

REDD+ Update Report

January 11, 2018

“Palm Oil Moratorium”

Draft Presidential Instruction on the Suspension and Evaluation of Palm Oil Plantation Licenses and Improvement of Palm Oil Plantation Productivity

- The palm oil and mining moratorium plan was announced by President Jokowi in April 2016.¹ However, until today, the Presidential Instruction has not been released. There is a newest draft Presidential Instruction circulating in December 2017. In a consolidation meeting held by Madani in January 2018, overall CSOs think that the draft's content is good and support its immediate issuance because while the policy is pending, many palm oil licenses have been issued, especially in Papua and Papua Barat.²

The Newest Draft Presidential Instruction (Dec 22, 2017)

- The instruction consists of 13 articles directed at 8 (eight) government institutions: 1) Coordinating Minister of the Economy (Kemenko), 2) Minister of Environment and Forestry, 3) Minister of Agriculture, 4) Minister of Agraria and Spatial Planning, 5) Minister of Home Affairs, 6) Head of BKPM (Investment Coordinating Agency), 7) Governors, and 8) District Heads/Mayors. The bulk of the instructions is directed at the MoEF, which is tasked with suspending forest area releases for palm oil plantations and evaluating the previous Ministerial Decrees on forest area release. However, many crucial tasks are given to a special Team called the Work Team (*Tim Kerja*), which will be established under the Coordinating Minister of the Economic Affairs, which must be carefully watched.
- The Instruction will be valid for 3 years and it does not mention a possibility for extension. The wordings on the validity period are ambiguous, however and can be interpreted that: (i) the suspension and evaluation of palm oil licenses that have been issued is valid for a maximum 3 years period (2018-2020) – meaning that it could be lifted before 3 years - or that (ii)) the suspension and evaluation of palm oil licenses that have been issued will start being implemented at the latest 3 years after the Presidential Instruction is issued. The former interpretation is more likely.

¹

<http://nasional.kompas.com/read/2016/04/14/16062001/Jokowi.Akan.Keluarkan.Moratorium.Lahan.Sawit.dan.Tambang>

² <http://www.foresthints.news/four-new-palm-oil-permits-issued-across-papua-region>

Instructions to the Coordinating Minister of the Economic Affairs:

- Establish a Work Team to implement the palm oil moratorium. The composition of such Team is not mentioned in the Instruction, but it most likely is a cross-ministerial team. The Coordinating Minister himself is tasked with coordinating the implementation of the moratorium and reporting to the President every 6 months.
- The tasks of the Work Team:
 - *Verify* data of forest area release/exchange for palm oil plantations, Plantation Business Permit (*Izin Usaha Perkebunan/IUP*) Map, Map of Plantation Registration Letter (*Surat Tanda Daftar Perkebunan* – a license before IUP-red), Location Permit, and Land Use Title (HGU). *Surat Tanda Daftar Budidaya* – STTB – a ‘license’ for smallholders is not mentioned in the Instruction, which means that smallholders’ licenses are not targeted by the policy.
 - *Determine* the minimum standard for data compilation.
 - *Conduct synchronization* with One Map Policy regarding: (i) the match between licenses issued by ministries/government agencies and by regional government; (ii) IUP with HGU, and (iii) decision letters regarding forest area designation/determination and HGU (to see whether there are HGUs issued inside forest area, which is illegal). This is very important because many IUPs do not yet have HGUs but are already operational and because many HGUs are issued in areas still classified as forest area. The official number of palm oil plantation in Indonesia is 15.7 million hectares, consisting of 10.7 hectares of estate managed by corporations, 4.4 million hectares of land managed by farmers, and 493 thousands of hectares by State Enterprises (BUMN).³ Most of the plantations are in Kalimantan (47%) and Sumatra (45%) with Papua catching up fast, currently reaching 3% of the total size and the opening of forests on the ground is increasing. However, in terms of the actual palm oil cover, the size of palm oil plantations in Indonesia is much higher, reaching 18 million hectares (Auriga, 2018). It means that around 2.3 million hectares of palm oil are illegal (without license) and/or unrecorded.
 - *Issue recommendations* to the Ministers/Governors/District Heads/Mayors regarding: (i) re-classification of forest area that have been released/exchanged back as forest area (to MoEF), (ii) Norms, Standards, Procedure, Criteria (NSPK) for IUP and STDUP (to Minister of Agriculture), (iii) determination of abandoned land and suspension of HGU issuance or HGU revocation (to Minister of Agraria and Spatial Planning), (iv) legal measures/compensation for unlawful use of forest area for palm oil plantation based on verification and evaluation of forest area release/exchange for palm oil plantations (to MoEF).

