

SABAH, MALAYSIA

Warta Kerajaan

Tambahan Pertama

Diterbitkan dengan kuasa

Jil. XLVI]

KOTA KINABALU, KHAMIS, 7 MEI 1992

[No. 1

Kenyataan-kenyataan berikut adalah diterbitkan atas perintah Tuan Yang Terutama Yang di-Pertua Negeri untuk makluman Umum.

DATUK SIMON SIPAUN,
Setiausaha Kerajaan Negeri.

No. 1

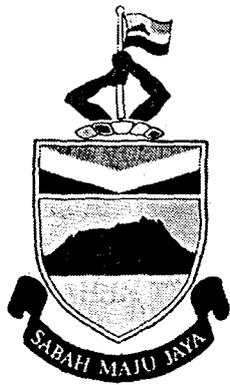
Enakmen-enakmen berikut telah dikemukakan dalam Majlis Mesyuarat Dewan Undangan Negeri yang diadakan pada 23 dan 24 Mac 1992 dan telah diperkenankan oleh Tuan Yang Terutama Yang di-Pertua Negeri pada 24 April 1992. Enakmen-enakmen itu adalah dengan ini diterbitkan untuk makluman umum:-

ENAKMEN-ENAKMEN

- No. 1 Tahun 1992 - Enakmen Hutan (Pindaan) 1992.
The Forest (Amendment) Enactment, 1992.
- No. 2 Tahun 1992 - Enakmen Hutan (Pindaan) (No. 1) 1992.
The Forests (Amendment) (No. 1) Enactment, 1992.
- No. 3 Tahun 1992 - Enakmen Mahkamah Anak Negeri 1992.
The Native Courts Enactment, 1992.
- No. 4 Tahun 1992 - Enakmen Perbekalan Tambahan Pertama (1992), 1992.
The First Supplementary Supply (1992) Enactment, 1992.

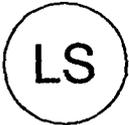
(ii)

No. 5 Tahun 1992 - Enakmen Bekalan Air (Pindaan), 1992.
The Water Supply (Amendment) Enactment, 1992.



STATE OF SABAH

I assent,



TUN DATUK HAJI MOHD. SAID BIN KERUAK,
Yang di-Pertua Negeri.

24TH APRIL, 1992.

No. 1 of 1992

An Enactment to amend the Forest Enactment, 1968.

ENACTED by the Legislature of the State of Sabah as follows:

1. (1) This Enactment may be cited as the Forest (Amendment) Enactment, 1992, and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Short title
and
commence-
ment.

(2) The Minister may appoint different dates for the coming into operation of different parts or provisions of the Enactment.

New Part 1 A
Enactment No.
2 of 1968.

2. The Forest Enactment, 1968 (hereinafter called 'the principal Enactment') is hereby amended by inserting, immediately after Part I thereof, the following new Part 1A;

**"PART 1A
FOREST REHABILITATION FUND**

Establishment
and adminis-
tration of
Forest
Rehabilitation
Fund.

4A. (1) There shall be established a fund to be known as the "Forest Rehabilitation Fund" (hereinafter referred to as the "Fund").

(2) The Fund shall be administered by a committee to be known as the "Forest Rehabilitation Fund Committee" (hereinafter referred to as the "Committee") consisting of-

- (a) the Secretary of Natural Resources, as Chairman;
- (b) the State Treasurer; and
- (c) the Director.

Moneys to be
paid into the
Fund.

4B. (1) There shall be paid into the Fund -

- (a) such sum as may be appropriated by the Legislative Assembly necessary for the purposes of the Fund;
- (b) the forest rehabilitation fee collected under section 4E;
- (c) any loan or grant given to the Government by the Federal Government for the purposes of the Fund; and
- (d) any money paid to the Government under sub-section (2) of section 28B.

