



# Forest Peoples Programme

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## Sawit Watch

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**Sawit Watch**



## Aliansi Masyarakat Adat Nusantara

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[February 2009]

Mr. Torsten Schackel  
Acting Secretary  
Committee on the Elimination of Racial Discrimination  
UNOG-OHCHR  
1211 Geneva 10  
Switzerland

**Re: Request for consideration of the situation of indigenous peoples in the Republic of Indonesia under the follow up and early warning and urgent action procedures (Seventy forth session of the Committee on the Elimination of Racial Discrimination).**

Dear Mr. Schackel:

1. A coalition of 9 Indonesian organizations and 1 international organization (see Annex A) (“the submitting organisations”) have the honour of again communicating with the Committee on the Elimination of Racial Discrimination (“the Committee”) with regard to the situation of indigenous peoples in the Republic of Indonesia (“Indonesia” or “the State”). This present communication requests that the Committee continues to monitor and takes action with regard to the situation of indigenous peoples in Indonesia pursuant to its follow up and early warning and urgent action procedures. Specific requests are set forth in paragraph 13 below.
2. The submitting organisations previously requested that the Committee considers the situation of indigenous peoples in Indonesia under its early warning and urgent action procedures on 06 July 2007.<sup>1</sup> After examining Indonesia’s periodic report at its 71<sup>st</sup> session, the Committee adopted concluding observations that detail serious deficiencies in Indonesia’s observance of its human rights obligations pertaining to indigenous peoples. The Committee requested at that time that Indonesia provide additional information within one year on the implementation of the recommendations set forth in paragraphs 17, 20 and 25 of the concluding observations.<sup>2</sup> Paragraph 17 addresses indigenous peoples’ rights and is the primary subject of this communication. Indonesia has failed to submit this information.

<sup>1</sup> See Request for Consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia, under the United Nations Committee on the Elimination of Racial Discrimination’s Urgent Action and Early Warning Procedures, 06 July 2007, at [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/urgent\\_action.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/urgent_action.pdf).

<sup>2</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Indonesia, 15/08/2007. CERD/C/IDN/CO/3, para. 31.

3. Paragraph 17 of the Committee's 2007 concluding observations concerns plans to establish massive oil palm plantations along the Indonesia-Malaysia border in Kalimantan, "and the threat this constitutes for the rights of indigenous peoples to own their lands and enjoy their culture." It observes "with deep concern" that there are a high number of conflicts between indigenous peoples and oil palm companies throughout Indonesia. It further observes that "references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to guarantee their rights effectively."<sup>3</sup>

4. The corresponding recommendations adopted by the Committee directly address a number of the deficiencies in Indonesian law that restrict or nullify the full exercise and enjoyment of indigenous peoples' rights. The 2004 Plantations Act is highlighted and the Committee recommends that Indonesia review this law and all other laws to "to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands." The Committee further recommends that the State "secure[s] the possession and ownership rights of local communities before proceeding" with the Kalimantan oil palm mega-project, and ensures that extensive and prior consultations are held in order to secure indigenous peoples' free, prior and informed consent in relation to this project.<sup>4</sup> Although the current status of the Kalimantan mega-project is unclear, oil palm plantations continue to be developed on indigenous peoples' lands along the border in both West and East Kalimantan without any attempt by the State to comply with the Committee's recommendations or to otherwise secure and protect indigenous peoples' rights.

5. Furthermore the number of land conflicts in Indonesia continues to increase steadily, a fact confirmed in public statements by the National Land Bureau (BPN).<sup>5</sup> By early 2008, BPN had inventoried some 7,491 land tenure conflicts of which many relate to imposition of land concessions to private companies in indigenous areas. Yet despite this escalating situation, the State has not put into place measures to protect the rights of indigenous peoples and address the root cause of such conflicts. Although a procedure for the recognition of ulayat (collective customary rights in land) was adopted by BPN through Regulation No 5 of 1999, entitled A Guideline for the Settlement of Problems related to the Communal Land of Customary Law Abiding Communities ("Regulation 5/1999") (See Annex D),<sup>6</sup> BPN staff admit that a mechanism for regularising indigenous peoples' rights to their lands and territories is still lacking because the corresponding guidelines and implementing procedures have not yet been adopted.<sup>7</sup> With this procedure unavailable, there is no effective protection of indigenous peoples' rights and they continue to be disregarded with impunity.

6. Regulation 5/1999 also contains a number of substantial defects that impair and nullify indigenous peoples' rights – and, therefore, its implementation would be highly inappropriate – and Indonesia continues to lack any effective legal means to recognise, secure and protect indigenous peoples' rights to their lands, territories and resources.<sup>8</sup> Not only have no indigenous lands been registered pursuant to Regulation 5/1999 Article 5(2), it acts to nullify and extinguish indigenous peoples' rights to their traditional lands where such lands "are already possessed by individuals or legal entities" or are "already acquired or appropriated by Government institutions, legal entities or individuals".<sup>9</sup> This regulation therefore legally sanctions and confirms prior land acquisitions and takings that occurred without regard for indigenous peoples' rights. In so doing, Regulation 5/1999 gives preference to the property

<sup>3</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Indonesia, 15/08/2007. CERD/C/IDN/CO/3, para. 17

<sup>4</sup> Ibid.

<sup>5</sup> Presentation by BPN to regional workshop on Free, Prior and Informed Consent and the Roundtable on Sustainable Palm Oil, Palangkaraya, Central Kalimantan, 30<sup>th</sup> April – 2<sup>nd</sup> May 2008.

<sup>6</sup> A Guideline for the Settlement of Problems related to the Communal Land of Customary Law Abiding Communities, Regulation of the State Minister of Agrarian Affairs No.5/1999. The full text is in Annex 4 hereto.

<sup>7</sup> Ibid.

<sup>8</sup> This remains the case despite the (as yet unfulfilled) 2006 public promise of the President of Indonesia to draft and adopt a framework law on indigenous peoples' rights.

<sup>9</sup> Regulation 5/1999, Article 3.

rights of non-indigenous persons (and the State) and denies indigenous peoples their right to seek restitution of their lands and resources taken without their informed consent.<sup>10</sup> The Committee has previously rejected similar legislative measures that "create legal certainty for Governments and third parties at the expense of indigenous title"<sup>11</sup> and held that "validation" and "confirmation of extinguishment" provisions are discriminatory.<sup>12</sup>

7. The Committee has recommended that "The State party should amend its domestic laws ... to ensure that the concept of national interest ... [is] not used as a justification to override the rights of indigenous peoples".<sup>13</sup> Indonesia has failed to comply with this recommendation to date, as demonstrated by Regulation 5/1999 discussed above, and further has failed to establish procedural mechanisms to allow the limited protections that do exist to function. Moreover, as discussed below, it is actively contravening this and the other recommendations adopted by the Committee in 2007 by drafting new laws and regulations that perpetuate discrimination against indigenous peoples, including through further enshrining provisions that allow for the wholesale abrogation of their rights.

8. Indonesia's 2008 draft Regulation on controlling payments for 'reduced emissions from deforestation and forest degradation' is a prime example (see Annex B). Climate change mitigation through 'reduced emissions from deforestation and forest degradation', or 'REDD', involves payments being made to national governments for halting or slowing rates of deforestation. Indonesia's approach to this, as defined in its draft regulation, requires that the State be the sole regulator of forest areas without recognizing or protecting the rights and forest stewardship role of traditional and indigenous peoples. In the simplest terms, to access international payments for REDD the State is establishing regulations that continue to allow the State to take over and issue concessions in any forest land as and when it deems it necessary. In both word and intent, the draft regulation as it stands now serves to reiterate existing violations of indigenous peoples' rights found in other national laws.

9. For instance, the regulation provides that "Customary forest is state forest within an area of a customary community" and defines state forest as being "forest on land unencumbered by proprietary rights".<sup>14</sup> This is a reiteration of Law 41 of 1999 on Forestry (See Annex C), and serves to deny any proprietary rights to indigenous peoples in forests. The same law states further that "The Government shall stipulate status of forest ... and indigenous forest shall be stipulated if any and its existence acknowledged."<sup>15</sup> The law thus ensures that the Government is the sole arbiter of whether indigenous peoples exist or not, a situation that allows the presence of indigenous peoples to be denied when expedient for the Government and denies the right of self-determination from Indonesia's indigenous peoples. The Committee specifically rejected this approach, which is common in Indonesian law, in its 2007 concluding observations.

10. This regulation is likely to cause significant and irreparable harm to indigenous peoples because of the potential scale of REDD activities in Indonesia. Defective design and implementation of REDD activities and incentives risks widespread violations of the rights of

<sup>10</sup> See Committee on the Elimination of Racial Discrimination, General Recommendation XXIII on Indigenous Peoples, 1997, para. 5 (calling on states to recognise and protect indigenous peoples' property rights, "and where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories"). See also UN Declaration on the Rights of Indigenous Peoples 2007, Article 27 and 28(1) (the latter providing that "Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent").

<sup>11</sup> Decision 2 (54) on Australia: Australia. 18/03/99, at para. 6. UN Doc A/54/18, para.21(2).

<sup>12</sup> Ibid. at para. 7.

<sup>13</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Indonesia, 15/08/2007. CERD/C/IDN/CO/3, para. 16

<sup>14</sup> Law 41, 1999 on Forestry, Article 1 (4) and (6)

<sup>15</sup> Law 41, 1999 on Forestry, Article 5 (3)

indigenous peoples whose traditional lands in Indonesia often include forest areas. The United Nations Framework Convention on Climate Change (UNFCCC) has noted that East Kalimantan is an optimal area for such activities,<sup>16</sup> and the annual deforestation rate of 2 million ha a year in Indonesia means that REDD activities are being promoted throughout the archipelago.<sup>17</sup> The extensive geographic scope of proposed REDD activities in Indonesia and the potential for further alienation of indigenous lands demands that the rights of indigenous peoples are fully accounted for and protected in any law or policy on REDD. The new draft regulation fails to do so and therefore poses a direct and significant threat to the livelihoods and customary rights of indigenous peoples within Indonesia. Not only does the draft regulation fail to respect indigenous peoples' rights in principle, it also perpetuates a number of the deficiencies in Indonesian law identified by the Committee in 2007.

