

Critical Notes

**On The Presidential Instruction
Number 5 of 2019 on the Halting
of Issuance of New Licenses
and Improvement of Governance in
Primary Natural Forest
and Peatland**

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Executive Summary

In the eyes of many, forest moratorium policy is considered crucial to protect Indonesia's remaining forests and mitigate climate change. Official data show that the area of Indonesia's rainforests in 2017 reached 89.4 million hectares¹, third largest worldwide² and cover almost half, or 47.5 percent of Indonesian mainland.³ However, Indonesia's forests are disappearing rapidly. According to FAO, forest loss in Indonesia is the second fastest in the world during 2010-2015, second only to Brazil, with deforestation rate of 684 thousand hectares per year.⁴

The Government of Indonesia emphasizes the effectiveness of forest moratorium in reducing the country's deforestation. According to the government, Indonesia's deforestation decreased by 20 percent after the enactment of the policy, 38 percent in the Indicative Map of Moratorium (PIPIB) area alone.⁵ Nevertheless, deforestation and forest and land fires are still occurring all around the Archipelago, including inside the area protected by the moratorium. Greenpeace's analysis states that the average annual deforestation in the moratorium area after the policy was enacted (2012-2018) is higher than the period prior to the enactment of this policy (2005-2011): 137 thousand hectares versus 97 thousand hectares annually.⁶ The government, however, refused to acknowledge such claim.⁷

In the eight years since the policy was first enacted, the area of primary natural forests and peatlands protected by the moratorium has decreased by 3 million hectares; from 69 million hectares in 2011 to 66 million hectares in 2018.⁸ On August 7, 2019, President Joko Widodo finally made the policy permanent through Presidential Instruction Number 5 of 2019 on The Halting of New Licenses and Improvement of Governance of Primary Natural Forest and Peatland, 18 days after the previous Presidential Instruction expired on July 17, 2019.⁹

¹ Ministry of Environment and Forestry, "State of Indonesia's Forests 2018", data of December 2017.

² FAO, "Global Forest Resources Assessment 2015."

³ Loc. Cit.

⁴ Loc. Cit.

⁵ Winata, Dhika Kusuma. 2019. *KLHK Bantah Greenpeace Soal Deforestasi di Area Moratorium*. Accessed at <https://mediaindonesia.com/read/detail/252447-klhk-bantah-greenpeace-soal-deforestasi-di-area-moratorium> on August 19, 2019.

⁶ Greenpeace Indonesia. 2019. *Briefer – Indonesia: Deforestasi Meningkatkan di Area-Area yang dilindungi oleh Moratorium*. Accessed at <https://www.greenpeace.org/indonesia/publikasi/3491/indonesia-deforestasi-meningkat-di-area-area-yang-dilindungi-oleh-moratorium/> on August 23, 2019

⁷ Loc. Cit.

⁸ The initial PIPPIB area was 69,144,073 hectares while PIPPIB revision XV area is reduced to 66,119,100 hectares. See SK 323 Menhut-II/2011 dated June 20, 2011 and SK 8559/Menlhk-PKTL/IPSDH/PLA.1/12/2018 dated December 17, 2018.

⁹ Winata, Dhika Kusuma. 2019. *Menteri LHK: Presiden Moratorium Hutan Permanen*. Accessed at <https://mediaindonesia.com/read/detail/251584-menteri-lhk-presiden-teken-moratorium-hutan-permanen> on August 19, 2019.

This paper attempts to examine the scope of protection given by the new policy to Indonesia's natural forests and peatland taking into consideration the various exemptions contained in the policy and the implementation of the policy so far. This paper ends its findings with crucial questions that may serve as trigger for dialogue between stakeholders to improve protection of Indonesia's natural forests and peatland in the future, especially as Indonesia enters the first commitment period of Nationally Determined Contribution (NDC), that begins in January 2020.

Crucial findings and questions that we believe should be addressed immediately are as follows:

1. During eight years of implementation since the policy was enacted in 2011 until it was made permanent in 2019, there is no significant improvement in terms of the scope of protection of the remaining Indonesia's natural forests and peatlands. The policy still limits its protection to primary natural forests while 43.3 million hectares of Indonesia's natural forests are currently categorized as secondary forests.¹⁰ Of this number, only 12.9 million hectares of secondary forests are included within the most recent moratorium map (PIPPIB) Revision XV¹¹ and thus are protected. Meanwhile, protection of 30.4 million hectares of secondary forests remains in question. Of these figures, 9.2 million hectares of secondary natural forests¹² are especially prone to deforestation due to the absence of legal protection. If they are deforested, Indonesia is at risk of failing its climate commitment in the forestry sector where the NDC target only allows deforestation at 3.25 million hectares from 2020 to 2030.¹³ **What is the role of secondary natural forests' protection to achieve Indonesia's climate target and what policies and regulations can be enhanced to prevent deforestation in secondary forests due to the issuance of new licenses?**
2. Although the policy was eventually made permanent, the protected area can still shrink or expand because the Indicative Map of the Halting of Issuance of New Licenses (PIPPIB) will still be revised every 6 months. So far, civil society faces great obstacles in carrying out effective monitoring on the process and results of the revision of the protected area because they lack access to relevant spatial data and information. Furthermore, reasons for changes in the protected area, where it has increased / decreased and for what purposes / for whose benefits, have not been disclosed in detail. **What kind of collaborative monitoring mechanisms between government and civil society could be put in place to ensure effective implementation of Presidential Instruction 5/2019?**
3. The policy maintains exemptions that could weaken the protection of forests and peatlands if not immediately revised. Compared to the last Presidential Instruction, the exemptions

¹⁰ Ministry of Environment and Forestry, "State of Indonesia's Forests 2018", data of December 2017.