(2) All moneys paid into the Fund shall -

- (a) be deposited in any bank duly licensed under the Banking and Financial Institutions Act, 1989; or

Act 372.

Act 208.

(b) be invested in accordance with the provisions of the Trustee Act 1949.

Purposes of the Fund.

4C. The Fund shall be used for the following purposes:

- (a) the preparation of the forest management plans;
- (b) the preparation and implementation of reforestation plans;
- (c) the reviewing of the forest management plans and reforestation plans;
- (d) the preparation and implementation of programmes relating to amenity forests; and
- (e) any expenses incurred by the Government in carrying into effect a reforestation plan under section 28B.

Accounts and audit.

4D. (1) The Committee shall keep proper accounts and other records in respect of the operations of the Fund, and shall cause to be prepared a statement of accounts in respect of each financial year.

(2) The Committee shall cause its accounts to be audited annually by the Auditor-General.

(3) As soon as the accounts of the Committee have been audited, but not later than six months after the end of the financial year, the Committee shall cause a copy of the audited statements of accounts to be transmitted to the Minister together with a copy of any observations made by the Auditor-General on the statement or on the accounts of the Committee.

(4) The Minister shall cause a copy of the statement and observations transmitted to him under sub-section (3) to be laid before the State Legislative Assembly.

Forest rehabilitation fee.

4E. (1) For the purposes of the Fund, there shall be payable to the Government a fee (to be known as forest rehabilitation fee) in respect of any of the forest produce

removed from any Forest Reserve, State land or alienated land, at the rate as may be prescribed.

(2) The Minister may by order prescribe the manner of collection of such fee.

(3) Sub-section (1) shall not apply to the removal of forest produce by the holder of a licence or licence agreement who has been required to carry into effect a reforestation programme under section 28B."

Amendment
of section 5.

3. Section 5 of the principal Enactment is hereby amended -

(a) by deleting the word "and" at the end of paragraph (e);
and

(b) by substituting a semi-colon and the word "and" for the colon at the end of paragraph (f) and thereafter by inserting, immediately after paragraph (f), the following new paragraph (g):

"(g) Class VII - Wildlife Reserve - For protection of wildlife:"

New section
5A.

4. The principal Enactment is hereby amended by inserting, immediately after section 5, the following new section 5A:

"Power to
declare
protected
areas.

5A. (1) The Yang di-Pertua Negeri may, by notification in the *Gazette*, declare any area in a Forest Reserve or on State land which may require special protection for reasons of soil, wildlife, ecological or water conservation to be a protected area and may, at any time, in like manner vary or revoke such declaration.

(2) Notwithstanding the terms of any licence or licence agreement to the contrary, no logging, land clearing, cultivation, grazing or other exploitation of any kind shall be undertaken in a protected area declared under sub-section (1) except as provided in the declaration of the protected area or as specially authorised in writing by the Minister."

5. Section 15 of the principal Enactment is hereby amended Amendment
of section 15.
by-

(a) by inserting, immediately after sub-section (1), the following new sub-section (1A):

"(1A). A licence agreement entered into by the Minister under sub-section (1) of this section may provide for the planting of forest or timber trees upon such terms and condition as may be agreed."; and

(b) by substituting for the proviso, the following:

"Provided that no licence shall be issued or no licence agreement shall be entered into under this Enactment in respect of Forest Reserves of Class I, Class VI and Class VII."

6. Section 24 of the principal Enactment is hereby amended - Amendment
of section 24.

(a) in sub-section (1), by substituting for the full-stop at the end thereof a colon and by inserting thereafter the following proviso:

"Provided that where a licence relates to the doing of any act in Forest Reserve or on State land, it shall not be issued without the written approval of the Minister.";

(b) in sub-section (2), by inserting at the end thereof the words "and may be renewed twice for a period not exceeding one year each by the Director or any person authorised by him in that behalf by an endorsement on the licence with a note of such renewal and the date of its intended expiry."; and

(c) by substituting for sub-section (4), the following:

"(4) No licence shall be issued for the doing of any act on State land before the issue of a Temporary Occupation Licence by the Collector under the provisions of the Land Ordinance."

