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Timber Utilization Permits: Procedures and Implementation

Overview

As part of conserving and protecting forest areas from illegal logging practices, on 15 March 2011 Minister of Forestry Regulation No. P.14/Menhut-II/2011 on Timber Utilization Permits ("Regulation") was issued to further implement Article 26 of Government Regulation No. 10 of 2010 on the Procedure on Altering the Purpose and Function of Forest Areas ("Regulation 10").

The Regulation itself provides a legal framework for securing timber utilization permits, enabling permit applicants to utilize timber and non-timber products in different types of forest areas, and setting the tariffs borne by the permit holder for utilizing timber.

This edition of the Indonesian Law Digest will highlight the key features of the legislative framework governing timber utilization permits and provide analysis of the relevant provisions.

Definition

Article 1 (1) of the Regulation defines timber utilization permits (*Ijin Penggunaan Kayu / IPK*) as permits to utilize timber and/or non-timber originating from relinquished convertible production forest areas, changed production forest areas, utilization of production forests or protected forests that is acquired through a borrow and use permit, and Other Utilized Areas that are granted by means of a utilization permit.

Relinquishment forest areas (*Pelepasan Areal Hutan*), pursuant to Article 1 (13) of the Regulation are defined as an alteration of forest designation purposes by converting production forest areas to a non-forest areas.

Other Utilized Areas (*Areal Penggunaan Lain / APL*) are defined under Article 1 (10) of the Regulation as designated forest areas converted to non forest areas.

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An enabled converted production forest (*Hutan Produksi dapat dikonversi* / HPK) as stipulated in Article 1 (11) is defined as a forest area allocated for the purpose of development outside of forest area activities.

Purpose

The Regulation is intended to implement Article 26 of Regulation 10, as stated in the preamble of the Regulation. Article 26 of Regulation 10 in essence provisioned the rights to utilize timber in forest areas.

Conversion of function and utilization of a forest areas as non-forest areas can be for the purpose of plantations, transmigration and housing, as well as a number of other purposes. Conversion to a non-forest area inevitably will result in forest area clearance, where logging of timber and non-timber products is part of the process.

With the Regulation being issued the parties wishing to utilize timber from an altered forest area, are given a certainty on how to acquire the timber utilization permit (Chapter III) for different types of forest areas and the associated tariffs that will be imposed (Chapter VI).

The Regulation also serves to repeal and replace the following Minister of Forestry Regulations:

- a. No. P.58/Menhut-II/2009 on Compensation for the Wood-Stand Value (*nilai tegakan*) from the Permit to Utilize Timber and/or from Land Preparation for Forest Plant Development;
- b. No. P.4/Menhut-II/2008 on Norms Standards, Criteria Procedures in issuing the Entry and Utilization of Equipment Permits for the purpose of Timber Utilization Permits; and
- c. No. P.53/Menhut-II/2009 (only for provisions regarding Entry and Utilization of Equipment Permits for the purpose of Forest Utilization Business Permits or Timber Utilization Permits).

Applicability

Pursuant to Article 2 (1) timber utilization permits can only be granted to forest areas falling under the category of:

- a. Converted production forest deriving from relinquishment or changed forest areas;
- b. Utilization of forest areas acquired through a borrow and use permit;
- c. Other Utilized Areas that have secured designation permits;

Parties having the rights to apply for a timber utilization permit, pursuant to Article 2 (2), are:

- a. Individuals;
- b. Cooperatives;
- c. State Owned Companies;
- d. District Government Owned Companies;
- e. Privately Owned Companies.

The application requirement for timber utilization permits for converted production forests deriving from relinquishment or changed forest areas, and Other Utilized Areas that have secured designation permits, are exempted for non-economically feasible timber utilization (Article 2 (4) of the Regulation), as defined under Article 21.

Regulation 10, the Umbrella Regulation Forest Relinquishment and Forest Area Changes in a Nutshell

The alteration of the purpose and designation of forest areas by means of changing and relinquishment of forest areas is regulated by Regulation 10.