¹¹ Analysis on the 2017 Land Cover Map from Ministry of Environment and Forestry (*Map Service* KLHK).

¹² Consisting of 3.8 million hectares of secondary forest in the HPK (Convertible Production Forest) area and 5.4 million hectares in APL (Non-forest Areas), data from Ministry of Environment and Forestry, "State of Indonesia's Forests 2018", data of December 2017.

¹³ See the Republic of Indonesia Nationally Determined Contribution document, 2016. During the NDC's first commitment period, 2020-2030, Indonesia must maintain deforestation below 325,000 hectares/year to reach the NDC target.

have increased both in number and categories.¹⁴ Of the many exemptions, exemptions of permit applications that have obtained principle approval or permit to use forest area for exploration activities from the previous Minister of Forestry before May 20, 2011 are especially prone to abuses and corruption. Although the Presidential Instruction also aims to improve licensing governance, the President failed to mandate a comprehensive review of forest area use and utilization permits that have been granted by the previous administration. License review is a crucial measure to stop potential loss of state income as mentioned in KPK Report related to the Evaluation of the Implementation of the National Movement to Save Natural Resources (GNPSDA) of 2018. The report states that forestry licensing remains a scourge in the management of natural resources in Indonesia because the process is full of corruption and leads to continuous corruption cycle. Furthermore, the report also mentions that business licensing processes that violate regulations and principles of good environmental governance have raised the need for corrupt practices to secure the illegal licenses and provide a loophole for corruption in securing new licenses or extension of existing ones.¹⁵ **What can be done so that the implementation of the Presidential Instruction can go hand in hand with a comprehensive evaluation of forestry licenses in accordance with the principles of legal compliance and sustainability requirements?**

4. Related to openness as one of the elements in General Principles of Good Governance, transparency and access to public information in the implementation of the moratorium policy is subject to improvement. To establish an effective monitoring, civil society needs access to official spatial data and information that can be analyzed or verified together, including the PIPPIB (now Indicative Map of the Halting of Issuance of New Licenses) as well as its revisions, data on forest area use licenses as the basis for reducing or increasing the protection area, annual land cover data and information as the basis for calculating deforestation rate, as well as reasons for changes in PIPPIB protection area on each revision. Transparency is important because the lack of public monitoring and oversight causes serious loopholes for corruption and undermines the credibility of the implementation of Presidential Instruction 5/2019. **What kind of data sharing and transparency mechanisms can be established between government and civil society to ensure effective collaborative monitoring on the areas protected by Presidential Instruction 5/2019?**
5. Government's monitoring and control in PIPPIB protected areas are not yet optimal as reflected in the occurrence of unplanned deforestation and forest and land fires. **How to**

¹⁴ Notable exemptions in Presidential Instruction No. 5 of 2019 that were absent in the previous Presidential Instruction are permits to use forest area for exploration activities that had been granted by the previous Minister of Forestry before 20 May 2011, land for national food security programs: cassava, implementation of activities related to defense and security of the country, evacuation route for victims of natural disasters and temporary shelter for victims of natural disasters, preparation of government centers / capital city / national, provincial and district / city government offices, infrastructure projects that are listed as national strategic projects as determined by Presidential Regulation and improvement of existing infrastructure, and infrastructure for public safety support.

¹⁵ Commission for Corruption Eradication, Policy Paper for Evaluation of the 2018 National Movement to Save Natural Resources.

build a qualified monitoring and control mechanism to ensure that the government is able to effectively monitor the entire areas protected by Presidential Instruction 5/2019?

6. During 2011 to 2016, after Presidential Instruction No. 10 of 2011 was issued, fifteen (15) Decrees of forest area release was issued in the moratorium area (PIPPIB) in eight provinces.¹⁶ Out of the 15 Decrees, eight (8) have obtained principle licenses before Presidential Instruction 10/2011 and were therefore entitled to exemption. However, seven (7) forest area release applications, which principle licenses were obtained after Presidential Instruction 10/2011, should not have been processed further. Most of the forest area releases overlapping with the moratorium area was not significant in size (under 10 hectares). However, one palm oil plantation company belonging to Korindo Group, PT Tunas Sawa Erma, obtained forest area release with a significant size of 2,652.7 hectares in Boven Digoel, Papua, on September 24, 2014, inside moratorium-protected peatland area.¹⁷ **How come that forest area releases in moratorium-protected area were still allowed and how to establish an adequate oversight mechanism to prevent it in the implementation of Presidential Instruction No. 5 of 2019?**