11. The Committee's above quoted recommendations are consistent with the 2007 UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007 with Indonesia's support. This Declaration contains rights that must be equally secured and protected pursuant to Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination ("the Convention").<sup>18</sup> The Committee has since observed that the Declaration should be used as a guide to interpret state's obligations under the Convention.<sup>19</sup>

12. However, despite its support for the UN Declaration on the Rights of Indigenous Peoples in the General Assembly, and its stated desire to comply with its obligations pursuant to the Convention, Indonesia has to date chosen to disregard the Committee's detailed and critically important concluding observations and recommendations. Not only has it not taken any discernible steps towards giving effect to these recommendations, it continues to issue additional permits for resource extraction and agro-industrial plantations to indigenous peoples' detriment and in direct contravention of its obligations. It is also in the process of adopting new laws and regulations that contravene the Committee's recommendations and indigenous peoples' rights as recognised in the Convention and the UN Declaration on the Rights of Indigenous Peoples.

13. In light of the above, we respectfully request that the Committee recommends that the State:

1. Amend relevant national laws as soon as possible to ensure that the rights of indigenous peoples to own, possess, develop, control and use their communal lands, territories and resources are not violated;
2. Amend, in particular, Agrarian Regulation No. 5 / 1999, A Guideline for the Settlement of Problems related to the Communal Land of Customary Law Abiding Communities, to remove provisions that impair or nullify indigenous peoples' rights to lands, territories and resources. Draft and adopt, with the full and informed participation of indigenous peoples and their freely chosen representatives, a framework law that recognises and guarantees the rights of indigenous peoples and that is fully consistent with Indonesia's obligations under the Convention and the UN Declaration on the Rights of Indigenous Peoples;
3. Immediately address the violations of indigenous peoples' rights taking place through the expansion of oil palm plantations, including in the Kalimantan border areas;

<sup>16</sup> Nancy L Harris, Silvia Petrova, Fred Stolle and Sandra Brown 'Identifying optimal areas for REDD intervention: East Kalimantan, Indonesia as a case study'  
[http://unfccc.int/files/methods\\_science/redd/application/pdf/harris\\_et\\_al\\_2008.pdf](http://unfccc.int/files/methods_science/redd/application/pdf/harris_et_al_2008.pdf)

<sup>17</sup> Global ForestWatch and ForestWatch Indonesia 2002 Natural Forest, Cover Change in Indonesia, 1985–1997.

<sup>18</sup> General Recommendation No. 20: Non-discriminatory implementation of rights and freedoms: 15/03/96, para. 1.

<sup>19</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, CERD/C/USA/CO/6, 08 May 2008, at para. 29.

4. Ensure that all actions undertaken towards the fulfilment of commitments under the United Nations Framework Convention on Climate Change (UNFCCC), including preparatory activities for REDD and its draft Regulation on controlling payments for 'reduced emissions from deforestation and forest degradation', are fully consistent with its obligations under the Convention and especially with the UN Declaration on the Rights of Indigenous Peoples;
5. Cease drafting and legislating new measures that violate the rights of indigenous peoples by reiterating existing laws that have already been the subject of the Committee's recommendations and ensure that all existing and future laws are fully compatible with indigenous peoples' rights.

## **Annex A**

### **Submitting Organizations**

Perkumpulan Sawit Watch is an Indonesian Non-Government Organisation concerned with adverse negative social and environmental impacts of oil palm plantation development in Indonesia. It is active in 17 provinces where oil palm plantations are being developed in Indonesia. Address: Jl. Sempur Kaler No. 28, Bogor 16129, tel: +62 251 352171/fax: +62 251 352047, e-mail: [info@sawitwatch.or.id](mailto:info@sawitwatch.or.id), website: [www.sawitwatch.or.id](http://www.sawitwatch.or.id)

Aliansi Masyarakat Adat Nusantara/AMAN (Indigenous People Alliance of the Archipelago) is an indigenous peoples' organisation that represents indigenous peoples from the whole of the Republic of Indonesia. The Alliance is aimed to be an organisation for indigenous peoples to struggle for their existence and rights inherited with it as well as to struggle for sovereignty in running their lives and in managing their natural resources. AMAN's main working areas are 1] Indigenous organization, networking and customary institutions development; 2] Indigenous rights advocacy and legal defense; 3] strengthening customary-based economic system; 4] strengthening indigenous women; and, 5] education for indigenous youth. Address: Jalan Tebet Utara II, Blok C No. 22 Jakarta Selatan 12820, Indonesia Telp/Fax. +62 21 8297954, e-mail: [rumahaman@cbn.net.id](mailto:rumahaman@cbn.net.id)

Aliansi Masyarakat Adat Kalimantan Barat (Indigenous Peoples' Alliance of West Kalimantan)/AMAN Kalbar is one of the provincial offices of Indigenous Peoples' Alliance of the Archipelago (AMAN) in West Kalimantan. Until October 2006 AMAN Kalbar has been directly working with its registered members of 106 indigenous communities, covering up to 247,000 persons. These communities live in 9 districts in West Kalimantan: Ketapang, Pontianak, Sanggau, Sintang, Bengkayang, Landak, Sekadau, Melawi, and Kapuas Hulu, and are mainly Dayak. Address: Jl. Budi Utomo, No.03, Siantan Hulu, Pontianak Utara 78241, Kalimantan Barat, Tel/fax: +62 561 885264/885211, e-mail: [amakalbar@ptk.centrin.net.id](mailto:amakalbar@ptk.centrin.net.id)

Lembaga Studi dan Advokasi Masyarakat/ELSAM (The Institute for Policy Research and Advocacy), established in August 1993, works to encourage and promote effective mechanisms of accountability for gross human rights violations; and to promote resolution of past human rights violations through revealing the truth, usage of sanction, and reparation, and; to establish acknowledgeable, democratic and sustainable association. Address: Jl. Siaga II No 31, Pasar Minggu, Jakarta 12510, tel: +62 (21) 7972662/fax: +62 (21) 79192519, e-mail: [elsam@nusa.or.id](mailto:elsam@nusa.or.id), web: [www.elsam.or.id](http://www.elsam.or.id)

Wahana Lingkungan Hidup Indonesia/WALHI (Friends of The Earth Indonesia) is the largest forum of non-governmental and community-based organisations in Indonesia. It is represented in 25 provinces and has over 438 member organisations (as of June 2004). It stands for social transformation, peoples sovereignty, and sustainability of life and livelihoods. WALHI works to defend Indonesia's natural world and local communities from injustice carried out in the name of economic development. Address: Jl. Tegal Parang Utara No.14 Jakarta 12790, Indonesia, tel +62 21 7919 33 63-88 [fax] +62 21 794 1673, e-mail: [info@walhi.or.id](mailto:info@walhi.or.id)

Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis/HuMA (Association for Community and Ecologically-based Legal Reform), founded in 2001, was established by individuals who have long experience and a clear position regarding the importance of community and ecological-based law reform on issues related to land and other natural resources. Address: Jl. Jati Agung No. 8, Jati Padang – Pasar Minggu, Jakarta 12540, Indonesia, tel: +62(21)78845871, fax: +62(21)7806959, e-mail: [huma@huma.or.id](mailto:huma@huma.or.id) and [huma@cbn.net.id](mailto:huma@cbn.net.id)

Yayasan Padi Indonesia is a non-governmental organisation concerned with the process of development (agriculture, forestry, fishery, and plantation) based on the principles of

sustainability of natural resources and environment. Address: Jl. Komplek Perumahan Dokter Balikpapan Tengah BPP, Belakang Puskip Rt.24 No.87 Mekarsari Balikpapan Tengah 76122, tel/fax: +62 542-443284/542- 426118, e-mail: [padi\\_ind@indo.net.id](mailto:padi_ind@indo.net.id)

Lembaga Gemawan (Lembaga Pengembangan Masyarakat Swandiri/The Institution of Swandiri Society Empowerment) is the result of a long going process of reflection of some students' activists to contribute to the immediate needs toward social transformation. Lembaga Gemawan was founded to transform the idea of social transformation into actual social movements. It is also developed to empower the local community as the silent majority of social-political-economical society. Address: Jl. Dr. Wahidin, Gg. Batas Pandang Komp. Kelapa Hijau No. 18 Pontianak, tel/fax: +62 561 586891, e-mail: [gemawan\\_borneo@telkom.net](mailto:gemawan_borneo@telkom.net)

Lembaga Bela Banua Talino (the Institute for Community Legal Resources Empowerment) was established in 1993 and aims to address various issues and problems of local regulations and policies towards effective recognition and protections of the rights of local communities and indigenous peoples have been proved could not guaranty better conditions of economic, social and politics aspects. Address: Jl Budi Utomo, Komplek Bumi Indah Khatulistiwa, Blok A/3, Siantan Hulu, Pontianak 78241, Kalimantan Barat – Indonesia, tel. +62 561 885623 fax. +62 561 884566, e-mail: [lbdt@ptk.centrin.net.id](mailto:lbdt@ptk.centrin.net.id)

Institut Dayakologi is an active community-based organization which primarily aims to revitalize and restore the cultural identity of the Dayak communities in Kalimantan through research, advocacy, publication and other activities. The Institute promotes the awareness of the Dayak people on their cultural integrity, land rights, intellectual property rights, etc. Address: Jl. Budi Utomo Blok A 3 No. 3-4, Pontianak 78241, +62 561- 884 567/+62 561- 8831 735, e-mail: [i.dayakologi@ptk.centrin.net.id](mailto:i.dayakologi@ptk.centrin.net.id)

Forest Peoples Programme (UK) is an international NGO, founded in 1990, which supports the rights of forest peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. Address: 1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893, Fax: (44) 01608 652878, e-mail: [info@forespeoples.org](mailto:info@forespeoples.org)

## Annex B

### Unofficial translation of the Ministry of Forestry Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation

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#### REGULATION OF THE MINISTER OF FORESTRY

Number:

#### ON IMPLEMENTATION PROCEDURES FOR REDUCING EMISSIONS FROM DEFORESTATION AND FOREST DEGRADATION (REDD)

WITH THE BLESSINGS OF GOD ALMIGHTY  
MINISTER OF FORESTRY,

- Considering:
- a. that the United Nations Framework Convention on Climate Change has been adopted by Law Number 6 of 1994, thus Indonesia is a party to that convention,
  - b. that deforestation and forest degradation contribute to greenhouse gas emissions (GHG),
  - c. that the effort to reduce emissions from deforestation and forest degradation is voluntary in nature and shall respect the sovereignty of developing countries in exploiting their forest resources,
  - d. that in accordance with the 13th Conference of Parties to the Convention on Climate Change, each state is encouraged to engage in efforts to reduce emissions from deforestation and forest degradation, in accordance with the conditions and responsibilities as regulated in the convention,
  - e. that implementation procedures are needed for the implementation of activities to reduce emissions from deforestation and forest degradation within the framework of REDD,
  - f. that the aforementioned efforts to reduce emissions from deforestation and forest degradation are among the responsibilities of the Ministry of Forestry.
  - g. that in relation to the aforementioned issues, a procedure for the implementation of reducing emissions from deforestation and forest degradation (REDD) needs to be determined in a Regulation of the Minister of Forestry.