Change

Changing a forest area is permitted only for a permanent and/or a limited production forest (Article 10 of Regulation 10), where pursuant to Article 11 of Regulation 10, it is utilized for the purpose of:

- a. Development besides a permanent forest activity
- b. Eliminating an enclave area, in order to ease the management of a forest area, or
- c. Recovering/improving forest area borders.

To request changing a forest area, an applicant must submit an application to the Minister of Forestry. Once the application is considered complete, an integrated team will be formed by the Minister to conduct further inquiries and to produce inquiry results and recommendations on the proposed change plan to the Minister of Forestry (Article 13 of Regulation 10).

Upon approval on the proposed changed forest area, a principal approval will be issued by the Minister of Forestry, comprising of obligations for the applicants, which, among others are (Article 15 (2) of Regulation 10):

- a. Clearing and cleaning the proposed changed land;
- b. Signing the minutes of meetings regarding the changed forest area;
- c. Bearing the cost of the proposed forest area boundaries and the proposed replacement land.
- d. Bearing the cost of reforestation of the replacement land.

According to Article 15 (1) of Regulation 10, the principal approval will be granted for a period of 2 years, and can only be extended twice, with each extension being valid for 1 year.

Relinquishment

Common reasons for forest relinquishment are for opening a plantation area, transmigration area, or mining activities. An application for forest relinquishment is submitted to the Minister of Forestry and will be examined against the stipulated administrative and technical requirements (Article 20 of Regulation No. 10).

Compared to the changed forest area procedure, the forest relinquishment procedure does not require examination by an integrated team, unlike the changed forest (Elucidation of Article 19 (1) of Regulation 10).

Upon approval of an application, the Minister of Forestry will issue a principal approval letter for the proposed forest relinquishment (Article 22 of Regulation 10). Which will be valid for 1 year and can only be extended twice, with each extension being valid for 6 months.

During this period, the principal approval holder has to settle the relinquished forest area boundaries and protect the relinquished area (Article 22 of Regulation No. 10). Its should be noted that a relinquishment production forest area can only be granted if the province has forest cover of over 30%, with an exception for changing forest areas.

Timber Utilization Permit

Permit issuer

The timber utilization permit for a converted production forest deriving from relinquishment or changing forest area is granted by the Head of the Provincial Agency (Article 4 (1) of the Regulation), while the timber utilization permit for Other Utilized Areas that have secured designation permits, is issued by the Head of District/City Agency (Article 4 (2) of the Regulation).

The timber utilization permit will be granted for 1 year and can only receive an extension once. Pursuant to Article 42 of the Regulation, an extension for a timber utilization permit requires an application to be submitted 2 months in advance of the expiry date.

Procedures for securing a Permit

Pursuant to Article 12 (1), to obtain a timber utilization permit, the applicant must submit an application to the

issuing officials (with a copy to the Director General of Forestry Development, the Director General of Forestry Planology, the Head of the District/City Agency, the Head of Production Forest Supervisory Agency, and the Head of the Forest Stabilization Area Agency (*Balai Pemantapan Kawasan Hutan / BPKH*)), along with the documents listed in Article 12 (2):

- a. copy of an identification card or deed of establishment of the company (as applicable);
- b. copy of a legalized ministerial decree regarding the forest area relinquishment; and
- c. map of the proposed location.

The official issuer will then request a technical consideration from the Director General of Forestry Development (with a copy to the Head of Production Forest Supervisory Agency). Head of the Production Forest Supervisory Agency will then conduct a site visit and submit its result to the Director General within 7 working days from the request for the technical consideration being received.

Subsequently, the Director General will issue or reject the requested technical consideration within 7 days from the site visit result being received (Article 14 of the Regulation). However, in the event the application does not meet the stipulated requirements, the official issuer will reject the application within 14 working days from the application being received (Article 13 of the Regulation).

Following the issuance of a technical consideration, the applicant must conduct a timber survey (i.e. to measure, observe, and record the potential trees for woodcutting pursuant to Article 1 (16) of the Regulation), prepare the recapitulation survey report, and convert its survey report to minutes signed by the management of the company along with the required integrity pact.

Upon completing the required procedures, the authorized official will issue an approval letter and the applicant will be obliged to, among other things, to submit a bank guarantee from a government bank and prepare the logging plan within 50 working days from the approval letter being received (otherwise the approval letter will be annulled) (Article 15 of the Regulation).