7. Overlapping licenses are still found in moratorium-protected areas (PIPPIB). From Madani's early findings, there are 1,001,182 hectares¹⁸ of palm oil plantations area in PIPPIB Revision XV in 23 Provinces.¹⁹ Besides palm oil plantations, there are also IUPHHK-HT (timber plantation concessions) with the size of 205,815 hectares in PIPPIB Revision XV in 23 Provinces and 497,462 hectares of IUPHHK-HA (logging concessions) in 18 Provinces.²⁰ The total area of palm oil plantations, timber plantation concessions, and logging concessions in PIPPIB Revision XV is 1,704,460 million hectares. **After eight years of implementation and fifteen (15) revisions of the moratorium indicative map, why does such overlap still occur and what kind of mechanism can be developed to allow for joint monitoring on this issue?**

8. Presidential Instruction 5/2019 fails to include social forestry an exemption even though social forestry is on the National Strategic Projects list under Economic Equality banner. The Instruction only exempt NSPs that qualify as infrastructure projects whereas applications for social forestry licenses may be hampered because they are included in the moratorium-protected area. **How to synchronize natural forests and peatland protection with economic equality program through social forestry and agrarian reform?**

¹⁶ South Sumatra, West Sumatra, Gorontalo, Riau Islands, Riau, West Papua, Papua and West Kalimantan.

¹⁷ Accessed from MoEF Geoportal, <http://geoportal.menlhk.go.id/arcgis/rest/services/KLHK>.

¹⁸ Madani's spatial analysis of PIPPIB Revision XV, sourced from MoEF and palm oil plantation areas sourced from Greenpeace Indonesia.

¹⁹ Aceh, Bangka Belitung, Bengkulu, Gorontalo, Jambi, West Kalimantan, South Kalimantan, Central Kalimantan, Kep. Riau, Lampung, Maluku, North Maluku, Papua, West Papua, Riau, West Sulawesi, South Sulawesi, Central Sulawesi, West Sumatra, South Sumatra, North Sumatra, Southeast Sulawesi, East Kalimantan.

²⁰ Aceh, Bengkulu, Jambi, West Kalimantan, South Kalimantan, Central Kalimantan, East Kalimantan, North Kalimantan, Maluku, North Maluku, Papua, West Papua, Riau, West Sulawesi, Central Sulawesi, North Sulawesi, West Sumatra, North Sumatra.

Nine Measures to Step up Natural Forests and Peatland Protection in Indonesia

Taking into account the urgency of protecting Indonesia's natural forests and peatland to prevent natural disasters, protect assets and wealth of the country, safeguard the safety of the people, and protect the global climate, we believe that the government of Indonesia should immediately:

1. Review Presidential Instruction No. 5/2019 to **include secondary natural forests** that are most threatened under the policy protection.
2. **Review all forestry permit applications that had received principle approval** from the previous Minister of Forestry as well as **exploration licenses** that had been granted by the previous administration with the involvement of the Corruption Eradication Commission (KPK) taking into account sustainability requirements and subsequently remove the clause from the list of exemptions in Presidential Instruction No. 5/2019.
3. Put in place a **collaborative monitoring mechanism** to monitor the implementation of Presidential Instruction No.5/2019 where the government, civil society, academia and other stakeholders can work together, including in the 6-monthly revision process of PIPPIB and issuance of new licenses.
4. Insert a mandate for line ministries to **review all forest use and utilization licenses** that have been issued taking into account legal compliance, sustainability requirements, and social aspects in accordance with KPK's recommendation in the 2018 Evaluation of the Implementation of the National Movement to Save Natural Resources report.
5. Insert an agenda of **harmonization and synchronization of forest and peatland regulations** led by the Ministry of Law and Human Rights in collaboration with other related ministries and state institutions with effective participation of civil society.
6. Put in place a mechanism to **increase transparency and access to data and information** by the public and civil society for the sake of effective monitoring, especially spatial data on forest and land cover that can be analyzed, forest area use and utilization, including permit applications that have obtained principle approval and exploration licenses that are exempted from this policy, and PIPPIB revisions including the reasons for decreasing/increasing the protection area.
7. Include **Ministry of Energy and Mineral Resources** as one of the ministries instructed in Presidential Instruction No.5/2019
8. **Explicitly include social forestry in the exemption list of the policy** taking into account that social forestry is a part of Economic Equality program of President Joko Widodo and is listed as a National Strategy Project and included in the RPJMN Technocratic Draft of 2020-2024 as a priority to alleviate people from poverty.
9. **Provide the policy with a stronger legal basis** (e.g: Presidential Regulation) and immediately integrate the areas protected in Presidential Instruction No.5/2019 to the Spatial Plan.

Critical Notes

on the Presidential Instruction Number 5 of 2019 on the Halting of Issuance of New Licenses and Improvement of Governance in Primary Natural Forest and Peatland

What does the policy of halting the issuance of new licenses in primary forests and peatland entail?