Amendment
of section
24A.

7. Section 24A of the principal Enactment is hereby amended by substituting a colon for the full-stop at the end thereof and by inserting immediately thereafter the following proviso:

"Provided that before exercising the powers conferred upon him under this sub-section, an opportunity to be heard shall first be given by the Minister to the holder of the licence or the licence agreement."

New
sections 24B,
24C and 24D.

8. The principal Enactment is hereby amended by inserting, immediately after section 24A, the following new sections 24B, 24C and 24D:

"Stumpage
sales.

24B. (1) Subject to the applicable forest management plan, the Director may issue licences under section 24 or the Minister may enter into a licence agreement under section 15, as the case may be, on the basis of sale of standing timber by tender or auction.

(2) The tender or auction price of the standing timber to be paid by the holder of a licence or licence agreement to the Government shall be in addition to any fee, royalty and other payment payable to the Government on forest produce.

Fee and
royalty.

24C. Fee, royalty and other payment on forest produce shall be payable by the holder of any licence or licence agreement to the Government at such rates as may be prescribed from time to time by the Minister.

Cancellation
and
suspension
of licence.

24D. (1) If the Director has reasonable grounds to believe that a holder of a licence or licence agreement or his agents or servants has contravened any of the provisions of this Enactment or any of the terms and conditions of the licence or licence agreement, he may, by giving a notice in writing to the holder thereof, or his agents or servants order that any or all logging operations within the area of the licence or licence agreement or any part or parts thereof shall cease with immediate effect.

(2) Anyone who refuses to comply with such notice in writing shall be guilty of an offence and liable to a fine of not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or both.

(3) The Director may at any time cancel the notice in writing if he thinks fit to do so.

(4) Unless such notice had previously been cancelled under sub-section (3), the Director shall within thirty days from the date of the issuance of the notice require the holder of the licence or the licence agreement to whom the notice has been issued to appear before him to show cause as to why his licence or licence agreement should not be suspended or cancelled.

(5) Anyone who is required to appear to show cause under sub-section (4) shall be notified in writing by the Director the nature of the breach or offence committed by him and he may appear himself or by his authorised representative.

(6) If, after the inquiry, the Director is satisfied that the holder of the licence or licence agreement has contravened any of the provisions of this Enactment or rules made thereunder or any of the terms and conditions of the licence or licence agreement, he may -

- (a) cancel the licence or, in the case of a licence agreement, recommend to the Minister to terminate it and the Minister shall do so accordingly;
or
- (b) suspend such licence or licence agreement for a further period he deems fit.

(7) Anyone who is dissatisfied with the decision of the Director made under sub-section (6) may, within thirty days from the date such decision is received by him, appeal to the Minister whose decision shall be final.

(8) Any decision made by the Director under sub-section (6) shall take immediate effect notwithstanding any appeal to the Minister made under sub-section (7)."

Amendment
of section
26.

9. Section 26 of the principal Enactment is amended -

- (a) by deleting the words "and section 26A" appearing in sub-section (5) thereof; and
- (b) by inserting, immediately after sub-section (5), the following:

"(6) No person shall be entitled to recover possession of any timber collected under sub-section (1) of this section until all expenses incurred in collecting, moving, storing and disposing of the timber as assessed by the Director have been paid up to the Government."

Deletion of
section 26A.

10. The principal Enactment is hereby amended by deleting section 26A.

New Part IIIA.

11. The principal Enactment is hereby amended by inserting, immediately after Part III, the following Part IIIA:

**"PART IIIA
FOREST MANAGEMENT AND DEVELOPMENT**

Requirement
of forest
management
plan, forest
harvesting
plan etc.

