

## The New Forest Reclamation Procedure

### Overview

Mining is a significant contributor to state revenue, however is also substantially affects forestry areas due to the distribution of mineral resources throughout Indonesia. To achieve a balance between economic development and the environment, pursuant to Article 45 of Law No. 41 of 1999 on Forestry ("Law"), parties that utilize forest areas for mining activities are obliged to rehabilitate and conduct reclamation of the utilized forest area.

Previously issued Government Regulation No. 76 of 2008 ("Government Regulation") on forest reclamation, was considered vague and insufficient to function as a guide to mining license holders to conduct forest reclamation. Consequently, on 14 January 2011 Ministry of Forestry Regulation No. P.04/MENHUT-II/2011 on Guidelines of Forest Reclamation ("Regulation") was issued to fully regulate this subject matter.

Pursuant to Article 4 the Regulation is a set of guidelines for mining license holders on forest reclamation, covering: the inventory of the location for reclamation, the determination of the location, forest reclamation planning, implementation of the plan, the organization that will execute the plan, the supervision of the reclamation, and the reporting mechanism after the execution of the plan is complete.

This edition of the Indonesian Legal Digest will highlight key features of the Regulation and provide an analysis of Regulation's provisions.

### Purpose

As the purpose of the Regulation is to implement Article 51 (6) of the Government Regulation, while the Regulation's framework is based on the philosophy of forest area utilization as set out in Article 33 (3) of the Law, which is to promote and implement natural resource conservation and the sustainable use.

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Pursuant to Article 3, the Regulation aims to be serve as a guide for forest reclamation for previously utilized mining forest areas, where the forest reclamation activities have to be in accordance with the general pattern, standard and criteria in rehabilitating a forest area to its intended function.

### Applicability

Pursuant to Article 2, the Regulation requires license holders to include forest reclamation as a part of their holistic activities of mining, meaning that reclamation has to commence without waiting for the mining operation to end.

Pursuant to Article 55, the license holder has to establish a special organization to handle all activities pertaining to forest reclamation. This organization, pursuant to Article 56, must consist of experts in the fields of forestry, agriculture, mining, soil and other fields related to forest reclamation.

### Location Inventory and Location Determination

Location inventory, pursuant to Article 5, is defined as a series of activities to collect data and information regarding the condition of the entire disturbed forest area due to its utilization for mining purposes.

Pursuant to Article 5 (2) the data that is to be collected comprises of primary data and secondary data, consisting of the physical condition of the forest area, and also the social and economic conditions of the surrounding area.

The physical condition of the forest area is further broken down by Article 5 (3), and the social and economic conditions by Article 5 (4). Pursuant to Article 5 (5) the social and economy conditions cover the surrounding villages that are impacted by the activities.

Results from the location inventory, pursuant to Article 6 (1), will be in the form of numeric data and spatial data of the disturbed forest area or the potentially disturbed area. Pursuant to Article 6 (3) the data will form the basis for a location determination, following the Article 8 analysis and evaluation of the spatial and numeric data.

### Forest Reclamation Planning

As set in Article 10, reclamation planning must comprise of a 5 year plan and an annual plan, where the life cycle is shorter than 5 years, an adjustment will be made.

The reclamation plan, pursuant to Article 11 (2) must contain:

- a. The forest area condition prior and after the activities (stipulated further in Article 13);
- b. Plan to open forest area (stipulated further in Article 14);
- c. Forest reclamation program (stipulated further in Article 15);
- d. The technical reclamation draft.
- e. The time schedule (stipulated further in Article 16);
- f. The plan cost (stipulated further in Article 17);
- g. Map location and map for the reclamation plan, with a scale of 1:25,000.

Pursuant to Article 19 (1), the 5 years reclamation plan is to broken down into an annual plan, where as set in Article 19 (2) the plan must comprise of:

- a. The forest reclamation site
- b. The type of reclamation activities (further stipulated in Article 19 (2) (b))
- c. Volume of each type of reclamation
- d. Schedule of the implementation
- e. The reclamation cost
- f. Map of the reclamation plan, with a scale of 1:10,000.

In addition, pursuant to Article 20, it is required that a license holder produce a technical design, having the detail stipulation of what the document must comprise in Article 21. Pursuant the Article 22, it is required that the technical design be compiled based on the analysis result of the biophysical condition and also the social and economy condition.

The biophysical condition will then become the basis for determining the types of plants for replanting, pursuant to Article 23, as further stipulated in Articles 24 and 25.

### Plan Approval

Pursuant to Article 26 in conjunction with Article 27, the reclamation plan will be assessed by the Directorate General of Watershed Management and Social Forestry at the Ministry of Forestry, on behalf of the Minister. If it is found to be adequate then a recommendation will be issued by Minister or the head of the provincial and/or regency government (Article 28).

### Plan Execution

Pursuant to Article 30 (1), reclamation of a forest area has to comprise of civil engineering and re-vegetation activities. The civil engineering activities are elaborated in Article 30 (2), and the re-vegetation activities in Article 30 (4).

## Forest Reclamation phases

Pursuant to Article 31, the phases of forest reclamation are:

- a. Land arrangement;
- b. Erosion and sedimentation control;
- c. Re-vegetation; and
- d. Maintenance.

