

**Executive Summary**

**Critical Notes**

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

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## Executive Summary

# Critical notes on Presidential Instruction 5/2019 on the Halting of Issuance of New Licenses and Improvement of Governance in Primary Natural Forests and Peatland

### 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 hectares<sup>1</sup>, third largest worldwide<sup>2</sup> and cover almost half, or 47.5 percent of Indonesian mainland.<sup>3</sup> 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.<sup>4</sup>

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 (PIPPIB) area alone.<sup>5</sup> 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.<sup>6</sup> The government, however, refused to acknowledge such claim.<sup>7</sup>

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.<sup>8</sup> 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

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

<sup>2</sup> FAO, "Global Forest Resources Assessment 2015."

<sup>3</sup> Loc. Cit.

<sup>4</sup> Loc. Cit.

<sup>5</sup> 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.

<sup>6</sup> 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 23, 2019

<sup>7</sup> Loc. Cit.

<sup>8</sup> 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.

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Improvement of Governance of Primary Natural Forest and Peatland, 18 days after the previous Presidential Instruction expired on July 17, 2019.<sup>9</sup>

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.<sup>10</sup> Of this number, only 12.9 million hectares of secondary forests are included within the most recent moratorium map (PIPPIB) Revision XV<sup>11</sup> 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 forests<sup>12</sup> 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.<sup>13</sup> **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?**

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<sup>9</sup> 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.

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

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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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 have increased both in number and categories.<sup>14</sup> 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.<sup>15</sup> **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 build a qualified**

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<sup>14</sup> 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.

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

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**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 (PIPIB) in eight provinces.<sup>16</sup> 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.<sup>17</sup> **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 (PIPIB). From Madani's early findings, there are 1,001,182 hectares<sup>18</sup> of palm oil plantations area in PIPPIB Revision XV in 23 Provinces.<sup>19</sup> 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.<sup>20</sup> 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?**

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<sup>16</sup> South Sumatra, West Sumatra, Gorontalo, Riau Islands, Riau, West Papua, Papua and West Kalimantan.

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

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

<sup>19</sup> 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.

<sup>20</sup> 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.

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## 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 is a non-profit organization aimed to bridge relations between key stakeholders (government, private sector, and civil society) to find innovative solutions in forest and land governance sector.**

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