Bearing in Mind:

- a. Law Number 6 of 1994 on the Adoption of the United Nations Framework Convention on Climate Change (State Gazette of the Republic of Indonesia Year 1994 Number 42, State Gazette Supplement Number 3557);
- b. Law Number 23 of 1997 on Environmental Management (State Gazette of Republic of Indonesia Number 68 Year 1997, State Gazette Supplement Number 3699);
- c. Law Number 41 of 1999 on Forestry (State Gazette Of Republic of Indonesia Number 167, State Gazette Supplement Number 3888) amended by Law Number 19 of 2004 on The Enactment of Government Regulation In Lieu of Law Number 1 of 2004 on Amendment of Law Number 41 of 1999 on Forestry (State Gazette of Republic of Indonesia Number 86 Year 2004, State Gazette Supplement Number 4412);

- d. Law Number 32 of 2004 on Regional Autonomy (State Gazette of Republic of Indonesia Number 125 Year 2004, State Gazette Supplement Number 4437);
- e. Law Number 17 of 2004 on the Ratification of Kyoto Protocol to the United Nations Framework Convention On Climate Change (State Gazette of Republic of Indonesia Number 72 Year 2004, State Gazette Supplement Number 4403);
- f. Law Number 26 of 007 on Spatial Planning (State Gazette of Republic of Indonesia Number 68 Year 2007, State Gazette Supplement Number 4725);
- g. Government Regulation Number 6 of 2007 on Forest Management and Forest Management and Forest Utilization Planning (State Gazette of Republic of Indonesia Number 22 Year 2007, State Gazette Supplement Number 4696) as amended in Government Regulation Number 3 of 2008 (State Gazette of Republic of Indonesia Number 16 Year 2008, State Gazette Supplement Number 4814);
- h. Decision Number 2 (Decision 2/CP.13) of the 13th Conference of Parties to the Convention on Climate Change on Reducing Emissions from Deforestation and Forest Degradation (REDD).

## **DETERMINED**

To Enact: **REGULATION OF THE MINISTER OF FORESTRY ON THE IMPLEMENTATION PROCEDURES FOR REDUCING EMISSIONS FROM DEFORESTATION AND FOREST DEGRADATION (REDD).**

### **CHAPTER I DEFINITION**

#### **Article 1**

In this regulation what is referred to as:

1. Forest is an ecosystem unit forming land cover [and] containing biotic natural resources dominated by woody vegetation in natural affinity with the surrounding environment, inseparable from one another.
2. Forest estate is a certain area that has been assigned or determined by government to be maintained as permanent forest.
3. State forest is forest on land unencumbered by proprietary rights.
4. Proprietary forest is forest on land encumbered by proprietary rights.
5. Customary forest is state forest within an area of customary community [tenure].
6. Production forest is an area of forest with the main function to produce forest products.
7. Protection forest is an area of forest with the main function to protect life support systems [such as to] regulate water management, prevent floods, control erosion, prevent intrusion of seawater, and maintain fertility of soil.
8. Conservation forest is an area of forest with distinct characteristics that has the main function to preserve the biodiversity of flora and fauna and associated ecosystems.
9. Deforestation is the permanent alteration of a forested area to become non-forested as a result of human activities.
10. Forest degradation is the reduction of the amount of forest cover and carbon stock during a certain period of time as a result of human activities.
11. Minister is the Minister who is responsible for the forestry sector.
12. REDD commission is a commission established by the Minister which has the task to manage the implementation of REDD.
13. Regional governments are Governors, Regents, or Mayors and other regional apparatus that execute regional governance.

#### **Article 2**

Reducing Emissions from Deforestation and Forest Degradation, referred to as REDD comprises all forest management activities that decrease the reduction of forest cover and carbon stock through various activities.

## **CHAPTER II**

### **LOCATION AND REQUIREMENTS**

#### **Article 3**

REDD may be implemented in:

- a. The area of Wood Forest Product Utilization License in Natural Forest (IUPHKHA)
- b. The area of Wood Forest Product Utilization License in Plantation Forest (IUPHKHTI).
- c. The area of Forest Product Utilization License in Community Forest.
- d. The area of Wood Forest Product Utilization License in Community Plantation Forest (IUPHKTR)
- e. The area of Ecosystem Restoration Wood Forest Product Utilization License.
- f. The area of Production Forest Management Unit (KPHP)
- g. The area of Protection Forest Management Unit (KPHL)
- h. The area of Conservation Forest Management Unit (KPHK)
- i. The area of customary forest.
- j. The area of proprietary forest.
- k. The area of state forest.

#### **Article 4**

The proponents of REDD are:

- a. The holder of Wood Forest Product Utilization License in Natural Forest (IUPHKHA).
- b. The holder of Wood Forest Product Utilization License in Plantation Forest (IUPHKHTI).
- c. The holder of Forest Product Utilization License in Community Forest.
- d. The holder of Wood Forest Product Utilization License in Community Plantation (IUPHKTR).
- e. The holder of Ecosystem Restoration Wood Forest Product Utilization License.
- f. The head of Production Forest Management Unit (KPHP)
- g. The head of Protection Forest Management Unit (KPHL)
- h. The head of Conservation Forest Management Unit (KPHK)
- i. The holder of customary forest management license.
- j. The owner of proprietary forest.
- k. The manager of state forest.

#### **Article 5**

1. The REDD requirements for the area of Wood Forest Product Utilization License in Natural Forest (IUPHKHA), the area of Wood Forest Product Utilization License in Plantation Forest (IUPHKHTI), the area of Forest Product Utilization License in Community Forest, the area of Wood Forest Product Utilization License in Community Plantation Forest (IUPHKTR), the area of Ecosystem Restoration Wood Forest Product Utilization License are:
  - a. Wood Forest Product Utilization License in Natural Forest (IUPHKHA)/ Wood Forest Product Utilization License in Plantation Forest (IUPHKHTI)/ Forest Product Utilization License in Community Forest/ Wood Forest Product Utilization License in Community Plantation Forest (IUPHKTR)/ Ecosystem Restoration Wood Forest Product Utilization License.
  - b. Recommendation for REDD implementation from the local government.
  - c. Fulfillment of the location criteria and indicators for REDD implementation.
  - d. REDD implementation plan.
2. The provisions on Forest Products Utilization License as referred to in paragraph (1) letter a are regulated in a separate Ministerial Regulation.

#### **Article 6**

1. The REDD requirements for Production Forest Management Unit (KPHP)/ Protection Forest Management Unit (KPHL)/ Conservation Forest Management Unit (KPHK) are:
  - a. Decree on the establishment of Production Forest Management Unit (KPHP)/ Protection Forest Management Unit (KPHL)/ Conservation Forest Management Unit (KPHK).
  - b. Recommendation for REDD implementation from local government.
  - c. Fulfillment of the location criteria and indicators for REDD implementation.
  - d. REDD implementation plan.
2. The provisions on Forest Management Unit as referred to in paragraph (1) letter a are regulated in a separate Ministerial Regulation.

## **Article 7**

1. The REDD requirements for customary forest are:
  - a. Decree on the right to manage customary forest
  - b. Recommendation for REDD implementation from local government.
  - c. Fulfillment of the location criteria and indicators for REDD implementation.
  - d. REDD implementation plan.
2. The provisions on customary forest management as referred to in paragraph (1) letter a are regulated in a separate Ministerial Regulation.

## **Article 8**

1. The REDD requirements for proprietary forest are:
  - a. Valid certificate of land or forest ownership or ownership letter from local government.
  - b. Recommendation for REDD implementation from local government.
  - c. Fulfillment of the location criteria and indicators for REDD implementation.
  - d. REDD implementation plan.
2. The provisions on proprietary forest management as referred to in paragraph (1) letter a are regulated in a separate Ministerial Regulation.

## **Article 9**

1. The REDD requirements for other state forests are:
  - a. Decree of the Minister of Forestry on assignment of other state forest.
  - b. Recommendation for REDD implementation from local government.
  - c. Fulfillment of the location criteria and indicators for REDD implementation.
  - d. REDD implementation plan.
2. The provisions on other state forest management as referred to in paragraph (1) letter a are regulated in a separate Ministerial Regulation.

## **Article 10**

1. The guidelines for the issuance of REDD implementation recommendation by Local Government as referred to in Article 5 Paragraph (1) letter b, Article 6 Paragraph (1) letter b, Article 7 Paragraph (1) letter b, Article 8 Paragraph (1) letter b, Article 9 Paragraph (1) letter b is regulated in Appendix 1 of this Regulation.
2. The criteria for REDD implementation locations as referred to in Article 5 Paragraph (1) letter c, Article 6 Paragraph (1) letter c, Article 7 Paragraph (1) letter c, Article 8 Paragraph (1) letter c, Article 9 Paragraph (1) letter c is regulated in Appendix 2 of this Regulation.
3. The guidelines for the formulation of REDD implementation plans as referred to in Article 5 Paragraph (1) letter d, Article 6 Paragraph (1) letter d, Article 7 Paragraph (1) letter d, Article 8 Paragraph (1) letter d, Article 9 Paragraph (1) letter d is regulated in Appendix 3 of this Regulation.

## **CHAPTER III**

## **IMPLEMENTATION PROCEDURES**

### **Article 11**

1. A proponent of REDD as mentioned in Article 4 shall submit a proposal to the Minister along with all requirements mentioned in Article 5, Article 6, Article 7, Article 8, and Article 9.
2. The Minister shall direct the REDD Commission to assess the REDD proposal referred to in paragraph (1).
3. The REDD commission shall assess the proponent's proposal.
4. Within 14 (fourteen) days after receiving the assessment of REDD commission as referred in paragraph (3), the Minister can decline the proposal or approve the proposal by issuing REDD Implementation License.
5. Within 90 (ninety) days at the latest after the License is granted by the Minister, the proponent shall forthwith commence the REDD activities.