28A. Unless otherwise exempted by the Minister, before any licence for an area exceeding one thousand hectares in a Forest Reserve or on State land is issued or before a licence agreement is entered into, the Director shall require the prospective holder thereof to prepare -

- (a) a forest management plan or forest harvesting plan, as the case may be; and
- (b) a reforestation plan,

in such manner as may be specified by the Director.

Management
plan, forest
harvest plan
etc. to be
carried into
effect.

28B. (1) The holder of a licence or a licence agreement who has been required under section 28A of this Enactment to prepare -

(a) a forest management plan or forest harvesting plan, as the case may be; and

(b) a reforestation plan,

shall from a date to be appointed by the Director carry them into effect to the satisfaction of the Director.

(2) Where the holder of licence or licence agreement, without reasonable cause, fails to carry into effect a reforestation plan to the satisfaction of the Director, the Director may in addition to revoking the licence or recommending to the Minister to terminate the licence agreement, as the case may be, require the holder thereof to pay forthwith to the Government a sum equivalent to the amount which would be incurred by the Government if it were to undertake or to engage any person to carry into effect the plan, such amount to be assessed by the Director in accordance with the guidelines and rates which the Minister may prescribe."

12. The principal Enactment is hereby amended by inserting, immediately after section 30, the following new section 30A:

New section
30A.

"Offence of
evasion of
royalty etc.

30A. (1) Any person who -

(a) is in any way knowingly concerned in conveying, disposal of or dealing with any forest produce in respect of which a forest offence has been committed or upon which the royalty or other payment due in respect thereof has not been paid or made; or

(b) is in any way knowingly concerned in any

fraudulent evasion or attempt at fraudulent evasion of any royalty or other payment due to the Government,

shall be guilty of an offence and on conviction be liable to imprisonment for a term not exceeding five years and a fine.

(2) In addition to the penalty imposed under sub-section (1) of this section, the convicting Court shall order the offender to pay to the Government a sum equivalent to double the amount of royalty or other payment which would have been payable to the Government:

Provided that where the amount of royalty or other payment cannot be ascertained, the sum ordered to be paid shall be one hundred thousand ringgit.

(3) In any prosecution under this section, it shall be presumed until the contrary is proved that the accused has knowledge that a forest offence has been committed in respect of the forest produce or that no royalty or other payment upon the forest produce due to the Government has been paid or made."

Amendment
of section
33.

13. Sub-section (2) of section 33 of the principal Enactment is hereby amended by inserting, immediately after the words "paragraph (a)", the words " of sub-section (1)".

Amendment
of section
34.

14. Section 34 of the principal Enactment is hereby amended by substituting for the full-stop at the end thereof a semi-colon and by inserting thereafter the following new paragraph (d):

"(d) that where any forest produce has been cut, collected, converted, felled or removed in contravention of this Enactment, the offender shall pay to the Government the fees, royalties and other payments which would have been payable under this Enactment."

Amendment
of section
35(1).

15. Sub-section (1) of section 35 of the principal Enactment is hereby amended by substituting for the words "The Director may

in his discretion compound any forest offence under paragraph (c) of section 20 or sub-section (3) of section 36 or any such offence which is punishable under sub-section (1) of section 33" the words "Subject to the general or special approval of the Minister, the Director may in his discretion compound any forest offence except an offence under paragraph (a) of sub-section (1) of section 20, sub-section (2) of section 20, sub-section (1) or sub-section (2) of section 23 or sub-section (1) of section 30A of this Enactment".

16. Sub-section (1) of section 36 of the principal Enactment is hereby amended -

Amendment
of section
36.

(a) by inserting, immediately after sub-paragraph (iii) of paragraph (d), the following new sub-paragraph (iv):

"(iv) any record, book, map, plan, account or any other document whatsoever used or reasonably suspected of having been used in or about the commission of a forest offence;"; and

(a) by inserting, immediately after sub-section (2), the following new sub-section (2A):

"(2A). Any forest officer not below the rank of Assistant District Forestry Officer, any police officer not below the rank of Sergeant and any officer in charge of police station may, in relation to any investigation in respect of any forest offence, without the order of the Public Prosecutor, exercise the special powers in relation to police investigations given by the Criminal Procedure Code in any seizable case."

