

VII. POLICIES AND REGULATION

7.1 Land tenure

7.1.1 Land tenure development

The 1945 Constitution entrusted Indonesia's natural resources to the State in line with the doctrines of State socialism. In 1960, the Government adopted the Basic Agrarian Law (BAL) which, while recognizing custom as the basis for land ownership, strongly affirmed the principle of State control all land. Central elements of the BAL and the regulations and procedures which it has entailed result in the following situation:

- a. The State has the right to control all decisions about land in the national interest.
- b. Customary rights may be extinguished without compensation when a national interest is involved.
- c. Individual land titling is promoted, though only of land parcels have yet been registered.
- d. Collective tenures are treated as weak rights of usufruct.
- e. Collective tenures must give way to State-endorsed natural resource development programmes, including logging.
- f. No procedures exist for the delineation or registration of collective tenures.

Since the fall of Soeharto in 1988, a period of legal and institutional reform has begun. The 1999 Human Rights Act provides for the protection and recognition of customary communities including collective tenure. A decision of the National Assembly (TAP MPR IX/2001) has recognized the flaws in the BAL and order laws relating to natural resources and has mandated the legislature to enact a comprehensive natural resources act which would *inter alia* reform tenurial laws. Meanwhile, authority over land and forest issues has passed to the district administrations and clauses in the new Local Government Act of 1999 – which has yet to be widely applied – provided a legal basis for the re-empowerment of *recog* institutions. A Decree from the Agrarian Ministry does now admit the possibility of collective usufructs and a handful of district level decrees, *Perda*, have begun recognize a diverse range of community tenures. Many lawyers argue that a fundamental revision of the BAL is necessary before collective tenures can be legally secured.

The BAL however only applies to land under the jurisdiction of the Agrarian Ministry. All forest lands are controlled by the Basic Forestry Laws (BFL) of 1967, revised in 1999, and are placed under the jurisdiction of the Department of Forestry. The BFL provides even less recognition of custom than the BAL. The law:

- a. Denies customary law communities a proprietary interest in forest land.
- b. Treats customary rights as weak usufructs.
- c. Subordinates them to the interests of concessionaires.
- d. Criminalizes shifting cultivation, unauthorized cutting of trees and the occupation of forests.

Several studies carried out by the different aid agencies and for the Ministry of Forestry itself have repeatedly shown that the mechanism designed to offset these problems by obliging concessionaires to share benefits with local communities have been unsuccessful and even damaging.

The revised Forestry Act, which it had been widely hoped would recognize community rights in forests, disappointed many. Instead of recognizing community forestry, the law instead opened the forests to logging cooperatives, while 'customary forests', mentioned for the first time, were defined as State forest in which there was no proprietary interest.

7.1.2 Ownership of forest resources

There are three ways in viewing ownership of forest resources, namely forest resources as state property, forest resources as private property and forest resources as community's property.

Forest resources as state property imply that the forest is under the authority of state and is utilized as far as possible for people's welfare. In law No. 41, year 1999, it is stated that authority by the state, authorized the state to handle and regulate all things related with forestry activities within the context of utilization for people's welfare as far as possible. In this case, the state serves as a medium for people's sovereignty.

In case of forest resources as private property, the government regulate and handle all things related with forest management, and has the authority to give permit and rights to other party to conduct forestry activities.

Forest resources as community's property is subject to traditional right of the community. The existence of this right is acknowledged as long as the community of traditional law is still existing and the existence is acknowledged. The traditional community can manage the forest and harvest the forest product on the traditional forest, although the forest is located in state forest.

Because of the existence of those three types of ownership, if the management and regulation of forest is not careful, there will be conflict arising from the difference in viewing the ownership, especially in relation with short term economic/commercial interest, and this will have implication on socio-economic and ecological balance. Conflict will occur between private companies and the people, between people and the state, and between people themselves. Conflict will happen if a process conducted by a party, has a negative impact on other party or vice versa.

7.2 Tax and levy for land, income plantation and other forest product

7.2.1 Income tax

Income tax in Indonesia is progressive and applied to both individual(s) and enterprises (Table 7.1). A self-assessment method is used to calculate the tax.

