest area;
  - d. Holder of an agreement or permit of forest area lease who had been charged with the obligation to re-forest a forest area outside of its leased area, and based on evaluation results of Provincial Forestry Service, the reforestation is stated to be successful at a minimum of 80%, shall not be charged with PNBP fund on the use of the forest area if the forest area of the province area is more than 30%. For provinces where the width of its forest area is less than 30%, it shall be imposed with an additional obligation to provide a land compensation;
  - e. Holder of an agreement or permit of forest area lease who had been charged with an obligation to re-forest a forest area outside of its leased area, and based on evaluation results of the Province Forestry Service, it is stated that the result of the reforestation is a failure, shall be charged with PNBP fund on the use of forest area.
- (7) For a principle approval on forest area lease not yet stating the obligation to provide and deliver land compensation or charged with PNBP fund on the use of forest area, a new principle approval shall be issued in accordance with provisions of this Regulation.

- (8) Holders of principle approvals on forest area lease with an obligation to provide and deliver land compensation, and had processed the provision of the land compensation in accordance with requirements of Article 18 paragraph (1) letter e and f, and Article 18 paragraph (4), must settle the land compensation within one (1) year.
- (9) For 13 (thirteen) mining permits stipulated in Presidential Decree No. 41 Year 2004 pursuant to Law No. 19 Year 2004, they are still obliged to submit applications for the lease of forest area and dispensation permit.
- (10) In the event the application referred to in paragraph (9) meet all of the requirements, the Minister shall issue principle approvals on the forest area lease and permit for the dispensation of the forest area lease.
- (11) In the event a permit of forest area lease had expired but the reclamation obligation had not been completed, then the permit of such forest area lease will be extended just for the purpose of performing the reclamation until the reclamation is declared as a success.

CHAPTER XIV  
CLOSING PROVISIONS  
Article 33

With the stipulation of this Forestry Minister Regulation, then Forestry Minister Regulation No. P.12/Minister of Forestry-II/2004, Forestry Minister Regulation No. P.14/

Minister of Forestry-II/2006 and Forestry Minister Regulation No. P.64/Minister of Forestry-II/2006 are declared as no more in effect.

Article 34

This Forestry Minister Regulation commences to become effective from the date of stipulation.

For public cognizance, this Forestry Minister Regulation shall be announced in the State Gazette Of the Republic of Indonesia.

Stipulated in Jakarta

On July 10, 2008

THE MINISTER OF FORESTRY,

sgd.

H. M.S. KABAN

Enacted in Jakarta

On July 17, 2008

THE MINISTER OF LAW AND HUMAN RIGHTS

OF THE REPUBLIC OF INDONESIA,

sgd.

ANDI MATTALATTA

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR  
2008 NO. 24

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