F.M.S. Cap.
6.

17. Section 38 of the principal Enactment is hereby amended by substituting for sub-section (8) the following:

Amendment
of section
38.

"(8) Where in a prosecution for a forest offence under -

(a) sub-section (2) of section 20;

(b) paragraph (b) of sub-section (1) of section 23; or

(c) sub-section (2) of section 23,
against the holder of a licence or licence agreement, his

agents or servants, it is alleged that such person did cut, collect, convert, fell or remove any forest produce illegally, it shall be presumed until the contrary is proved that he did cut, collect, convert, fell or remove such forest produce illegally, if it is proved that timber extraction routes, paths or roads exist between the area under his licence or licence agreement and the area in which the illegal cutting, collection, conversion, felling or removal of the forest produce is alleged to have been committed."

Amendment
of section
37.

18. Section 37 of the principal Enactment is hereby amended -

(a) by inserting, immediately after sub-section (1), the following:

"(1A). Where anything has been seized under this Enactment, the Director may, in his discretion, temporarily release such thing to the owner of the same on security being furnished to his satisfaction that such thing shall be surrendered to him on demand or to produce it before a court of competent jurisdiction.";

(b) by substituting for sub-section (2) the following:

"(2) Whenever anything mentioned under paragraph (d) of sub-section (1) of section 36 is seized, the seizing officer shall forthwith -

(a) where the seizure is made by any other person than the Director, deliver such thing into the control or custody of the Director; and

(a) except where the seizure is made in the presence of the owner, his agent or servant, as the case may be, give notice in writing of such seizure and the grounds thereof to the owner of such thing -

(i) if known, either by delivering such notice to him personally or by post at his place of abode or business; or

(ii) if unknown, by publishing such notice in any manner as he thinks fit.";

19. The principal Enactment is amended by inserting immediately after section 37 the following new section 37A: New section 37A.

No costs
damages etc.
on seizure.

"37A. No person shall in any proceedings before any court in respect of the seizure of any thing seized in the exercise or purported exercise of the powers conferred under this Enactment be entitled to the costs of such proceedings or to any damages or other relief other than an order for the return of such thing or the payment of their value unless seizure was made without reasonable or probable cause."

20. Section 40 of the principal Enactment is hereby amended by inserting, immediately after the words "forest produce", the words "or other property". Amendment of section 40.

21. The principal Enactment is hereby amended by substituting for section 40A the following: Amendment of section 40A.

"Power to
prosecute
and to
institute
legal action
etc.

40A. (1) The Director may prosecute any offence or institute any action, suit or other proceedings relating to any matter under this Enactment.

(2) In any prosecution, action, suit or other proceedings to which this section applies, the Director may appear personally or may be represented by the State Attorney-General, any legal officer of the State Attorney-General's Chambers or of the Forests Department, or any forest officer not below the rank of District Forestry Officer."

22. Paragraph (f) of section 41 of the principal Enactment is hereby amended by inserting, immediately after the words "upkeep of", the words "clinics, schools, community halls, places of worship, bridges and". Amendment of section 41.

23. The Forest (Amendment) Enactment, 1984 is amended - Amendment of Enactment No. 4 of 1984.

(a) by substituting for the long title the following:

"An Enactment to constitute Forest Reserves and to amend the Forest Enactment, 1968."; and

(b) by inserting immediately before the word "Amendment" in section 1 the words "Constitution of Forest Reserves and".

CERTIFIED by me to be true copy of the Bill passed by the Legislative Assembly on Monday, the 23rd March, 1992.

JOHN DATUK ANGIAN ANDULAG,
Deputy Speaker.