Before President Joko Widodo signed Presidential Instruction 5/2019 on 7 August 2019, the policy was named “moratorium on primary natural forests and peatlands”, a temporary ban (suspension) on issuance of new licenses for large-scale concessions in primary natural forests and peatland area as defined in PIPPIB (Indicative Moratorium Map), which protects an area of 66,119,000 hectares in 2018.²¹

The temporary ban had been implemented for 8 years before it was eventually made permanent in 2019. The policy was first adopted by President Susilo Bambang Yudhoyono through a Presidential Instruction in 2011,²² which was extended in 2013.²³ The policy was extended again in 2015²⁴ and 2017 during Joko Widodo’s first administration.²⁵

On August 7, 2019, through Presidential Instruction 5/2019 on the Halting of New Licenses and Improvement of Governance in Primary Natural Forests and Peatland, President Joko Widodo made permanent the ban on the issuance of new licenses in primary natural forests and peatland area as defined in the Indicative Map of the Halting of Issuance of New Licenses or PIPPIB. Any new license on primary natural forest and peatland areas that are included in PIPPIB could no longer be granted. This includes: license for utilization of timber forest products (including logging and timber plantations), license for harvesting timber forest products, license for forest area use, and changes in the designation of forest area.²⁶

²¹ SK 8559/Menlhk-PKTL/IPSDH/PLA.1/12/2018 dated December 17, 2018.

²² Presidential Instruction No. 10 of 2011 on The Postponement of New Licenses and Improvement of Governance in Primary Natural Forest and Peatland

²³ Presidential Instruction No. 6 of 2013 on The Postponement of New Licenses and Improvement of Governance in Primary Natural Forest and Peatland.

²⁴ Presidential Instruction No. 8 of 2015 on The Postponement of New Licenses and Improvement of Governance in Primary Natural Forest and Peatland.

²⁵ Presidential Instruction No 6 of 2017 on The Postponement of New Licenses and Improvement of Governance in Primary Natural Forest and Peatland.

²⁶ See the Fourth Act in the Decree of the Minister of Environment and Forestry of the Republic of Indonesia No. SK 8599/MenLHK PKTL/IPSDH/PLA.1/12/2018 on Determination of Indicative Map of Postponement of Issuance of New Licenses of Forest Utilization, Use, and Change of Forest Area Status and Area of Other Uses Revision XV.

Presidential Instruction 5/2019 is not a regulation that can be legally enforced. Rather, it is an executive order from the President to his staff, namely the Ministers and Heads of Agencies/Institutions.²⁷ Normatively, they must obey the President's order. However, the effectiveness of this Instruction is often questioned because there are no legal actions against offenders and no room for monitoring its implementation from the outside.

The Instruction is directed to nine (9) ministers / heads of state institutions, namely the Minister of Environment and Forestry, Minister of Home Affairs, Minister of Agrarian Affairs and Spatial Planning / Head of National Land Agency, Minister of Agriculture, Minister of Public Works and Public Housing, Cabinet Secretary, Head of Information and Geospatial Agency, Governors, and Regents/Mayors. Although there is an improvement in terms of the recipients of this Instruction with the inclusion of Minister of Agriculture and Minister of Public Works and Public Housing, it still excludes Minister of Energy and Mineral Resources responsible for the issuance of mining licenses that often intersect with forest area.

Presidential Instruction 5/2019 differs fundamentally from the previous four Presidential Instructions where in the 2019 Instruction the President orders the Minister of Environment and Forestry to ***Stop the issuance of new licenses on primary natural forests and peatlands***, the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency to ***Stop the issuance of land rights including land use rights and use rights in non-forest area based on the Indicative Map on the Halting of New Licenses***, and the Governors and Regents/Mayors to ***Stop the issuance of recommendations and new location licenses on forest area, peatlands and non-forest area based on the Indicative Map on the Halting of New Licenses***.

Although the prohibition for issuing new licenses in primary natural forests and peatland area has been made permanent, the area of primary natural forests and peatland protected by this policy is not. Thus, uncertainty of their fate remains. The protected area can still shrink or expand through the revision of the Indicative Map of the Halting of New Licenses (PIPPIB) by the Directorate General of Forestry Planning and Environmental Management of the Ministry of Environment and Forestry, which will be conducted every six (6) months. During eight years of the moratorium implementation until it was made permanent in 2019, the moratorium-protected area has decreased by around three million hectares (net). Detailed reasons for area reduction, where and for whose benefits, have never been disclosed to the public, which makes it prone to power abuse and corruption.

On top of the uncertainty and potential loss of protected area due to the mandatory 6-monthly revision, the permanent moratorium policy is also weakened by the numerous exemptions contained in Presidential Instruction 5/2019.

²⁷ Presidential Instruction is a set of instructions from the President to relevant Ministers and Head of State Institutions. As a non-legislative document, there are no legal consequences for violation. As stipulated in Law Number 12 of 2011 on the Formation of Law and Regulations, the Presidential Instruction is not included in the type and hierarchy of legislation and therefore has no binding legal force.

What are exempted from the protection?