### **Article 12**

The guidelines for REDD proposal assessment as referred to in Article 11 paragraph (3) are stated in Appendix 4 of this regulation.

## **CHAPTER IV TIME PERIOD**

### **Article 13**

1. The maximum time period for REDD implementation in the area of Wood Forest Product Utilization License in Natural Forest (IUPHHKHA), the area of Wood Forest Product Utilization License in Plantation Forest (IUPHKHTI), the area of Forest Product Utilization License in Community Forest, the area of Wood Forest Product Utilization License in Community Plantation Forest (IUPHHKTR), the area of Ecosystem Restoration Wood Forest Product Utilization License is equal to the period of for the license.
2. The maximum time period for REDD implementation in the area of Production Forest Management Unit (KPHP), the area of Protection Forest Management Unit (KPHL), the area of Conservation Forest Management Unit (KPHK) and other state forest is 30 (thirty) years.
3. The maximum time period for REDD implementation in customary forest and proprietary forest is 30 (thirty) years.

## **CHAPTER V RIGHTS AND RESPONSIBILITIES**

### **Article 14**

The proponents of REDD have the following rights:

1. Receive the amount of incentives according to the reduction of emissions achieved.
2. Trade REDD certificates.

### **Article 15**

The proponents of REDD have the following responsibilities:

1. Conduct the activities of forest management within the framework of REDD implementation.
2. Set reference emission [levels] in the beginning of activities.
3. Conduct monitoring in accordance with the plan.
4. Submit monitoring reports to the Minister through the REDD Commission.
5. Distribute incentives to all stakeholders in accordance with the plan.

## **CHAPTER VI REFERENCE EMISSIONS, ACCOUNTING, MONITORING AND REPORTING**

### **Article 16**

The Minister shall direct the organizational unit responsible for forestry planning to set reference emissions at the national level.

### **Article 17**

The guidelines for setting reference emissions as referred to in Article 15 paragraph (2) and Article 16, monitoring and reporting of REDD implementation as referred in Article 15 paragraph (3) and (4) are stated in Appendix 5 of this Regulation.

## **CHAPTER VII VERIFICATION AND CERTIFICATION**

### **Article 18**

1. Within 14 (fourteen) days after the monitoring report is submitted by a REDD proponent as referred to in Article 15 paragraph (4) to the REDD Commission, the REDD Commission shall engage an Independent Appraisal Institution to conduct verification.
2. The Independent Appraisal Institution shall report the verification result to the REDD Commission and REDD proponent.
3. The verification cost shall be borne by the REDD proponent.
4. Within 30 (thirty) days after receipt of the verification result from the Independent Appraisal Institution, the REDD commision shall issue a REDD Certificate to the REDD proponent.

### **Article 19**

The guidelines for verification as referred to in Article 19 paragraph (1) are stated in Appendix 6 of this Regulation.

### **Article 20**

1. The Minister shall direct the organizational unit responsible for forestry research and development to conduct the accreditation of Independent Appraisal Institutions.
2. The mechanism and procedure for Independent Appraisal Institutions accreditation process shall be regulated in a separate Ministerial Regulation.

### **Article 21**

The REDD Commission shall submit regular reports on REDD implementation to the Minister and the focal point of the United Nations Convention on Climate Change to be forwarded to the United Nations Convention on Climate Change.

## **CHAPTER VIII INCENTIVE DISTRIBUTION AND LIABILITIES**

### **Article 22**

The distribution of incentives from REDD implementation will be regulated in a Government Regulation.

### **Article 23**

1. Thirty percent of the total of REDD credits shall be deposited with the Commission as collateral for REDD implementation at the national level.
2. The collateral referred to in paragraph (1) may be used by Government for:
  - a. Management of emission reduction at the national level, and/or
  - b. Empowerment of communities in areas surrounding the forests.

3. The mechanism and procedures for utilizing REDD implementation collateral shall be regulated in a separate Ministerial Regulation.

## **CHAPTER IX TRANSITIONAL PROVISIONS**

### **Article 24**

The funds for REDD demonstration activities shall come from the participation of parties to the United Nations Convention on Climate Change.

### **Article 25**

Prior to the establishment of a system for Independent Appraisal Institutions, the function of those institutions shall be executed by an Independent Appraisal Team that will be established by the organizational unit responsible for forestry research and development.

### **Article 26**

Prior to the establishment of Production Forest Management Units (KPHP) and Protection Forest Management Units (KPHL), the government agencies responsible for the management of production forest and protection forest may be the REDD proponent.

### **Article 27**

Other forest carbon trading initiatives, yet to be regulated, shall refer to this Regulation.

## **CHAPTER X CONCLUDING PROVISION**

### **Article 28**

This Regulation shall come into effect on the date of enactment

In order that all may take cognizance hereof, this Ministerial Decree is promulgated by its insertion in the State Gazette of the Republic of Indonesia.

Enacted in: Jakarta

On:

Minister of Forestry  
Dr (HC) M.S. Kaban

Promulgated in: Jakarta

On:

MINISTER OF LAW AND HUMAN RIGHTS  
THE REPUBLIC OF INDONESIA

ANDI MATTALATTA

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR.....NUMBER.....

## **Annex C**

**LAW OF THE REPUBLIC OF INDONESIA NUMBER 41 of 1999**  
**REGARDING**  
**FORESTRY**  
**BY MERCY OF THE ONE SUPREME GOD**

- Considering:
- a. whereas forest as endowment and mandate of the One Supreme God bestowed to the Indonesian people constitutes state controlled asset which provides various benefits for human beings, thereby requiring us to be grateful, manage and utilize the same optimally and maintain the preservation thereof for maximum prosperity of the people, both present and future generations;
  - b. whereas forest, as one of determinant factors of life buffer system and sources of people's prosperity tends to degrade, therefore existence thereof shall be maintained optimally, its bearing capacity shall be preserved and managed by noble, fair, wise, sensible, transparent, professional, and accountable manners;
  - c. whereas sustainable global forest management shall accommodate dynamic of community's aspiration and participation, custom and culture as well as social value based on national legal norms;
  - d. whereas Law Number 5 of 1967 regarding Principles of Forestry (State Gazette of 1967 Number 8) is no longer conforming to principles of forest control and management and current demand, thereby requiring revision;
  - e. whereas in this respect, it is deemed necessary to stipulate a new Law regarding Forestry.
- In View of:
- 1. Article 5 paragraph (1), Article 20 paragraph (I), Article 27, and Article 33 of Constitution 1945;
  - 2. Stipulation of People's Consultative Assembly of the Republic of Indonesia Number XV/MPR/ I998 regarding Decentralization; Fair control, Distribution and Use of National Resources; as well as Revenue Sharing within the Unitary State of the Republic of Indonesia;
  - 3. Law Number 5 of 1960 regarding Principles of Agrarian Affairs (State Gazette of 1960 Number 104, Supplement to State Gazette Number 2034);
  - 4. Law Number 5 of 1990 regarding Conservation of Bio-Natural Resources and Ecosystem thereof (State Gazette of 1990 Number 49, Supplement to State Gazette Number 3419);
  - 5. Law Number 24 of 1992 regarding Spatial Plan (State Gazette of 1992 Number 115, Supplement to State Gazette Number 3501);
  - 6. Law Number 23 of 1997 regarding Environmental Management (State Gazette of 1997 Number 68, Supplement to State Gazette Number 3699);
  - 7. Law Number 22 of 1999 regarding Decentralization (State Gazette of 1999 Number 60, Supplement to State Gazette Number 3839);

**With Approval of**  
**THE HOUSE OF PEOPLE'S REPRESENTATIVES**  
**OF THE REPUBLIC OF INDONESIA**

**HAS DECIDED:**

To Stipulate: LAW REGARDING FORESTRY

**CHAPTER I**

**GENERAL**

**Part One**

**Definition**

**Article 1**

In this Law by:

1. Forestry we mean integrated management system pertaining to forest, forest area and forest produces.
2. Forest we mean an ecosystem unit in term of a plot of land containing bio-natural resources dominated by vegetation in integrated unity of environment thereof.
3. Forest area we mean any particular area determined or designated by the government to be permanent forest.
4. State forest we mean any forest on a land not charged with land title.
5. Title Forest we mean any forest situated on land charged with land title.
6. Indigenous forest we mean state's forest situated in indigenous law community area.
7. Production forest we mean forest area with main function to yield forest produces.
8. Protected forest we mean forest area with main function to protect life buffer system to arrange water management, prevent flood, erosion, prevent brine water intrusion, and maintain land fertility.
9. Conversion forest we mean forest area with typical characteristics, with main function to conserve bio-diversity and ecosystem thereof.
10. Nature reserve forest area we mean forest with typical characteristics, with main function to preserve bio-diversity and ecosystem thereof and also as life life buffer system.
11. Natural preservation forest area we mean forest with typical characteristics, with main function to protect life life buffer system, preserve bio-diversity and utilize sustainably bionatural resources and ecosystem thereof.
12. Hunting Resort we mean forest area designated for hunting.
13. Forest Produce we mean biological, non-biological materials and their derivatives as well as forest originated service.
14. Government we mean Central Government.
15. Minister we mean the minister assigned to deal with and responsible for Forestry affairs.

**Part Two**

**Principle and Objective**

**Article 2**

The principles of forestry management shall be benefit and conservation, democracy, justice, togetherness, transparency, and integrity.

**Article 3**

Forest management shall be aimed at providing maximum prosperity for the people based on justice and sustainability by:

- a. securing existence of forest at adequate extent and proportional distribution;
- b. optimizing various forest functions covering conservation, protection, and production functions to attain environmental, social, cultural and economic benefits proportionally and sustainably;
- c. increasing baring capacity of river sheds;
- d. increasing capability to develop community's capacity and capability on participation, justice, and sustainability basis to create social and economic resilience as well as endurance against impacts of external changes; and
- e. securing distribution of benefits on just and sustainability basis.