Table 7.1 The Tax Rates for Individual (s) and enterprises.

Taxable annual income	Income Tax Rate
Up to Rp 25 million	5%
Over Rp 25 million to Rp 50 million	10%
Over Rp 50 million to Rp 100 million	15%
Over Rp 100 million to Rp 200 million	25%
Over Rp 200 million	35%

7.2.2 Land and building tax

Land and building tax is payable annually on land, buildings and permanent structures. The effective rates are nominal, typically not more than one tenth of one percent per annum (0.1%) of the value of property.

PP No. 48 Year 1997 and PP No. 25 Year 2002 about Stipulating of is Level Of Value Sell to Incur lease for Enumeration of Land Tax and Building, Assess To Sell to Incur lease for the Forestry, Plantation And Mining [is] 40% from Value Sell Obyek of lease as according to section 6 sentence (3) UU No 12 Year 1984.

7.2.3 Fee of rights of forest enterprising (IHPH)

Ministrial Decree of Forestry and Plantation No. 700/Kpts-11/1999 about Stipulating return the level of Fee of Rights of Forest Enterprising (IHPH) to entire/all Indonesia, level of tariff IHPH (follow the example of): for additional areal for region of Sumatra and Sulawesi of equal to Rp 37,500/ha, region of Kalimantan and and Moluccas [of] equal to Rp 50,000/ha.

Above tariff go into effect to set of unit of enterprising of forest broadly till 100,000 ha and categorized by as standard tariff. To HPHTI broadly > 100,000 ha go into effect rule of is other; dissimilar, example of: excess of up to 25,000 ha is first imposed by IHPH with tariff of equal to 125% standard tariff.

7.2.4 Provision of forest resource (PSDH)

Ministrial Decree of Industry and Commerce No. 814/MPP/Kep/12/2002 about Pricing of Directive for calculation PSDH. Level of PSDH is 10% x fixation of prices. Follow the example of fixation of prices for: log of Group of meranti coming from Region I (Sumatra, Kalimantan, Sulawesi And Moluccas) equal to Rp 500,000/m³; Raw material chip equal to Rp 204,000/m³.

7.2.5 Fund reforestation (DR)

PP No. 59 Year 1998 about Tariff for Type of Acceptance of State of Non tax going into effect at Forestry Department, what in it arrange for example acceptance coming from DR. Follow the example of dance of DR for: group

Meranti (Sumatra, Sulawesi US \$ 14/m³; Raw material chip particle (entire/all Indonesia region) US \$ 2/ton.

PP No. 35 Year 2002 about DR, at this governmental regulation is DR have to be paid to be based by for Report of Result Of Cruising (LHC). If/when this regulation is applied , anticipated by a lot of forest entrepreneur of difficult cash flow pay for DR of before there is earnings and produce wood.

7.3 Loan

Foreign aid can be in the form of loan or grant. Foreign loan has a great role in funding the development. Up to now, foreign loan received by the government and utilized for development amount totally to 119.36 billion US \$ (BI data on 30 June 2000) where some of it has been paid back and the remaining amount to 76.24 billion US \$.

Of the total loan, approximately 52 billion US \$ (about 44%) is utilized for development in financial sector. In the infrastructure sector, development of electricity and energy utilize the loan as much as 18.36 billion US\$ (approximately 15%).

In the state guidelines for the year 1999 – 2004, there are directives for the policies on foreign loan. Through law No. 22/1999 and law No. 25/1999, local government can utilize loan from domestic and/or foreign sources with the approval of local parliament. Of course the execution of authority created by the two law is still in line with state guidelines, so that the policy of taking foreign loan (either utilized by central government or local government) does not deviate from State Guidelines.

7.4 Central government incentive/policies for plantation encouragement

7.4.1 Macro policy on forestry

Macro policy on forestry are as follows :

- a. Forestry development is conducted to ensure sustainable forest management.
- b. Forestry development is conducted with proper planning, rationally, optimally and responsible manner with the principles of balance, equity and harmony.