Presidential Instruction 5/2019 contains more exemptions than the previous Presidential Instructions, supposedly to accommodate President Joko Widodo's priority programs, including infrastructure development listed as National Strategic Projects and food security programs. Unfortunately, the exemptions fail to accommodate community rights to forest because social forestry is not mentioned in the exemptions although it is also considered as a National Strategic Project under Economy Equality program. Based on the exemptions list in the Presidential Instruction 5/2019, new licenses may still be issued in the area of primary natural forests and peatland if they qualify as one of the following nine categories:

1. Permit applications that had obtained principle approval from the Minister of Forestry prior to the issuance of Presidential Instruction 10/2011 on May 20, 2011 or permissions to use forest area for exploration activities obtained before the date. Exemption for forest area use licenses for exploration activities which, among others, may refer to mining, is a new exemption that did not exist in the previous Presidential Instructions, the most recent being Presidential Instruction 6/2017.
2. Implementation of vital national development projects, including geothermal, oil and gas, electricity, land for national food security programs, including rice, sugar cane, corn, sago, soybeans and cassava. The addition of corn, sago, soybean and cassava to the exemption list was done during Joko Widodo's administration. Cassava is a new addition to Presidential Instruction 5/2019.
3. Extension of existing forest area utilization / use licenses. Although the title of this policy also includes improvement in governance, there is no mandate to review or evaluate previously issued licenses in primary forests and peatland, which can still be extended despite this policy.
4. Ecosystem Restoration;
5. Any activities related to defense and security;
6. Evacuation routes for victims of natural disaster and temporary shelters for victims of natural disasters;
7. Preparation of government centers/government capitals/national, provincial and district/city government central offices;
8. Infrastructure projects listed as National Strategic Projects established by Presidential Regulation, and improvement of existing infrastructure.
9. Infrastructure for public safety support.

Our concerns regarding the abovementioned exemptions are as follows:

- Due to lack of openness of government data regarding licenses, we cannot ascertain the number or size of permit applications that had received principle approval from and forest area use licenses for exploration activities granted by the previous Minister of Forestry before May 20, 2011, which will reduce the protected area. We cannot know either who the recipients of these licenses are and whether it is justifiable to sacrifice primary natural forests

and peatlands for the benefit of these licenses. Another crucial question is that why these permit applications and exploration licenses are still even allowed to continue after more than eight years. As mentioned in the KPK Report on the Evaluation of the National Movement to Save Natural Resources in 2018, forestry licensing is a scourge in the management of natural resources in Indonesia because the process is full of corruption and has led to a continuous corruption cycle. Furthermore, business licensing processes that violate regulations and principles of good environmental governance have raised the need for corrupt practices to secure the illegal licenses and provide a loophole for corruption in securing new licenses or extension of existing ones.²⁸ Thus, **the exemption of permit applications that had obtained principle approval and exploration licenses as well as extension of existing licenses without review is a fundamental loophole in this primary natural forests and peatland protection policy.**

- **The exemption of implementation of National Vital Development programs may weaken the protection of natural forests and peatlands in Indonesia if not accompanied by rigorous and adequate oversight and safeguards.** The issuance of licenses for land clearing for paddy fields, sugar cane, soybeans, corn and cassava projects based on large-scale agribusiness model such as the Merauke Integrated Food and Energy Estate (MIFEE) initiated by President Susilo Bambang Yudhoyono in 2006 and continued by President Joko Widodo may entail destruction of primary natural forests, especially in Papua, and displace indigenous communities if there are no strict safeguards.²⁹
- National Strategic Projects (NSP) in Presidential Regulation 56/2018 include, among others, 64 highway infrastructure projects, 4 non-highway infrastructure projects, 16 railway infrastructure projects, 7 airport revitalization and development projects, 10 port development and capacity building projects, 3 projects related to the construction of one million houses, 10 oil and gas projects, 57 dam projects, 28 special economic zones development projects, 6 smelter construction projects and only one Economy Equality program that includes Social Forestry and Agrarian Reform project. However, **only infrastructure projects listed in the NSP are exempted from the policy.** Therefore, social forestry still cannot be granted for communities in areas included in the Indicative Map of the Halting of Issuance of New Licenses (PIPIB), which may hamper the realization of social forestry program and fulfillment of community rights.

²⁸ Commission for Corruption Eradication, Policy Paper for Evaluation of the 2018 National Movement to Save Natural Resources.

²⁹ Damarjati, Danu. 2017. Accessed at <https://news.detik.com/berita/d-3548282/lestarynya-merauke-dan-kabar-target-jokowi-soal-sawah-12-juta-ha> on August 23, 2019

To what extent is this policy protecting the remaining natural forests?

On top of the abovementioned exemptions, natural forests protection provided by this policy is fundamentally weakened by the overly narrow scope associated with the dichotomy of primary and secondary natural forests. The policy limits its protection only to **primary natural forests**³⁰, and **peatlands** that are located:

1. **In forest area** with all functions: conservation forest, protection forest, production forest (limited production forest, permanent production forest, convertible production forest), and
2. **Outside forest area / non-forest area (APL)**

Based on the data from Indonesian government, the area of primary natural forests in 2017 was 46.1 million hectares while the area of secondary natural forest was 43.3 million hectares.³¹ The detailed explanation regarding the scope of protection in the most recently revised PIPPIB of 66 million hectares has never been disclosed by the government, whether it covers all of the remaining primary natural forests or still excludes certain primary natural forests, including how much primary natural forests and peatland areas have been released from PIPPIB because they had been burdened with licenses.