**Part Three**  
**Forest Control**

**Article 4**

- (1) All forests in territory of the Republic of Indonesia including natural resources contained therein shall be controlled by State for the maximum prosperity of the people.
- (2) Forest Control by the State as referred to in Paragraph (1) shall mean authority of the government to:
  - a. maintain and manage anything relating to forest, forest area, and forest produces;
  - b. stipulate certain area status as forest area or forest area and non-forest area; and
  - c. maintain and stipulate legal relations of people to forest as well as legal acts concerning forestry.
- (3) Forest control by state shall remain taking into account rights of indigenous law community if any and its existence is acknowledged and not contradictory to national interest.

**CHAPTER II**  
**FOREST STATUS AND FUNCTION**

**Article 5**

- (1) Forest shall by status consist of:
  - a. state forest, and
  - b. title forest.
- (2) State forest as referred to in paragraph (1) item a, can be in terms of customary forest.
- (3) The Government shall stipulate status of forest as referred to paragraphs (1) and (2); and indigenous forest shall be stipulated if any and its existence acknowledged.
- (4) In case in its development indigenous law community no longer exists the management right of indigenous law shall return to the Government.

**Article 6**

- (1) Forest shall have three functions, namely:
  - a. conservation,
  - b. protection, and
  - c. production.
- (2) The Government shall determine forest by main function as follows:

- a. conservation forest,
- b. protected forest, and
- c. production forest.

#### **Article 7**

The conservation forest as referred to in Article 6 paragraph (2) item a shall consist of:

- a. nature preserve forest area;
- b. natural preservation forest area; and
- c. hunting resort

#### **Article 8**

- (1) The Government shall determine specially designated forest area.
- (2) Determination of specially designated forest area as referred to in paragraph (1) shall be required in public interest such as:
  - a. research and development,
  - b. training and education.
  - c. religion and culture.
- (3) Forest area for special designation as referred to in paragraph (1) shall not change major function of forest area as referred to in Article 6.

#### **Article 9**

- (1) For micro-climate, aesthetic, and water catchment designation for urban forest shall be available in each town.
- (2) Further provision as referred to in paragraph (1) shall be stipulated by virtue of Government Regulation.

### **CHAPTER III**

### **FOREST MANAGEMENT**

#### **Article 10**

- (1) Forest management as referred to in Article 4 paragraph (2) item a shall be aimed at obtaining maximum benefit and multifunction and preservation for people's prosperity.
- (2) Forest management as referred to in paragraph (1) shall include the following activities:
  - a. forestry planning,
  - b. forest management,
  - c. research and development, training and education as well as extension on forestry affairs, and
  - d. supervision.

### **CHAPTER IV**

### **FORESTRY PLANNING**

#### **Part One**

##### **General**

#### **Article 11**

- (1) Forestry planning is intended to provide guidelines and direction securing attainment of forestry management goal as referred to in Article 8.
- (2) Forestry planning shall be made transparently, accountably, participatively, and integratedly by taking into account regional characteristics and aspiration.

### **Article 12**

Forestry planning as referred to in Article 10 paragraph (2) item a shall include:

- a. forest inventory taking,
- b. forest area affirmation,
- c. forest area use,
- d. forest management area establishment, and
- e. forestry plan preparation.

## **Part Two**

### **Forest Inventory Taking**

#### **Article 13**

- (1) Forest Inventory Taking is conducted to identify and obtain complete data and information on forest resources, forest natural wealth potential and environment thereof.
- (2) The forest inventory taking as referred to in Article 4 paragraph (1) shall be made by survey on status and physical condition of forest, flora and fauna, human resources as well as community social condition in and around forest.
- (3) The forest inventory taking as referred to in Article 4 paragraph (2) shall consist of:
  - a. forest inventory taking at national level,
  - b. forest inventory taking at regional level,
  - c. forest inventory taking at river shed level, and
  - d. forest inventory taking at management unit level.
- (4) Forest inventory taking finding as referred to in paragraphs (1), (2), and (3) shall be used inter alia as basis of forest area affirmation forest resources balance preparation, forestry plan preparation and forestry information system.
- (5) Further provisions as referred to in paragraphs (1), (2) and (3) shall be stipulated by virtue of a Government Regulation.

## **Part Three**

### **Forest Area Affirmation**

#### **Article 14**

- (1) Based on forest inventory taking as referred to in Article 13, the Government shall make forest area affirmation.
- (2) Forest area affirmation as referred to in paragraph (1) shall be to provide security of law on forest area.

#### **Article 15**

- (1) Forest Area Affirmation as referred to in Article 14 shall be made under the following process:
  - a. forest area designation,
  - b. forest area boundary management,

- c. forest area mapping, and
  - d. Forest area stipulation.
- (2) Forest Area Affirmation as referred to in paragraph (1) shall be conducted by taking into account regional spatial plan.

#### **Part Four**

##### **Forest Area Use**

###### **Article 16**

- (1) The Government shall, based on Forest Area Affirmation as referred to in Articles 14 and 15, organize forest area use
- (2) The Forest Area use shall include determination of functions and use of Forest Area.
- (3) Further provision as referred to in paragraphs (1) and (2) shall be stipulated by virtue of a Government Regulation.

#### **Part Five**

##### **Forest Management Area Establishment**

###### **Article 17**

- (1) Establishment of forest management area shall be made for:
  - a. province,
  - b. district/town. and
  - c. management unit levels.
- (2) The establishment of forest management area in management unit level shall be made by taking into account soil characteristics, forest type, forest function, river shed condition, socio culture, economic condition, local community institution including indigenous law community and Government administration boundaries.
- (3) The establishment of forest management unit exceeding Government administration boundary due to condition and characteristics as well as types of forest shall be stipulated separately by the Minister.

###### **Article 18**

- (1) The Government shall determine and maintain forest area extent adequacy and forest coverage for each river shed and or island, to optimize environmental, social and economic benefits for local community.
- (2) Forest area extent which shall be maintained as referred to in paragraph (1) shall be at least 30% (thirty percent) of river shed and or island area extent at proportional distribution.

###### **Article 19**

- (1) Change of forest designation and function shall be stipulated by the Government based on integrated research findings.
- (2) Change of forest area designation as referred to in paragraph (1) generating significant impact and extensive coverage as well as strategic value shall be stipulated by the Government with approval of the House of People's Representatives.
- (3) Provisions on procedure for change of forest area designation and function as referred to in paragraphs (1) and (2) shall be stipulated by virtue of a Government Regulation.

#### **Part Six**

##### **Forestry Planning Preparation**

## **Article 20**

- (1) Based on inventory taking findings as referred to in Article 13 and by taking into account environmental factors and social condition of local community, the government shall prepare forestry plan.
- (2) Forestry plan as referred to in paragraph (1) shall be prepared by term of planning, geographical scale and main function of forest area.
- (3) Further provisions as referred to in paragraphs (1) and (2) shall be stipulated by virtue of a Government Regulation.

## **CHAPTER V**

### **FOREST MANAGEMENT**

#### **Part One**

##### **General**

## **Article 21**

Forest Management as referred to in Article 10 paragraph (2) item b shall include the following activities:

- a. forest arrangement and forest management planning,
- b. forest utilization and forest area use,
- c. forest rehabilitation and reclamation, and
- d. forest protection and natural conservation.

#### **Part Two**

### **Forest Arrangement and Forest Management Planning**

## **Article 22**

- (1) Forest arrangement shall be made for more intensive forest area management to obtain more optimum and sustainable benefits.
- (2) Forest arrangement shall include distribution of forest area in blocks by ecosystem, type, function and forest utilization plan.
- (3) Blocks as referred to in paragraph (2) shall be divided into plots by intensity and efficiency of handling.
- (4) Based on block and plots as referred to in paragraphs (2) and (3), forest management plan shall be prepared for a definite period.
- (5) Further provisions as referred to in paragraphs (1), (2), (3) and (4) shall be stipulated by virtue of Government Regulation.

#### **Part Three**

### **Forest Utilization and Forest Area Use**

## **Article 23**

Forest utilization as referred to in Article 21 item b shall be intended to obtain optimum benefit for welfare of all by maintaining preservation thereof.

## **Article 24**

Forest area utilization can be made to all forest areas except natural conservation forest as well as core zone and forest zone in national park.

## **Article 25**

Natural Preservation forest area utilization and nature reserve forest area as well as hunting resort shall be stipulated according to the prevailing legislation.

#### **Article 26**

- (1) Utilization of protected forest in form of area utilization, environmental service utilization and collection of non-timber forest produce.
- (2) Utilization of protected forest shall be made by issue of area utilization operation permits, environmental service utilization operation permits and non-timber forest produce collection permits.

#### **Article 27**

- (1) Area utilization operation permits of as referred to in Article 26 paragraph (2) can be issued to:
  - a. individuals,
  - b. cooperatives.
- (2) Environmental service utilization operation permits of as referred to in Article 26 paragraph (2) can be issued to:
  - a. individuals,
  - b. cooperatives.
  - c. Indonesian private corporate bodies,
  - d. State or enterprises.
- (3) Non-timber forest produce collection permits of area as referred to in Article 26 paragraph (2) can be issued to:
  - a. individuals,
  - b. cooperatives.

#### **Article 28**

- (1) Production forest utilization can be in terms of area utilization, environmental service utilization, timber and non-timber forest produce, as well as timber and non-timber forest produce collection.
- (2) Production forest utilization shall be made by issue of area utilization operation permits, environmental service utilization operation permits, timber forest produce utilization operation permits, non-timber forest produce utilization operation permits, timber forest produce collection permits, and non-timber forest produce collection permits.

#### **Article 29**

- (1) Area utilization operation permits as referred to in Article 28 paragraph (2) can be issued to:
  - a. individuals,
  - b. cooperatives.
- (2) Environmental service utilization operation permits as referred to in Article 28 paragraph (2) can be issued to:
  - a. individuals,
  - b. cooperatives,
  - c. Indonesian private corporate bodies,
  - d. State enterprises.

- (3) Non-timber forest produce utilization operation permits as referred to in Article 28 paragraph (2) can be issued to:
  - a. individuals,
  - b. cooperatives,
  - c. Indonesian private corporate bodies,
  - d. State enterprises.
- (4) Timber forest produce utilization operation permits as referred to in Article 28 paragraph (2) can be issued to:
  - a. individuals,
  - b. cooperatives,
  - c. Indonesian private corporate bodies,
  - d. State enterprises.
- (5) Timber and non-timber forest produce collection permits as referred to in Article 28 paragraph (2) can be issued to:
  - a. individuals,
  - b. cooperatives.