- c. Forestry development is conducted to enhance the role of all parties in maintaining the sustainability of forest function.
- d. The role of forestry development in supporting growth and economic stability an healthy continuation of social life of community, is conducted through utilization healthy of forest resource within limit of sustainability of local forest ecosystem.
- e. Conducting rehabilitation and conservation as priority in recovering the condition of natural resources for long term use and benefit.

To implement those policies, up to the end of year 2004, five priority policies of Ministry of Forestry has been implemented holistically and in stages, namely :

- a). Education of illegal logging.
- b). Overcoming forest and land fire, with emphasis on prevention efforts.
- c). Restructurization of forestry sector which is aimed at increasing the efficiency of forest resource management.
- d). Decentralization of forestry sector.
- e). Development of plantation forest/rehabilitation which is aimed at rehabilitating damaged land and forest to increase their productivity.

The implementation of those five priority policies, is underlain with social forestry approach. The salvation of forest resources is attempted through the following stages :

- a). Shock therapy. This is immediate action and is conducted on very critical, and multidimensional problem which has extensive negative impacts.
- b). Environmental recovery. This effort is focused on rehabilitating forest resource whose condition is damaged, to restore its functions.
- c). Sustainable use. Utilization of forest resources is conducted under the principles of sustainable forest management, so that it can contribute to national economic growth.

7.4.2 Funding of HTI (Industrial Plantation Forest) development

Up to now the greatest role in HTI development is from joint venture companies, namely joint venture between forestry state owned business entity (BUMN) and private companies. Of the existing 178 units of HTI companies, it turns out that

more than 60% (namely 92 units) are joint venture companies, and the rest are pure private companies as many as 80 units, one (1) PT Smallholder Nucleus Estate Inti Indo Rayon and self-managed companies, either by BUMN as many as 5 (five) units or forestry services.

Through the decree of Forestry Ministry No. 375/Kpts II/96 dated 19 July 1996 concerning procedures for Allocating Reforestation Fund for involvement of Indonesian State Capital and Loan for Development of Industrial Plantation Forest by Joint Venture Companies, the funding scheme or HTI capital raising by joint venture companies is 14% coming from involvement of government capital (PMP) which is allocated through BUMN, and 21% coming from involvement of private company capital (PMS). The other 65% constitute loan fund from reforestation fund (DR) which is divided into interest-free loan (0% interest rate) as much as 32.5%, and commercial loan as much as 32.5%.

Up to the year 1998/1999, reforestation fund which has been transferred for HTI development is approximately Rp 2.417 billion, which consists of PMP of about Rp 960 billion, interest-free loan as much as 1.139 billion and commercial loan Rp 318 billion. Area size of HTI which has been built by joint venture companies is about ± 1 250 000 ha.

7.4.3 Performance of HTI development

In the year 1997, reforestation fund (DR) which was initially managed by Forestry Ministry with category as non-budgetary fund, had been changed into Non Tax State Revenue (PNBP) which was confirmed by Law No 20/1997 and was included in State Budget (APBN) scheme. Afterwards, Ministry of Forestry ceased the transfer of DR for HTI development through the circular from Secretariat General of Forestry Ministry No 549/II-Keu/2000 dated 20 April 2000. This policy is in line with Government Regulation No 35/2002 which implies that DR can not be made to PMP, but it can be used only as loan with interest rate which will be decided afterwards.

Of the approximately 2.7 million ha of definitive area for planned HTI development by joint venture companies and State Owned Business Entities

(BUMN) (including for infrastructure and conservation area within HTI area), the physical realization is still only 34.5% or around 1.7 million ha.

Program of HTI development has strategic implication. Therefore investment which has been spent by private investors, and especially government funding should be salvaged. From the forest management point of view, the cessation of physical development is very annoying in regulating production sustainability due to the absence of strata/age class continuity of forest tree. Therefore, government, in this case Ministry of Forestry has adopted policy to restructure HTI management.