By limiting itself to only 'primary natural forests,' this policy turns a blind eye to 43.3 million hectares of Indonesia's secondary natural forests that are rich in carbon and threatened by deforestation due to the issuance of new licenses, especially 30.4 million hectares that are located outside conservation and protection areas. Indonesian government data shows that there are 3.8 million hectares of secondary forest in the HPK (Convertible Production Forest) and 5.4 million hectares in APL (Non-forest Areas).³² These 9.2 million hectares of natural forests are the most threatened by deforestation because they currently have no legal protection from not being located in conservation or protection areas and being excluded from the permanent moratorium policy. If these forests are deforested, Indonesia is at risk of failing its targets and climate commitment in the NDC, which only allows deforestation with the size of 3.25 million hectares from 2020 to 2030.³³

The risk of potential loss of secondary natural forests due to issuance of new licenses is still very high because the Indonesian National Forestry Plan of 2011-2030 states the intention of the government to expand timber plantation concession area to 15.9 million hectares in 2030 (from the currently 11.1 million hectares) and logging concessions to 24.8 million hectares in 2030 (from currently 18.8 million hectares).³⁴

³⁰ According to the Food and Agriculture Organization (FAO) (FAO, 2010), Primary Forests are forests consisting of native species that grow naturally, there are no clear signs of human activity and ecological processes are not significantly disturbed. 'Primary Natural Forest' is intended to imply that there has never been a permit issued in such region (Murdiyarto, D., Dewi, S., Lawrence, D. and Seymour, M., 2011.). The Ministry of Forestry uses the term 'primary forest', as defined by FAO, for reporting purposes only.

³¹ Ministry of Environment and Forestry. 2018. State of Indonesia's Forests 2018.

³² Data of December 2017, in the State of Indonesia's Forests 2018.

³³ See the Republic of Indonesia Nationally Determined Contribution document, 2016. During the NDC's first commitment period, 2020-2030, Indonesia must maintain deforestation below 325,000 hectares/year.

³⁴ Regulation of the Minister of Environment and Forestry of the Republic of Indonesia No. P.49 of 2011 on 2011-2030 National Forestry Plan.

To prevent climate crisis and biodiversity loss, the dichotomy between 'primary' and 'secondary' natural forests is less relevant. In comparison, the University of Maryland defines primary forests in Indonesia as 'mature natural humid tropical forest cover that has not been fully felled and replanted in recent history' or more than 30 years, which also includes forests that have been subject to selective logging. Organizations that use this data to analyze the loss of Indonesia's primary forests are WRI and Greenpeace. Forest Watch Indonesia (FWI) also refuses to adopt the dichotomy of primary and secondary natural forests in calculating Indonesia's remaining natural forests. According to data from the University of Maryland, the current Indonesia's primary natural forest area is approximately 85.2 million hectares.³⁵

What are important lessons from the implementation of the previous moratorium policy?

Were there any new licenses issued in the moratorium-protected area?

Yes.

Based on civil society's 6-year evaluation of moratorium implementation, three location licenses were issued in the moratorium-protected area for two palm oil plantation companies, namely PT Sinar Abadi Wijaya, covering an area of 28,079 hectares and PT Sinar Persada Mulia, covering an area of 25,951 hectares by the Head of Mamberamo Raya, Papua.³⁶ A case was also reported from Kotawaringin Barat District, Central Kalimantan, where the Head of District issued a license to PT ASMR in moratorium-protected peatland area after the enactment of Presidential Instruction.³⁷

During 2011 to 2016, after Presidential Instruction No. 10 of 2011 was issued, fifteen (15) Decrees of forest area release was issued in the moratorium area (PIPPIB) in eight provinces.³⁸ Out of the 15 Decrees, eight (8) have obtained principle licenses before Presidential Instruction 10/2011 and were therefore entitled to exemption. However, seven (7) forest area release applications, which principle licenses were obtained after Presidential Instruction 10/2011, should not have been processed further. Most of the forest area releases overlapping with the moratorium area was not significant in size (under 10 hectares). However, one palm oil plantation company belonging to Korindo Group, PT Tunas Sawa Erma, obtained forest area release with a significant size of 2,652.7 hectares in Boven Digoel, Papua, on September 24, 2014, inside moratorium-protected peatland area.³⁹ **How come that forest area releases in moratorium-protected area were still allowed and how to establish an adequate oversight mechanism to prevent it in the implementation of Presidential Instruction No. 5 of 2019?**

³⁵ Greenpeace Indonesia. 2019. Briefer - Indonesia: Deforestasi Meningkat di Area-Area yang dilindungi oleh Moratorium. Accessed at <https://www.greenpeace.org/indonesia/publikasi/3491/indonesia-deforestasi-meningkat-di-area-area-yang-dilindungi-oleh-moratorium/> on August 21, 2019.