#### **Article 30**

To empower people's economy, each state enterprise, state regional enterprise and Indonesian private corporate body provided with environmental service utilization operation permit, timber and non-timber forest produce utilization operation permit shall cooperate with local cooperatives.

#### **Article 31**

- (1) For fairness, equal distribution and preservation, forest utilization operation permit shall be limited by taking into account forest preservation and business security aspect.
- (2) Limitation as referred to in paragraph (1) shall be stipulated by virtue of a Government Regulation.

#### **Article 32**

Permit holders as referred to in Articles 27 and 29 shall keep, maintain and preserve forests where they operate.

#### **Article 33**

- (1) Forest produce utilization operation shall include planting, maintenance, harvesting, processing, and marketing of forest produce.
- (2) Harvesting and processing of forest produce as referred to in paragraph (1) shall not exceed forest bearing capacity.
- (3) Arrangement, development and improvement of forest produce processing as referred to in paragraph (2) shall be regulated by the Minister.

#### **Article 34**

Specially designated Forest area management as referred to in Articles 8 can be issued to:

- a. indigenous law community.
- b. educational institutions,
- c. research institutions,
- d. social and religious institutions.

### **Article 35**

- (1) Each holder of forest utilization operation permit as referred to in Articles 27 and 29 shall be charged with operation permit dues, fee, afforestation fund and performance bond.
- (2) Each holder of forest utilization operation permit as referred to in Articles 27 and 29 shall provide investment fund for forest conservation.
- (3) Each holder of forest produce collection permit as referred to in Articles 27 and 29 shall be charged with fee.
- (4) Further provisions as referred to in paragraphs (1), (2) and (3) shall be stipulated by virtue of a Government Regulation.

### **Article 36**

- (1) Title forest utilization shall be conducted by relevant land title holder according function thereof.
- (2) Title forest with protection and conservation functions can be utilized provided not disturbing its function.

### **Article 37**

- (1) Indigenous forest shall be utilized by the relevant indigenous law community, according to its function.
- (2) Indigenous forest with protection and conservation functions can be utilized provided not disturbing its function.

### **Article 38**

- (1) Use of forest area use in the interest of development beyond forestry activities can only be made in production forest area and protected forest area.
- (2) Forest area use as referred to in paragraph (1) shall not change its major function.
- (3) Use of forest area for mining purpose shall be made through issue of loan use permit by the Minister by taking into account its extent and definite term as well as environmental conservation.
- (4) No open pit mining can be made in protected forest area.
- (5) Loan use permit as referred to in paragraph (3) generating significant impact and having extensive coverage as well as strategic value shall be issued by the Minister with approval of the House of People's Representatives.

### **Article 39**

Provisions on implementation of forest utilization and forest area use as referred to in Articles 27, 29, 34, 36, 37, and 38 shall be stipulated by virtue of a Government Regulation.

## **Part Four**

### **Forest Rehabilitation and Reclamation**

### **Article 40**

Forest and land rehabilitation shall be intended to recover, maintain and improve forest and land function to maintain bearing capacity, productivity and role thereof in supporting life buffer system.

### **Article 41**

- (1) Forest and land rehabilitation shall be made through the following activities:
  - a. afforestation,
  - b. reforestation,

- c. maintenance,
  - d. vegetation enrichment, or
  - e. application of land conservation engineering on vegetative and civil engineering, basis to critical and non productive land.
- (2) Rehabilitation as referred to in paragraph (1) shall be made in all forests and forest areas except natural preserve and core zone of national park.

#### **Article 42**

- (1) Forest and land rehabilitation shall be based on specific biophysical condition.
- (2) Forest and land rehabilitation shall be chiefly implemented primarily by participatory approach to develop potential and empower community.
- (3) Further provisions as referred to in paragraphs (1) and (2) shall be stipulated by virtue of a Government Regulation.

#### **Article 43**

- (1) Any person controlling, managing, and or utilizing critical and non productive forest shall conduct forest rehabilitation for protection and conservation.
- (2) In rehabilitation as referred to in paragraph (1), each person can solicit for assistance, service and support of any non government organizations, other parties or Government.

#### **Article 44**

- (1) Forest reclamation as referred to in Article 21 item c shall include program to improve or recover optimum function of damaged land and forest vegetation according to designation thereof.
- (2) Reclamation as referred to in paragraph (1) shall include site inventory taking, site determination, planning and reclamation implementation.
- (3) Further provisions as referred to in paragraphs (1) and (2) shall be stipulated by virtue of a Government Regulation.

#### **Article 45**

- (1) Forest area use as referred to in Article 38 paragraph (1) resulting in forest damage, shall be reclaimed and or rehabilitated according to pattern stipulated by the Government.
- (2) Reclamation in forest area ex mining area shall be made by mining permit holder according to mining activities phase.
- (3) Any parties using forest area for any purposes other than forestry activities resulting in change of surface and overburden shall pay reclamation and rehabilitation deposit.
- (4) Further provisions as referred to in paragraphs (1), (2) and (3) shall be stipulated by virtue of a Government Regulation.

### **Part Five**

#### **Forest Protection and Nature Conservation**

#### **Article 46**

Forest protection and natural conservation shall be intended to maintain forest area and environment thereof, for optimum and sustainable protection, conservation and production.

#### **Article 47**

Forest and forest area protection shall be intended to:

- a. prevent and minimize damage to forest area and forest produce due to human beings' act, animal, fire, natural power, pest, as well as diseases; and
- b. maintain and keep state's, community's and individuals' rights to forest, forest area, forest produce, investment as well as facilities relating to forest management.

#### **Article 48**

- (1) The Government shall regulate forest protection, both within and outside forest area.
- (2) Forest protection in state forest shall be implemented by the Government.
- (3) Forest utilization operation permit holders as referred to in Articles 27, and 29 as well as parties authorized to manage forest as referred to in Article 34 shall protect forests in their working areas.
- (4) Forest protection in title forests shall be made by title holders.
- (5) For proper forest protection, the community shall be involved in forest protection program.
- (6) Further provisions as referred to in paragraphs (1), (2), (3), (4) and (5) shall be stipulated by virtue of a Government Regulation.

#### **Article 49**

Title or permit holders shall be responsible for any forest fire occurring to their working areas.

#### **Article 50**

- (1) No one shall damage forest protection infrastructure and facilities.
- (2) No holder of area utilization operation permit, environmental service utilization operation permit, timber forest produce utilization operation permit, non-timber forest produce utilization operation permit, timber forest produce collection permit, and non-timber forest produce collection permit shall commit anything resulting in damage to forest.
- (3) No one shall:
  - a. exploit and or use and or occupy forest area illegally;
  - b. encroach forest area;
  - c. fell vegetation in forest area at radius or distance through:
    1. 500 (five hundred) meters from perimeter of dams or lakes;
    2. 200 (two hundred) meters from perimeter of springs and right and left sides of rivers in swampy areas;
    3. 100 (one hundred) meters from right and left sides of flyers;
    4. 50 (fifty) meters from right and left sides of tributaries;
    5. Two times of valley depth from valley edge;
    6. 130 (one hundred thirty) times of difference of the highest tide and lowest tide from beach line.
  - d. burn forest;
  - e. fell vegetation or harvest or collect forest produces In forest illegally;
  - f. receive, purchase or sell, exchange, receive consignment, keep or posses forest produce identified or reasonably alleged to be illegally taken or collected;
  - g. make general surveyor exploration or exploitation of minerals in forest area without consent of the Minister;
  - h. transport, control, or posses forest produces without any legal documentation;

- i. herd cattle in forest areas not specially designated for that purpose by competent authorities;
  - j. mobilize heavy and or other equipment commonly or reasonably alleged to use to transport forest produce in forest area without any consent of competent authorities;
  - k. bring in any devices commonly used to fell, cut or split trees in forest area without any consent of competent authorities;
  - l. dispose any materials which may cause fire and damage as well as endanger existence or preservation of forest function into forest area; and
  - m. bring out, bring in and transport vegetation and wildlife not protected by law from forest area without any consent of competent authorized;
- (4) Provisions on bringing out, bringing in and or transporting protected vegetation and wildlife shall be stipulated according to the prevailing legislation.

#### **Article 51**

- (1) To secure forest protection, certain forestry officials shall according to nature of their work be given of special police authority.
- (2) Officials given special police authority as referred to in paragraph (1) shall be authorized to:
  - a. patrol in forest area or their jurisdiction;
  - b. inspect papers or documents relating to transportation of forest produce in forest area or their jurisdiction;
  - c. receive report on any criminal act relating to forest, forest area and forest produce;
  - d. inquire and seek for evidence of criminal acts relating to forest, forest area and forest produce;
  - e. in case of being caught red handed, capture the suspects to give to custody of the competent authorities; and
  - f. make reports and sign reports on criminal acts relating to forest, forest area and forest produce.

### **CHAPTER VI**

#### **RESEARCH AND DEVELOPMENT, EDUCATION AND TRAINING AS WELL AS EXTENSION ON FORESTRY**

##### **Part One**

###### **General**

#### **Article 52**

- (1) Sustainable forest management, will require quality human resources is required characterized by their good command of science and technology based on faith and piety to the One Supreme God. through research and development, education and training as well as continuous extension on forestry.
- (2) Research and development, education and training as well as extension on forestry shall take into account science and technology, traditional wisdom as well as socio-cultural condition of the community.
- (3) In making research and development, education and training as well as extension on forestry, the government shall protect Indonesian's typical germ (If line from theft).

##### **Part Two**

###### **Forestry Research and Development**

### **Article 53**

- (1) Forestry research and development shall be aimed at developing national capability as well as science and technology culture in forest management.
- (2) Forest research and development shall be aimed at improving forest capability in materializing sustainable forest management and increasing forest produce added value.
- (3) Forest research and development shall be organized by the Government and cooperation can be made with universities, business world and community.
- (4) The Government shall encourage and establish a condition conducive to improvement in capability to master, develop and use forestry science and technology.

### **Article 54**

- (1) The Government and business world as well as community shall publicize results of forestry research and development and develop information and service system of forestry research and development.
- (2) The Government shall protect scientific discovery and technological invention in forestry pursuant to the prevailing legislation.
- (3) Permit to make forestry research in Indonesia can be given to foreign researchers with reference to the prevailing legislation.

