

## General Corporate

Versi Bahasa Indonesia

### Enforcement Date

17 October 2014

### Related ILB

- Acknowledgement to the Customary Law Society
- One Hundred and Nine Regulations on Land Matters Repealed: Travelling through Indonesia's Land Law History
- New Provision on Customary Forest
- Draft Bill on Indigenous Communities' Right
- Authority Delegation on Land Rights and Land Registration Re-Regulated
- Digestible Overview of Indonesian Land Law

## Preserving Land Rights in Forestry Areas

The Minister of Interior Affairs, Minister of Forestry, Minister of Public Works, and Head of National Land Agency have issued Joint Regulation [No. 79 of 2014, PB.3/Menhut-11/2014, 17/PRT/M/2014, and 8/SKB/X/2014](#) on Acquisition Procedures for Land Located in Forestry Areas ("2014 Joint Regulation").

The 2014 Joint Regulation was issued to accommodate several decision made by the Constitutional Court, namely Decision No. 34/PUU-IX/2011, No. 45/PUU-IX/2011, and No. [35/PUU-X/2012](#),<sup>1</sup> which essentially obligates the government to preserve existing land rights located in forestry areas. Consequently, the 2014 Joint Regulation was issued to set out procedures for individuals, governmental institutions, social and religious entities and customary communities (collectively referred as "Applicants")<sup>2</sup> to claim rights over land located in forestry areas.

If an Applicant can prove an entitlement over land located in a forestry area, the related governmental authorities must determine such land as not part of forestry area, and grant the Applicant the appropriate land right. Such a determination is critical to an Applicant (owner), as Law

[No. 41 of 1999](#) on Forestry provides that land located in State forest areas (*hutan negara*) cannot be encumbered with any land rights (freehold, right to use, right to farm, or right to build).<sup>3</sup>

The 2014 Joint Regulation is relevant to businesses in the forestry sector and the public in general.

## Inventory Team

Every regent/mayor and governor must establish an inventory team<sup>4</sup> within their jurisdiction that will be responsible for receiving, verifying, assessing and inspecting, land rights claims.<sup>5</sup> The inventory team at the regency/city level has the authority to process applications for land right claims located within their regency/city, while the inventorying team at the provincial level has authority to process applications for land located across multiple regencies/cities within a province.<sup>6</sup>

<sup>1</sup> For more information see [Hukumonline.com](#), MK Affirms Differentiation Between Customary and State Forest Land and ILB [No. 2297](#).

<sup>2</sup> Art. 1 (7), 2014 Joint Regulation.

<sup>3</sup> Art. 1 (c) (d), Law [No. 41 of 1999](#) on Forestry. For more information on land right see ILD [No. 323](#).

<sup>4</sup> *Tim Inventarisasi Penguasaan, Pemilikan, Penggunaan, dan Pemanfaatan Tanah* (IP4T). This team is comprised of representatives from the land services office, forestry services office, forestry area determination office, spatial services office, Camat, and lurah (Art. 2 (2) and 3 (2), 2014 Joint Regulation).

<sup>5</sup> Art. 4, 2014 Joint Regulation.

<sup>6</sup> Art. 2 (1) and 3 (1), 2014 Joint Regulation.

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### Application Procedure

Land right claim applications must be submitted to the relevant inventorying team with jurisdiction.<sup>7</sup> There are three main requirements for land right claim in a forestry area, namely:

- a. The Applicant must lodge the application themselves, and include written approval from other parties which possess/own the land directly adjacent to the land being applied for;<sup>8</sup>
- b. The Applicant must physically control the land in question; and<sup>9</sup>
- c. The Applicant has drafted an Affidavit of Physical Land Possession (*Surat Pernyataan Penguasaan Fisik Bidang Tanah - "SPPFBT"*), declaring that the Applicant is the owner of the land in question. This affidavit must be witnessed by at least 2 persons (non-relatives) and acknowledged by the local village head.<sup>10</sup>

Upon receiving an application, the inventory team will procure a satellite image of the claimed land and perform a field inspection.<sup>11</sup> Through the field inspection, the inventory team will verify the legality of the claim for the land rights<sup>12</sup> and physical condition of the land itself.<sup>13</sup>

If the field inspection reveals that the Applicant had possessed and utilized the land for at least 20 consecutive years, the Applicant may proceed to register their land rights with the National Land Agency pursuant to State Minister of Agrarian/Head of National Land Agency Regulation [No. 3 of 1997](#) on Implementing Regulation of Government Regulation [No. 24 of 1997](#) on Land Registration.<sup>14</sup>

However, if the inspection finds that the Applicant did not possess and/or utilize the land for at least 20 consecutive years, the land will be declared as State land and the Applicant may be granted certain rights over the land, as part of the government land reform program.<sup>15</sup> Alternatively, the Applicant may also be granted rights to utilize the land under the government community empowerment scheme.<sup>16</sup>

### Excluding Land from Forestry Areas

The inventorying team is responsible to present the results of the field inspection to the head of the land services office where the land in question is located. The results of the field inspection will then be forwarded by the head of the land services office to the Director of Forestry Plantology at the Ministry of Forestry ("Director").<sup>17</sup>

Based on the results of the field inspection, the Director will make adjustments to the forest area boundaries and exclude the land in question from the forestry area.<sup>18</sup> Thereafter, the Director will also issue a decree Amend existing Forestry Area Boundaries, which is a requirement for the Applicant to register their land.<sup>19</sup>

<sup>7</sup> Art. 4 (a) (b), 2014 Joint Regulation.

<sup>8</sup> Art. 6 (1), 2014 Joint Regulation.

<sup>9</sup> Art. 1 (7) and 8 (1) (2), 2014 Joint Regulation.

<sup>10</sup> Art. 7 (b), 2014 Joint Regulation.

<sup>11</sup> Art. 6 (2), 7 (a) and 4 (c), 2014 Joint Regulation.

<sup>12</sup> Information on legal aspects of the land covers the status of the land and any encumbrances on the land (Art. 1 (9), 2014 Joint Regulation).

<sup>13</sup> Art. 4 (d), 2014 Joint Regulation. Information on physical condition of the land covering location and land area (Art. 1 (10), 2014 Joint Regulation).

<sup>14</sup> Art. 8 (1) and 1 (16), 2014 Joint Regulation.

<sup>15</sup> Art. 8 (2) and 1 (11), 2014 Joint Regulation. For more information on land reform program see ILD [No. 382](#).

<sup>16</sup> Art. 8 (3), 2014 Joint Regulation.

<sup>17</sup> Art. 4 (f) and 11, 2014 Joint Regulation.

<sup>18</sup> Art. 12 and 13 (1), 2014 Joint Regulation.

<sup>19</sup> *Ibid*.

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### Land Rights Claims by Customary Societies

Although a customary society may claim land rights under the Joint Regulation, the procedure to acknowledge such rights is carried out based on Minister of Interior Affairs Regulation [No. 52 of 2014](#) on Guidelines for the Acknowledgment and Protection of Customary Law Societies.<sup>20</sup>

The 2014 Joint Regulation has been in force since 17 October 2014.

<sup>20</sup> Art. 9, 2014 Joint Regulation. For more information see ILB [No. 2460](#)

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