7.4.4 Evaluation result from the working group of HTI restructurization

Based on evaluation result for 92 units of Industrial Plantation Forest Business (PHTI) the following results are obtained :

- a. Of the 92 units of PHTI evaluated, 3 units of PHTI had been revoked by Forestry Minister Decree before the start of working group of PHTI restructurization.
- b. PHTI which obtain classification as technically and financially feasible number to 31 units of PHTI, and obtain good score. For the continuation of HTI business, the following requirement is imposed :
 - 1) Conveying statement of ability to fulfill obligation in the form of paying back the DR in accordance with the duration term, accompanied by document of collateral submission within a notary needed.
 - 2) If until a certain predetermined period, the obligation is not fulfilled, the collateral becomes owned by Ministry of Forestry.
 - 3) In accordance with provision of article 81 Government Regulation No. 34/2002, PHTI will be evaluated comprehensively by Independent Evaluator Agency (LPI) in term of its success in achieving sustainable forest.
 - 4) Conveying statement before notary, that for the continuity of HTI development, there will be utilization of bail out fund from private company, and there will be guarantee/collateral for that ability.
 - 5) Paying back the loan from DR in accordance with time schedule determined in Credit Agreement (PK).

For this purpose, of the 31 units of PHTI which are technically and financially feasible, DR funds which can be saved is Rp 803.6 billion, which consist of PMP as much as Rp 214.3 billion, DR loan 0% as much as Rp 423.6 billion and commercial DR loan Rp 165.5 billion

- c. PHTI which obtain classification score as technically feasible and not feasible financially, with poor score, number to 5 units of PHTI. The continuity of HTI business will be revoked through 3 times warning.
- d. HTI companies which obtain classification score as technically not feasible and financially not feasible and is scored as poor, number to 51 units of PHTI. The continuity of their HTI business will be revoked through warning stages of 3 times.
- e. PHTI which are scored as specific, number to 2 units, with the following explanation : 1) 1 unit of PHTI is a development project of HTI with pattern of Smallholder Nucleus Estate which uses people/community's land and obtain approval from President through Ministerial Letter of State Secretary of Indonesia No. 446/M.Sesneg/8/1991 dated 26 August 1999; 2) 1 unit of PHTI is judged to be not going through presentation and is decided to have its HPHTI (Right for Industrial Plantation Forest Business) decree revoked due to violation of existing regulation.

7.4.5 Follow up from the revocation of HPHTI decree

Area of forest production which is used for HTI is state forest area which is under state authority. Therefore, on area where the HTI permit has been revoked, the provincial governor is assigned to :

- a. Supervise and safeguard the revocation of HPHTI.
- b. Supervise and safeguard activities in the former HPHTI area in any form until further regulation is established.
- c. Conduct inventory on moving objects or stationary objects which are within the area of former HPHTI.
- d. Carry out formal transfer of moving and stationary objects, by using approved document of transfer.

On HPHTI are which has been revoked, forest management activity should adjust to 4 categories of area, as follows :

- a. Production forest area, whose stand condition is good and do not receive pressure from local people (no people living in and around the forest) → auctioned off
- b. Production forest area with damaged stand condition and do not receive pressure from the people → rehabilitation
- c. Production forest area with good stand condition and receive pressure from the existence of sufficiently dense human population, within and around the area, indicates that the stand in the area is prospective to be utilized. However, the pressure of sufficiently dense human population, create the risk of conflict → social forestry
- d. Production forest area with damaged stand condition accompanied the existence of dense human population inside and around the forest area. In this case, it is necessary to manage production forest with emphasis on forest rehabilitation → social forestry

PHTI which is revoked should pay back the DR loan to the government through the following funding sources :

- a. Liquid asset
- b. Sale of fixed asset
- c. Sale of plant production
- d. Sale of plant stand asset
- e. Responsibility form private companies
- f. Submission of problem settling to State Agency and Auction (BUPLN)

7.4.6 Controversy in the HTI policy

After the operation of Forest Concession Holder (HPH) for a long time, the government is faced by two contradictive conditions. First, many forests of the HPH are damaged, and the license is not extended, and the management is transferred to State Owned Business Entity (BUMN, like PT. Inhutani), so that the government should implement new mechanism for natural forest regeneration. Second, foreign exchange income through export of precessed wood, and employment generating capacity of HPH and wood industry should be maintained.