## **Part Three**

### **Forestry Education and Training**

#### **Article 55**

- (1) Forestry education and training shall be aimed at developing and improving quality of skillful, professional, honest, sincere and noble human resources.
- (2) Forestry research and development shall be aimed at establishing human resources who master and are able to use and develop science and technology in fair and sustainable forest management based on faith and piety to the One Supreme God.
- (3) Forestry research and development shall be made by the Government, business world and community.
- (4) The Government shall support and create condition conducive to forestry research and development, for higher human resources quantity and quality.

## **Part Four**

### **Extension on Forestry**

#### **Article 56**

- (1) Extension on forestry shall be aimed at improving knowledge and skill as well as changing community's attitude and behavior in order that they are willing and able to support forestry development based on faith and piety to the One Supreme God as well as awareness of importance of forest resources for human beings' life.
- (2) Extension on forestry shall be conducted by the Government, business world and community.
- (3) The Government shall support and create condition conducive to extension on forestry.

## **Part Five**

### **Financing and Infrastructure**

#### **Article 57**

- (1) Business world dealing with forestry shall provide investment fund for research and development, education and training, as well as extension on forestry.

- (2) The Government shall provide forest area for use by and support to research and development, education and training as well as extension on forestry.

#### **Article 58**

Further provisions on research and development, education and training as well as extension on forestry shall be stipulated by virtue of a Government Regulation.

### **CHAPTER VII**

### **SUPERVISION**

#### **Article 59**

Forestry supervision is intended to scrutinize, trace and assess implementation of forest management for optimum attainment of objective and simultaneously as feedback for further betterment of and or improvement in forest management.

#### **Article 60**

- (1) The government and local administrations shall exercise forest supervision.  
(2) The community and or individuals shall play their role in forest supervision.

#### **Article 61**

The Government shall exercise supervision of forest management by Regional Administration.

#### **Article 62**

The Government, Regional Administration and community shall supervise forest management and or utilization by third parties.

#### **Article 63**

In exercising forest supervision as referred to in Article 60 paragraph (I), the government and regional administrations shall be authorized to monitor, inquire and inspect implementation of forest management.

#### **Article 64**

The government and community shall supervise implementation of forest management generating impact nationally and internationally.

#### **Article 65**

Further provision on forestry supervision shall be stipulated by virtue of a Government Regulation.

### **CHAPTER VIII**

### **DELEGATION OF AUTHORITY**

#### **Article 66**

- (1) To organize forestry, the Government shall delegate a part of its authority to Regional Administrations.  
(2) Delegation of a part of authority as referred to in paragraph (I) shall be aimed at improving effectiveness on forest management for decentralization development.  
(3) Further provisions as referred to in paragraphs (1), and (2) shall be stipulated by virtue of a Government Regulation.

### **CHAPTER IX**

### **INDIGENOUS LAW COMMUNITY**

#### **Article 67**

- (1) Indigenous law community shall if any and still acknowledged shall be entitled to:

- a. collect forest produce to fulfill daily needs of relevant customary law community;
  - b. manage forest according to the prevailing indigenous law and not in-contravention of the law; and
  - c. obtain empowerment for welfare improvement.
- (2) Affirmation of existence and extinction of indigenous law - community as referred to in paragraph (1) shall be stipulated by Regional Regulation.
- (3) Further provisions as referred to in paragraphs (1), and (2) shall be stipulated by virtue of a Government Regulation.

## **CHAPTER X**

### **COMMUNITY PARTICIPATION**

#### **Article 68**

- (1) The community shall be entitled to enjoy environmental quality the forest produces.
- (2) Besides right as referred to in paragraph (1), the community can also:
  - a. utilize forest and forest produce according to the prevailing legislation;
  - b. know forest designation plan, forest produce utilization, and information on forestry;
  - c. provide information, suggestion, as well as consideration in forestry development;
  - d. supervise implementation of forestry development, both directly and indirectly.
- (3) The community in and around the forest shall be entitled to compensation against loss of access to surrounding forest as employment opportunity to fulfill their daily need due to forest area designation according to the prevailing legislation.
- (4) Each person shall be entitled to compensation against loss of their title to land they own due to forest area designation according to the prevailing legislation.

#### **Article 69**

- (1) The community shall take part and keep as well as maintain forest area from disturbance and damage.
- (2) In conducting forest rehabilitation, the community can solicit for advocacy, service and support to non-government organizations, other parties or the Government.

#### **Article 70**

- (1) The community shall take part in development in forestry sector
- (2) The Government shall support community participation through various activities in Forestry sector effectively and efficiently.
- (3) To improve community participation, the Government and Regional Administration can be assisted by Forestry Observing Forum.
- (4) Further provisions as referred to in paragraphs (1), and (2) shall be stipulated by virtue of a Government Regulation.

## **CHAPTER XI**

### **CLASS ACTION**

#### **Article 71**

- (1) The community shall be entitled to file classaction before the court of justice and or report to law enforcer any damage to forest thereby harming the community's life.

- (2) Right to file class action as referred to in paragraph (1) shall be limited to that against forest management violating the prevailing legislation.

### **Article 72**

If it is identified that the community suffers due to pollution and or damage to forest in such a way that affects their life, the Government or Regional Administration agency responsible for forestry affairs shall be entitled to act in the interest of the community.

### **Article 73**

- (1) In assuming responsibility for forest management any organizations dealing with forest shall be entitled to file classaction for forest function conservation.
- (2) Each organization dealing with forest entitled to file classaction as referred to in paragraph (1) shall fulfill the following requirements;
- a. Corporate body;
  - b. Its articles of association expressly states that it is established to conserve forest function; and
  - c. It has implemented activities according to its articles of association.

## **CHAPTER XII**

### **SETTLEMENT OF FORESTRY DISPUTE**

#### **Article 74**

- (1) Forestry dispute can be settled intra - or extra – judicially based on voluntary option of the disputing parties.
- (2) In case of selecting extra judicial settlement, suit filed before to court of justice can be filed in case of failure.

#### **Article 75**

- (1) Extra judicial settlement of forestry dispute shall not apply to criminal acts as provided herein.
- (2) Extra judicial forestry dispute settlement is intended to attain agreement on return of right, amount of compensation and or form of certain actions to take to receiver forest function.
- (3) Extra judicial settlement of forestry dispute as referred to in paragraph (2) can solicit service of any third party jointly appointed by the disputing parties and or advocacy by non-government organization for settlement of forestry dispute.

#### **Article 76**

- (1) Intra judicial forestry dispute settlement is intended to attain court order on return of right, amount of compensation and or form of certain actions to take by the losing party.
- (2) In addition to order to take certain actions as referred to in paragraph (1), the court of justice can decide cognizance for delay in implementing such action per day.

## **CHAPTER XIII**

### **INVESTIGATION**

#### **Article 77**

- (1) Besides National Police Investigators, certain Civil Servant investigators in charge of forest management can be specially authorized to act as investigators as referred to in the Indonesian Criminal Law of Procedure.
- (2) Civil Servant Investigators as referred to in paragraph (1) shall be authorized to:

- a. investigate the truth of report or statement relating to criminal acts concerning forest, forest area and forest produce;
  - b. investigate any person alleged to commit any criminal act relating to forest, forest area, and forest produce;
  - c. examine identity card of anyone in forest area or their jurisdiction;
  - d. search and confiscate evidence of crime relating to forest, forest area, and forest produce according to the prevailing legislation;
  - e. make inquiry and seek for evidence from individuals or corporate bodies in relation to criminal acts relating to forest, forest area, and forest produce;
  - f. catch and arrest in coordination with and under the supervision of National Police Investigators Indonesia according to the Indonesian Criminal Law of Procedure;
  - g. draw up and sign minutes;
  - h. drop investigation in case of absence of sufficient evidence of any criminal acts relating to forest, forest area, and forest produce;
- (3) Civil Servant Investigators as referred to in paragraph (1) shall notify commencement of investigation and deliver their investigation findings to public prosecutor according to the Indonesian Criminal law of Procedure.

## **CHAPTER XIV**

### **PENAL PROVISIONS**

#### **Article 78**

- (1) Anyone whomsoever intentionally violating Article 50 paragraph (1) or Article 50 paragraph (2) shall be subjected to imprisonment of maximum 10 (ten) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);
- (2) Anyone whomsoever intentionally violating Article 50 paragraph (3) items a, b, or c shall be subjected to imprisonment of maximum 10 (ten) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);
- (3) Anyone whomsoever intentionally violating Article 50 paragraph (3) item d shall be subjected to imprisonment of maximum 15 (fifteen) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);
- (4) Anyone whomsoever intentionally violating Article 50 paragraph (3) item d shall be subjected to imprisonment of maximum 5 (five) years and penalty of maximum Rp 1,500,000,000.00 (one billion five hundred million rupiah);
- (5) Anyone whomsoever intentionally violating Article 50 paragraph (3) item e or f shall be subjected to imprisonment of maximum 10 (ten) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);
- (6) Anyone whomsoever intentionally violating Article 38 paragraph (4) or Article 50 paragraph (3) item g, shall be subjected to imprisonment of maximum 10 (ten) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);
- (7) Anyone whomsoever intentionally violating Article 50 paragraph (3) item h shall be subjected to imprisonment of maximum 5 (five) years and penalty of maximum Rp 10,000,000,000.00 (ten billion rupiah);
- (8) Anyone whomsoever intentionally violating Article 50 paragraph (3) item i shall be subjected to imprisonment of maximum 3 (three) years and penalty of maximum Rp 10,000,000.00 (ten million rupiah);

- f9) Anyone whomsoever intentionally violating Article 50 paragraph (3) item j, shall be subjected to imprisonment of maximum 3 (three) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);
- (10) Anyone whomsoever intentionally violating Article 50 paragraph (3) item k, shall be subjected to imprisonment of maximum 3 (three) years and penalty of maximum Rp 1,000,000,000.00 (one billion rupiah);
- (11) Anyone whomsoever intentionally violating Article 50 paragraph (3) item l, shall be subjected to imprisonment of maximum 3 (three) years and penalty of maximum Rp 1,000,000,000.00 (one billion rupiah);
- (12) Anyone whomsoever intentionally violating Article 50 paragraph (3) item m, shall be subjected to imprisonment of maximum 1 (one) year and penalty of maximum Rp 50,000,000.00 (fifty million rupiah);
- (13) Criminal act as referred to in paragraphs (1), (2), (3), (4), (5), (6), (7), (9), (10) and (11) shall be considered a crime and that as referred to in paragraphs (8) and (12) shall be misdemeanor;
- (14) In case the criminal act as referred to in Article 50 paragraphs (1), (2) and (3) is committed by and or in the name of corporate body or company, suit and criminal sanction shall be imposed upon their management, whether individually or collectively plus 1/3 (one third) of imposed imprisonment/sanction;
- (15) Any forest produce obtained from criminal act and violation and or equipment including means of transportation in use in committing crime and or violation as referred to herein shall be seized for State.