³⁶ Civil Society Coalition, Enam Tahun Memperbaiki Tata Kelola Hutan dan Lahan Gambut, 2017.

³⁷ Ibid.

³⁸ South Sumatra, West Sumatra, Gorontalo, Riau Islands, Riau, West Papua, Papua and West Kalimantan.

³⁹ Accessed from MoEF Geoportal, <http://geoportal.menlhk.go.id/arcgis/rest/services/KLHK>.

Was there any conversion of natural forests and peat landscape in the moratorium-protected area?

Yes.

According to Director of Inventory and Monitoring of Forest Resources of MoEF, Belinda Arunawati Margono, the deforestation rate after the moratorium took effect (2011-2018) has decreased from initially 0.88 thousand hectares per year in 2003-2010 to 0.7 thousand hectares per year.⁴⁰ The government also stated that Indonesia's deforestation rate before and after the moratorium has decreased by around 20 percent and if we focus on moratorium area (PIPPIB) only, the deforestation rate decreased by 38 percent.⁴¹

Meanwhile, Greenpeace's published data shows the contrary. According to Greenpeace, in the period prior to moratorium policy (2005-2011), total deforestation in moratorium-protected area was 800 thousand hectares or 97 thousand hectares per year. In the 2012-2018 period, after moratorium took effect, total deforestation in the moratorium area increased to 1.2 million hectares or 137 thousand hectares per year despite of significant decrease in 2018 compared to the previous years.⁴² Greenpeace's analysis shows that Indonesia's total deforestation (inside and outside the moratorium area) reached 4.38 million hectares during moratorium implementation period, which means that deforestation inside moratorium area was 27.4 percent of the total deforestation in Indonesia.⁴³

Both claims, which came to a conflicting conclusion, merit further scrutiny. Currently, the data cannot be compared directly because they differ in terms of periods and definition of primary forests used. This prompts two urgent questions: **What kind of mechanism can be established to allow collaborative monitoring between the government and civil society to ensure that Presidential Instruction 5/2019 is effectively implemented? How to build a qualified oversight and control mechanism to ensure that the government has adequate capability to monitor the entire area protected by the policy and prevent deforestation??**

Were there still hotspots and forest fires in moratorium-protected area?

Yes.

According to Director of Inventory and Monitoring of Forest Resources of the Ministry of Environment and Forestry, Belinda Arunawati Margono, in 2015, the total burned area in Indonesia reached 2.6 million hectares. Thirty-one percent or 806 thousand hectares occurred inside moratorium-protected area while 69 percent occurred outside moratorium area. This data is consistent with Greenpeace's analysis, which found that 31 percent of hotspots in 2015 occurred in PIPPIB area.⁴⁴ Furthermore,

⁴⁰ Winata, Dhika Kusuma. 2019. *KLHK Bantah Greenpeace Soal Deforestasi di Area Moratorium*. Accessed at <https://www.medcom.id/nasional/peristiwa/VNnQoMvK-klhk-bantah-greenpeace-soal-deforestasi-di-area-moratorium> on August 16, 2019

⁴¹ Ibid.

⁴² Greenpeace Indonesia. 2019. Briefer - Indonesia: Deforestasi Meningkat di Area-Area yang dilindungi oleh Moratorium. Accessed at <https://www.greenpeace.org/indonesia/publikasi/3491/indonesia-deforestasi-meningkat-di-area-area-yang-dilindungi-oleh-moratorium/> on August 21, 2019.

⁴³ Ibid.

⁴⁴ Civil Society Coalition, Enam Tahun Memperbaiki Tata Kelola Hutan dan Lahan Gambut, 2017.

according to the government, from all fires that occurred within the moratorium area, only 3 percent occurred in forested areas while the rest occurred in non-forested areas, namely peatlands and non-forested natural ecosystems such as savannahs or shrubs.⁴⁵

In 2019, according to the government, the total burned area due to forest and land fires reached 135 thousand hectares, where 23 percent or 31,050 hectares occurred in moratorium-protected area and 77 percent occurred outside the moratorium area. From the 135 thousand hectares, 71 thousand hectares that were burned were declared as savanna.⁴⁶ In conclusion, according to the government, fires that occurred in the moratorium area covered by natural forests were only 0.8 percent while the rest (99.2 percent) occurred in non-forested areas.⁴⁷ Greenpeace's analysis is quite similar in which it states that in 2019 (January-July), 25 percent of all hotspots were located in the moratorium area.

The government and civil society's data on hotspots and forest and land fires are quite similar. The question is thus: **How to build a qualified fire prevention, monitoring and control mechanism to ensure that forest and land fires do not re-occur in the protected area during the implementation of Presidential Instruction 5/2019?**

Have Indigenous People and local communities' rights and access to land been guaranteed?

Not yet.

In the 6-year evaluation report on moratorium implementation, Civil Society Coalition to Save Indonesia's Forests and the Global Climate overlaid PIPPIB Revision XI with community-managed areas map and found 1.1 million hectares of community-managed areas in moratorium-protected area, around 76 thousand hectares in primary forests and 54.6 thousand hectares in peatland areas.⁴⁸ This data, however, have not been updated for 2019.