Permit Nullification

Provided under Article 50 of the Regulation, the timber utilization permit will cease to have validity for reasons of:

- a. Validity period expiry,

- b. Revocation by the issuer as part of a sanction, or
- c. Return to the official issuer prior its expiry date.

Rights and Obligations of the Permit Holder

A timber utilization permit holder is entitled to perform its logging activity in accordance with the granted permit, where it may transport, cultivate, and/or distribute its timber forest production pursuant to the prevailing forestry laws and regulations (Article 39 of the Regulation).

Furthermore, the permit holder is obliged, as set out in Article 40, to pay compensation for the wood-stand value (*nilai tegakan*), forestry resources provision (*provisi sumber daya hutan*), and deforestation costs (*dana reboisasi*), to secure the timber utilization permit area from any security disturbance and fires, and also to comply with all prevailing forestry laws and regulations (Article 40 of the Regulation).

Timber Utilization Permit in Borrow and Use Licensed Areas

The timber utilization permit can be granted for forest areas that are utilized for non-forestry purposes (which have been granted a 'borrow and use' permit). The holder of a borrow and use permit can conduct logging activities for its land clearing purposes, including timber measurement and timber collection activities. Article 3 addresses timber utilization permits for forest areas using the borrow and use permit.

Compensation for Wood-Stand Value

Utilizing timber is not free, and, as stated in Articles 10 (2) and 17 (2) of the Regulation, permit holders are subject to tariffs for utilizing timber. Provided in the Regulation's Appendix is the Order Letter to Pay the Wood-Stand Value form, informing the permit holder of the payment obligation, the methods of payment, and the beneficiary.

Pursuant to Article 50 (2) of the Regulation, nullification of a timber utilization permit does not terminate the payment obligation.

Sanctions

Chapter XI of the Regulation provides sanctions in the form of permit revocation, activity suspension, penalties, as well as criminal sanction.

Permit Revocation

The timber utilization permit can be revoked in the event that the permit holder does not commence its timber utilization

activities within 30 days from the issuance of the permit, or leaves the permit area for 45 consecutive days prior the expiry date of the permit, illegally transfers the timber utilization permit, or commits criminal forestry actions pursuant to the prevailing forestry laws and regulations (Article 51 of the Regulation).

Criminal Sanctions

Any illegal logging activities are subject to criminal sanction as stipulated under the prevailing forestry laws and regulations, respectively Law No. 41 of 1999, as amended by Law No. 19 of 2004, on Forestry.

Transitional Provisions

Pursuant to Articles 54 and 55 of the Regulation:

- a. Timber utilization permits issued prior the issuance of the Regulation remain valid until their expiry date, while applications submitted prior the issuance of the Regulation will now be processed in accordance with the Regulation;
- b. Specifically with regards to applications submitted to the Regent/Mayor in accordance with the previous regulation (namely Minister of Forestry Regulation No.58/Menhut-II/2009), such applications will be processed directly by the Provincial Forestry Agency; and
- c. Borrow and use permits issued prior to the issuance of the Regulation will be valid as timber utilization permits, entry and utilization of equipment permits for forest clearance purposes.

Conclusion

The number of issued timber utilization permits has increased as a consequence of the increased utilization of forest areas, whether for forestry or non-forestry purposes. The government, over time, has progressively improved the legal framework governing timber utilization permits, especially in relation to accommodating the development of forestry businesses.

The purpose of such permits is to prevent illegal logging activities that have lead to negative effects on the environmental and the community. However, due to lack of supervision and development from the central government, the issuance of such permits has not always been in accordance with legislation, resulting in unlawful forest exploitation. As a consequence, with the issuance of the Regulation, the government has stipulated provisions that impose strict administrative sanctions, as well as criminal

sanctions, in order to ensure public order in the area of forestry.

Specifically, the lack of supervision from the central government over the forest areas has resulted in uncontrolled issuance of timber utilization permits by regional governments, leading to negative effect towards the environment, community, and resulting in widespread illegal logging. It is expected that with stricter regime governing the utilization of timber in forest areas will not only accommodate business interests, but will also benefit the surrounding community. 