#### **Article 79**

- (1) State's wealth in terms of forest produce and other material whether in terms of invention and or seizure of result of criminal acts or violation as referred to article 78 shall be auctioned for state.
- (2) Any parties having merit for salvation of State's wealth as referred to paragraph (1) shall be provided with incentive appropriated from auction proceeds.
- (3) Further provisions as referred to in paragraph (2) shall be stipulated by the Minister.

#### **CHAPTER XV**

#### **COMPENSATION AND ADMINISTRATIVE SANCTION**

##### **Article 80**

- (1) Any illegal act stipulated herein, without prejudice to criminal sanction as referred to in Article 78, shall require the person in responsible for such act to pay compensation according to severity of damage or consequence resulting therefrom to the State, for rehabilitation and recovery of forest condition or other necessary actions.
- (2) Any holder of area utilization operation permit, environmental service utilization operation permit, forest produce utilization operation permit, or forest produce collection permit stipulated herein, if violating provisions beyond criminal provisions as referred to Article 78 shall be subjected to administrative sanction.
- (3) Further provisions as referred to in paragraphs (2) and (3) shall be stipulated by the Minister.

#### **CHAPTER XVI**

#### **TRANSITIONAL PROVISIONS**

##### **Article 81**

Forest area already designated and or stipulated based on the preceding legislation shall remain effective hereunder.

**Article 82**

All existing implementing regulations hereof in forestry sector provided not in-contravention hereof shall remain effective until issue of implementing regulation hereunder.

**CHAPTER XVII**

**CLOSING**

**Article 83**

As of the effectiveness hereof:

1. 'Boschordonnantie Java en Madoera' 1927, 'Staatsblad' 1927 Number 221 as already amended by virtue of 'Staatsblad' 1931 Number 168 recently amended by virtue of 'Staatsblad' 1934 Number 63;
2. Law Number 5 of 1967 regarding Principles of Forestry (State Gazette of 1967 Number 8, Supplement to State Gazette Number 2823).

shall be declared null and void.

**Article 84**

This Law shall become effective as of date of promulgation.

For public cognizance, it is instructed to promulgate this law by inserting the same in the State Gazette of the Republic of Indonesia.

Enacted in Jakarta  
On September 30, 1999

PRESIDENT OF THE  
REPUBLIC OF INDONESIA

signed

BACHARUDDIN JUSUF HABIBIE

STATE GAZETTE OF THE REPUBLIC OF INDONESIA  
OF 1999 NUMBER 167

## ANNEX D

WARTA CAFI 76

SEPTEMBER 21, 1999

41TH YEAR

### \*\*\* OFFICIAL ANNOUNCEMENT \*\*\*

#### AGRARIAN AFFAIRS

#### REGULATION OF STATE MINISTER OF AGRARIAN AFFAIRS /HEAD OF THE NATIONAL LAND AGENCY NUMBER : 5/1999 ; DATED : JUNE 24, 1999

#### R E

#### A GUIDELINE FOR THE SETTLEMENT OF PROBLEMS RELATED TO THE COMMUNAL RESERVED LAND OF THE CUSTOMARY-LAW-ABIDING COMMUNITY

STATE MINISTER OF AGRARIAN AFFAIRS/HEAD OF THE NATIONAL LAND AGENCY

- Considering:**
- a. that Indonesia's national land laws recognize the presence of the communal reserved land title and the like belonging to the customary-law-abiding community, as long as it still exists in reality, as meant in the provisions in Article 3 of Law No. 5/1960 on the Basic Regulation of the Agrarian Principles (hereinafter referred to as the Law on Agrarian Principles);
  - b. that in reality, at present, there are still in many regions plots of land within the customary-law-abiding community of which the settlement, control and use are based on the provisions of the local customary laws and are recognized by the members of the customary-law abiding-community concerned as their communal reserved land;
  - c. that recently there have arisen, in many regions, many problems about the said communal reserved land title, with respect to both its existence and land control;
  - d. that in connection with this, it is necessary to provide a guideline which may be used as a guide in facing and settling the existing problems and in dealing with land affairs in general in connection with the said communal reserved land title belonging to the customary-law-abiding community in future;
  - e. that this guideline must be given in the form of a regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency.

- Bearing in mind :**
- 1. Act No. 5/1960 on Basic Regulation of Agrarian Affairs;
  - 2. Act No. 5/1967 on Basic Provision on Forestry;
  - 3. Act No. 11/1967 on Basic Provisions on Mining Affairs;
  - 4. Act No. 24/1992 on Spatial Layout;

5. Act No. 22/1999 on Regional Administration;
6. Government Regulation No. 40/1996 on the Land Title for Business Purposes, the Land Title for Building Purposes and the Land Use Title;
7. Presidential Decree No. 26/1988 on the National Land Agency;
8. Presidential Decree No. 122/1988 on the Establishment of the Development Reform Cabinet;
9. Presidential Decree No. 101/1998 on the Positions, Tasks, Functions, Organizational Structure and Working System of State Ministers.

**HAS DECIDED :**

**To stipulate : THE REGULATION OF STATE MINISTER OF AGRARIAN AFFAIRS/ HEAD OF THE NATIONAL LAND AGENCY CONCERNING A GUIDELINE FOR THE SETTLEMENT OF PROBLEMS RELATED TO THE COMMUNAL RESERVED LAND TITLE OF THE CUSTOMARY-LAND-ABIDING COMMUNITY.**

**CHAPTER I  
GENERAL PROVISIONS**

**Article 1**

Referred to in this regulation as :

1. The communal reserved land title and the like, which belong to the customary-law-abiding community (hereinafter referred to as the communal reserved land title) shall be an authority which, pursuant to the customary law, rests with a particular customary-law-abiding community over a particular region constituting a living environment of its members, and which they can exercise to take benefits from the natural resources, including the land, within this region, for the continuity of their lives and living inasmuch as such authority arises from an uninterrupted physical and spiritual relationship from generation to generation between the said customary-law-abiding community and the region concerned.
2. Communal reserved land shall be a plot of land over which there is a communal reserved land title belonging to a particular customary-law-abiding community.
3. A customary-law-abiding community shall be a group of people bound by their customary law system as communal members of a legal union because of a common dwelling place or on the basis of lineage.
4. A region shall be an autonomous region authorized to deal with land affairs as meant in Law No. 22/1999 on Regional Administration.

**CHAPTER II  
IMPLEMENTATION OF CONTROL OVER COMMUNAL RESERVED LAND**

**Article 2**

- (1) The communal reserved land title, as long as it still actually exists, shall be exercised by the customary-law-abiding community pursuant to the provisions of the local customary law.
- (2) The communal reserved land title of a customary-law-abiding community shall be considered as still being in existence if :

- a. there is a group of people who feel that they are still bound by their customary law system as communal members of a particular legal union and who recognize and apply the provisions of the said union in their daily lives;
- b. there is a particular plot of communal reserved land which constitutes the living environment of the members of the said legal union and the place where they take their daily necessities for their lives; and
- c. there is a customary law system about the settlement, control and use of the communal reserved land, which still prevails and is adhered to by the members of the said legal union.

### **Article 3**

The exercise of the communal reserved land title of the customary-law-abiding community as meant in Article 2 can no longer apply to the plots of land which, at the time of the stipulation of the regional as meant in Article 6 :

- a. are already possessed by individuals or legal entities by virtue of a particular land title pursuant to the Law on Agrarian Principles;
- b. constitute plots of land already acquired or appropriated by Government institutions, legal entities or individuals pursuant to the prevailings and procedure.

### **Article 4**

- (1) Control over plots of land included as communal reserved land as meant in Article 2 by individuals and Legal entities may be conducted;
  - a. by members of the customary-law-abiding, community concerned by virtue of the title of control pursuant to the prevailing customary law, which if so desired by the title holder, can be registered as an appropriate land title pursuant to the Law on Agrarian Principles;
  - b. by government agencies, legal entities or individuals who are not members of the customary-law-abiding community concerned by virtue of the land title pursuant to the provisions of the Law on Agrarian Principles on the basis of the granting of the title from the State after the said land has been given up by the said customary-law-abiding community or by its members pursuant to the provisions and procedure of the prevailing customary law.
- (2) The communal reserved land as meant in paragraph (1) letter b for agricultural and other purposes requiring the land title for business purposes or the land use title may be given up by the customary-law-abiding community by means of surrendering the use of land for a particular period of time, so that after this period expires, or after the said land is no longer used or is neglected so that the land title for business purposes or the land use title concerned is annulled, further use must be based on a new agreement from the customary-law-abiding community concerned as far as the said communal reserved land of the customary-law-abiding community still exists pursuant to the provision in Article 2.
- (3) In cases as meant in sub-section (2) the land title for business purposes and the land use title granted by the state and their extension as well as renewal may not exceed the period of land use obtained from the customary-law-abiding community concerned.

**CHAPTER II  
DETERMINATION OF WHETHER THE COMMUNAL RESERVED LAND  
TITLE STILL EXISTS AND FURTHER REGULATION  
OF THE COMMUNAL RESERVED LAND CONCERNED**

**Article 5**

- (1) An examination and determination of whether their communal reserved land title as meant in Article 2 still exists shall be conducted by a regional administration by involving customary law experts, the customary-law-abiding community in the region concerned, non-governmental organizations and government agencies, managing natural resources,
- (2) The presence of existing communal reserved land of the customary-law-abiding community as meant in sub-section (1) shall be expressed on a land registration basic map by affixing a cartographic mark, and if possible, by giving the boundaries and registering them in the land register.

**Article 6**

Further provisions about the implementation of Article 5 shall be regulated in a regional regulation concerned.

**CHAPTER IV  
CLOSING PROVISION  
Article 7**

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

Stipulated in Jakarta  
On June 24, 1999

THE STATE MINISTER OF AGRARIAN AFFAIRS/  
HEAD OF NATIONAL LAND AGENCY

sgd

HASAN BASRI DURIN

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