Development of HTI is considered a solution to face the fact mentioned before, and to increase the productivity of natural forest. Therefore, incentives to develop HTI area create. It turns out that the incentives are attractive for private companies, especially because of existence of subsidy from reforestation fund. However, because wood supply from natural forest remain “abundant” due to illegal logging, the price of HTI wood becomes cheap and even unmarketable. As a result, HTI company has never been considered as feasible financially if it is independent. Therefore, calculation of financial feasibility is always related with industry which process the wood product.

The phenomena as describe above are utilized by a number of private businessman to obtain the facility for HTI development with the objective of obtaining wood from natural forest which constitute the prospective area for HTI, and obtaining subsidy form reforestation fund. Facing this fact, the government should change the system of utilization of production natural forest (HPH) as a main cause of damage in natural forest. This change has not been conducted yet, because the government has a vested interest to maintain the role of HPH in supporting state income. Therefore, from the government point of view, development of HTI is interpreted as a way to solve problem. Damaged natural forest is excluded from HPH territory and is turned into HTI area, giving an impression that HPH performance reputation does not deteriorate due to forest damage in its territory. With this policy, the HPH system can be maintained, due to freedom from poor predicate, observed from damaged forest.

The policy of HTI development as described above, implicitly legitimate the destruction of natural forest conducted by HPH. Scenario of HTI development, would never exist if the HPH were able to properly manage natural forest. Therefore it is no wonder that the policy of HTI development-whose subsidy formulation is designed by a study funded by Asian Development Bank (ADB)-obtain support from private companies.

According for government, with the inclusion of reforestation fund to state budget (APBN), on request by IMF, the development of HTI will be hindered, because the existing credit with lowest interest rate of 12 % will make the HTI development not feasible financially.

This government's statement is not automatically correct, considering the fact that 22 companies which manage around 1.2 million ha of HTI are in fact to do not use the subsidy facility from reforestation fund offered by the government. One director of the company revealed that the presence of reforestation fund subsidy, followed by the entry of BUMN on company management, would in fact worsen the inefficiency of the company. The reasons are that the company management cost and other cost for administrative purpose related with the issuance (cash disbursement) of reforestation fund become increased. In general, companies which are not willing to receive subsidy, have possessed market certainly for their wood product from HTI, especially to the existing wood industry, or for export.

The fact described above shows that for some companies, the existence of subsidy for HTI development is considered not useful, because the transaction cost is higher than the benefit of the subsidy. Therefore, from this point of view, the inclusion of reforestation fund on state budget (APBN) which eliminate interest free loan from reforestation fund, does not constitute an obstacle for HTI development, as stated by the government. This is because facts from field reveal that the obstacle is not from the high interest rate of loan, but from the high cost of transaction.

7.5 Local government Incentive/policies for plantation encouragement

The enactment of law No 22/1999 in the beginning of January 2001, inevitably makes the local government confused on how to increase true local income (PAD). Up to present, the thing which comes to the mind of local policy maker is optimizing retribution and taxes. All aspects are subject to local government regulation and are made into cash. Yet, those efforts are not sufficient to meet the financial need of local development. Other idea on how to increase true local income (PAD) is by inviting investors and making cash cow through PD (Local Company) or BUMD (Locally Owned Business Entity). The idea of establishment of cash cows starts to develop in several regions. One thing which is implicitly or explicitly desired to be turned into BUMD is the forest managed by Perhutani (State Owned Forestry Company, in Java). Up to now, although geographically the Perhutani area is within district (regency) administration, the Perhutani seems to appear as a state within a larger state. Interference from local government do

not enter into Perhutani area. Up to now, local government obtain only land and building tax (PBB) and forest product royalty (IHH) form Perhutani, whose amount is offer considered far less than the extent of exploration conducted by Perhutani, whereas the existing risks, such as forest fire and rural poverty become the burden for local government.

Therefore, it is no wonder that several local governments want to control forest, which on the judicial basis is legal. Article 10 juncto article 199, Law No 22/1999 concerning local government; Article 6 juncto article 8 Law No 25/1999 on financial balance between central and local government; and even article 21 Law No 41/1999 concerning forestry, all justify forest management by local government. At provincial level, there are Local Government Regulation No 19/2001 on forest management, and Local Government Regulation No 20/2001 on circulation of forest product in West Java, which draw protest.