With regards to this, social forestry schemes could be used as an alternative to guarantee community livelihoods, optimize forest protection, and minimize conflicts. Unfortunately, social forestry is not included in the exemptions list of the permanent moratorium policy and this could hamper fulfillment of community rights, especially in areas located within or adjacent to moratorium-protected area. Although social forestry is on the list of National Strategic Projects and Presidential Regulation 56/2018, only infrastructure projects are exempted in Presidential Instruction 5/2018 whereas social forestry is categorized not as infrastructure project but economy equality project.

Is there a comprehensive review of forest use and utilization licenses?

Not yet

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Civil Society Coalition, Enam Tahun Memperbaiki Tata Kelola Hutan dan Lahan Gambut, 2017.

Presidential Instruction 5/2019 requires improvement in governance of primary natural forests and peatland. After eight years of moratorium implementation, continued with the Instruction, there are still no clear performance indicators for governance improvement referred to by the policy. Therefore, such improvements are difficult to ascertain or evaluate.

In civil society's policy paper, "Performance-Based Moratorium," published in 2012, Civil Society Coalition to Save Indonesia's Forests and the Global Climate recommended a comprehensive review of existing land use and forest use and utilization licenses as the first step of governance improvement, especially for licenses that still have natural forests cover and peatland. Such review must include legal compliance, sustainability requirements, and social aspects.

In the eight years of moratorium implementation, there has not been a comprehensive review of all existing licenses, including evaluation for extension of existing licenses, which has been exempted by the moratorium. By allowing the existing licenses to operate and be extended in primary natural forests and peatland, the effort to prevent deforestation and reduce emissions in moratorium-protected area becomes increasingly difficult. Greenpeace's analysis states that 4.5 million hectares of primary forest and peatlands were released from moratorium-protected area in the period 2011-2018 where 1.6 million hectares were allocated for palm oil plantations, pulp and paper, logging, and mining.⁴⁹ This raises the following question: **How to equip the implementation of Presidential Instruction 5/2019 with a comprehensive review of forestry licenses in accordance with the principles of legal compliance, social sustainability and sustainability requirements?**

⁴⁹ Greenpeace Indonesia, Briefer - Indonesia: Deforestasi Meningkatkan di Area-Area yang dilindungi oleh Moratorium. Accessed at <https://www.greenpeace.org/indonesia/publikasi/3491/indonesia-deforestasi-meningkat-di-area-area-yang-dilindungi-oleh-moratorium/> on August 21, 2019.

Nine Measures to Step up Natural Forests and Peatland Protection in Indonesia

Taking into account the urgency of protecting Indonesia's natural forests and peatland to prevent natural disasters, protect assets and wealth of the country, safeguard the safety of the people, and protect the global climate, we believe that the government of Indonesia should immediately:

1. Review Presidential Instruction No. 5/2019 to **include secondary natural forests** that are most threatened under the policy protection.
2. **Review all forestry permit applications that had received principle approval** from the previous Minister of Forestry as well as **exploration licenses** that had been granted by the previous administration with the involvement of the Corruption Eradication Commission (KPK) taking into account sustainability requirements and subsequently remove the clause from the list of exemptions in Presidential Instruction No. 5/2019.
3. Put in place a **collaborative monitoring mechanism** to monitor the implementation of Presidential Instruction No.5/2019 where the government, civil society, academia and other stakeholders can work together, including in the 6-monthly revision process of PIPPIB and issuance of new licenses.
4. Insert a mandate for line ministries to **review all forest use and utilization licenses** that have been issued taking into account legal compliance, sustainability requirements, and social aspects in accordance with KPK's recommendation in the 2018 Evaluation of the Implementation of the National Movement to Save Natural Resources report.
5. Insert an agenda of **harmonization and synchronization of forest and peatland regulations** led by the Ministry of Law and Human Rights in collaboration with other related ministries and state institutions with effective participation of civil society.
6. Put in place a mechanism to **increase transparency and access to data and information** by the public and civil society for the sake of effective monitoring, especially spatial data on forest and land cover that can be analyzed, forest area use and utilization, including permit applications that have obtained principle approval and exploration licenses that are exempted from this policy, and PIPPIB revisions including the reasons for decreasing/increasing the protection area.
7. Include **Ministry of Energy and Mineral Resources** as one of the ministries instructed in Presidential Instruction No.5/2019
8. **Explicitly include social forestry in the exemption list of the policy** taking into account that social forestry is a part of Economic Equality program of President Joko Widodo and is listed as a National Strategy Project and included in the RPJMN Technocratic Draft of 2020-2024 as a priority to alleviate people from poverty.
9. **Provide the policy with a stronger legal basis** (e.g: Presidential Regulation) and immediately integrate the areas protected in Presidential Instruction No.5/2019 to the Spatial Plan.

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Yayasan Madani Berkelanjutan adalah lembaga nirlaba yang berupaya menjembatani hubungan antar pemangku kepentingan (pemerintah, sektor swasta, dan masyarakat sipil) untuk mencapai solusi inovatif terkait tata kelola hutan dan lahan.

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