## Land arrangement

Pursuant to Article 32, land arrangement comprises the following activities:

- a. Refilling former mine excavations, which, pursuant to Article 33, refers to the environmental threshold assessment document (AMDAL);
- b. Arranging the form of the land (further stipulated in Articles 34 through 37);
- c. Managing top soil (further stipulated in Articles 38 and 39)

## Erosion and Sedimentation Control

As erosion is caused by wind and water (Article 40), Article 41 (3) requires the license holder to control wind erosion by using annual plants or cover crop plants. Whereby wind breaker plants have to be planted (Article 41 (5)), taking into consideration factors such as:

- a. The erosive wind direction
- b. The height and spacing of the plants
- c. The permeability or the ability for wind to break through (maximum 40 %)
- d. The continuity of the length of the wind breaker plants and the turbulence of the area to be reclaimed.

As factors causing water erosion are rainfall, topography, types of plants, land use management, and cover crop plants (Article 42 (1)), Article 42 (2) provides guidelines to control water erosion, which are:

- a. Minimize the disturbed land.
- b. Limiting / reducing the rate of water runoff.
- c. Intensify water absorption.
- d. Accommodate sediment.
- e. Minimize erosion.
- f. Control water flow from the utilized forest area.

## Re-vegetation

Pursuant to Article 43 the phases of re-vegetation activities comprise of:

- a. Field preparation (having it further stipulated in Articles 44 through 47).
- b. Seed procurement (further stipulated in Article 48).

- c. Planting activity (further stipulated in Articles 49 and 50)
- d. Plant maintenance (further stipulated in Article 51)

## Reclamation Cost

Pursuant to Article 52, cost of forest reclamation will be born by the license holder of the utilized forest area, in which the license holder is required to pay into the Reclamation Assurance Fund (*Dana Jaminan Reklamasi* / DJR) to assure the completion of the forest reclamation obligation.

## Reclamation Duration

Article 53 provides a 1 year deadline to complete forest reclamation, which starts from when a license to utilize a forest area ends. Before the forest can be returned to the government, the forest reclamation is subject to an assessment.

## Institution

According to Article 55, the license holder has to establish a special organization that will execute the forest reclamation obligation. The requirements, under Article 56, consist of experts in the field of forestry, agriculture, mining, soil and other field related to forest reclamation.

The established organization's tasks are to (Article 55):

- a. Identify the plan for space allocation and utilization areas for mining
- b. Identify the initial environmental setting.
- c. Execute the forest reclamation plan.
- d. Conduct maintenance, research, observation, and report on the forest reclamation activities.

To ensure the quality of the experts, Article 58 sets out the training requirements, giving an option for the license holder to cooperate in the training purposes with the Forest Stabilization Unit (*Balai Pemantapan Kawasan Hutan* / BPKH) for GIS mapping and mastering tenure information of the forest area. The Watershed Management Unit (*Balai Pengelolaan Daerah Aliran Sungai*) to monitor and evaluate the watershed. The Forest Plant Seeding Unit (*Balai Perbenihan Tanaman Hutan*) for forest plant seeding.

## Monitoring and Technical Guidance

Pursuant to Article 59 (2) monitoring and technical guidance of the forest reclamation activities will be conducted by the central government and the regional government. Pursuant to Article 62, the body within the central government is the Directorate General of Watershed management and Social

Forestry along with the Directorate of Land and Forest Rehabilitation (*Direktorat Bina Rehabilitasi Hutan dan Lahan*)

If required, it may also involve the Directorate General of Mineral, Coal and Geothermal at the Ministry of Energy and Mineral Resources, and the Directorate General of Forest Planology.

Pursuant to Article 64, regional governments, through a technical unit will monitor the reclamation progress as well as the technical issues. The variables to be monitored within the reclamation progress are:

- a. The fulfillment of payment of the PSDH-DR obligation
- b. Reclamation inventory stands
- c. Progress of the forest area utilization
- d. Reclamation / re-vegetation

For the technical monitoring, pursuant to Article 65, the variables to be evaluated are:

- a. The progress in arranging boundaries of the area
- b. Implementation of the forest protection
- c. Progress in utilizing the forest area; and
- d. Reclamation / re-vegetation.

## Reporting

Pursuant to Article 76, license holders are required to periodically submit their forest reclamation reports to the Directorate General of Watershed Management and Social Forestry at the Ministry of Forestry, with a carbon copy to the Directorate General of Forestry Planology at the Ministry of Forestry, Directorate General of Minerals, Coal and Geothermal at the Ministry of Energy and Mineral Resources; Provincial Technical Agency that handles forestry matters; and the Regent/City Technical Agency that handles forestry matters.

Pursuant to Article 77, the reports comprise of a quarterly and an annual report, for which Appendix 7 provides the credentials and format of what needs to be submitted. License holder are also required to submit the water debit and sedimentation data (SPAS) along with documentation photos of the reclamation activities, as well as a map of the reclamation site at the scale of 1:10,000.

## Sanctions

The Regulation only provides for administrative sanctions. If a license holder does not commission forest reclamation, pursuant to Article 79, it is stipulated that a license

revocation will be initiated, with the procedure that 3 warning letters are sent with 3 month intervals.

As provisioned under Article 80, the body having the authority to revoke licenses is the Directorate General of Watershed Management and Social Forestry at the Ministry of Forestry.

## Conclusion

The Regulation serves as a further stipulation of Government Regulation No. 76 of 2008 on Forest Rehabilitation and Reclamation, by providing specific and detailed procedures for license holder in relation to their forest reclamation obligations.

It can be expected that with the type of legal scrutiny on performing forest reclamation obligations, such as a specifically established special organization to perform the forest reclamation obligation, it is likely that small and medium-sized mining companies will be pushed to outsource these obligation to other institutions that have the manpower and interdisciplinary expertise to perform forest reclamation. 🇮🇩