³ KPK, *Kajian Sistem Pengelolaan Komoditas Kelapa Sawit* (KPK: Jakarta, 2016), p.9.

Instructions to the Minister of Environment and Forestry:

- Suspend forest area release/exchange for palm oil plantations, for:
 - New requests for forest area release/exchange for palm oil plantations;
 - Requests that have been proposed, but have not fulfilled all administrative and technical requirements OR that have fulfilled all requirements but are located in areas that still have forest cover.
 - Requests that have obtained a principle approval (*persetujuan prinsip*) from the Minister, but have not been delineated (*tata batas*) and are located in productive forest area. The definition of productive forest area is available by negation only (forest area for conversion that is not dominated by bushes or non-forest).
- This means that this policy will not apply to forest area release/exchange requests that have been proposed, fulfilled all technical and administrative requirements, and that have been delineated even though they are located in forest area that still have forest cover or that are still productive. See chart below to see where the moratorium shall apply and the exemptions.

Evaluation of the previous forest area release decisions for palm oil plantations

- Unlike the moratorium on primary forest and peatland, the palm oil moratorium does not only apply on new licenses. It also looks back and gives instruction to the Minister to review and evaluate past decisions and licenses regarding palm oil, which is an upgrade compared to the other policy. The Minister of Environment and Forestry is instructed to conduct inventory and verification of the following five categories to be submitted to the Work Team:
 - Forest area release/exchange decisions for palm oil plantation that have not been developed/worked on;
 - Forest area release/exchange decisions for palm oil plantation that are still productive forest;
 - Forest area release/exchange decisions for palm oil plantation that are indicated of being misused (used for other purposes than for palm oil plantation);
 - Forest area release/exchange decisions for palm oil plantation that are transferred to another party.
 - Palm oil plantations that are located inside forest area, but have not obtained forest area release/exchange permit.
- The MoEF claims that they have been conducting inventory of palm oil plantations that are operating illegally in forest area and that the number has reached 1 million hectares (names and locations undisclosed).⁴ Regarding smallholders (both independent and plasma), the data from Ministry of Agriculture says that out of 4.6 million hectares of smallholders' plantations, 1.7 million hectares are indicated operating illegally (inside forest area).⁵ President Jokowi has ordered that smallholders' plantations be released from forest area (as long as they are not in conservation and protection forest).⁶
- The Minister is also instructed to follow-up recommendations from the Work Team regarding: (i) reclassification of forest area that have been released/exchanged for palm oil plantations as forest area, and/or (ii) legal measures/compensation for unlawful use of forest area as palm oil plantation
- The Minister is also tasked with identifying and enforcing the 20% rule for forest area released for palm oil plantations. The rule says that out of the total size of forest area released for palm oil plantation, 20% must be allocated for people's plantation (smallholder).

Instructions for the Minister of Agriculture

⁴ <http://industri.bisnis.com/read/20160628/99/562149/kebun-sawit-di-kawasan-hutan-1-juta-ha-diduga-ilegal>

⁵ <https://www.infosawit.com/news/7275/nasib-kebun-sawit-swadaya-di-kawasan-hutan>

⁶ <https://sawitindonesia.com/rubrikasi-majalah/berita-terbaru/presiden-jokowi-kebun-petani-sawit-di-kawasan-hutan-akan-disertifikatkan/>

The Minister of Agriculture must conduct the following:

- Develop and verify data and maps regarding: (i) Plantation Business Permits (IUP and STDUP) nationally (name, number, location, size, issuance date, uses, size of planted area, year of planting);
- Evaluate the process of issuance of Plantation Business Permits;
- Evaluate Plantation Business Permits that have not been utilized/planted on;
- Evaluate the realization of Plantation Business Permits holder (IUP and STDUP) to develop smallholders' plantation with the size of 20% of the total area that they are working on;
- Report the evaluation results to the Work Team;
- Follow-up the Work Team's recommendation regarding NSPK (Norms, Standards, Procedure, Criteria) for Plantation Business Permits;
- Optimize assistance to smallholders to improve productivity;
- Ensure that every palm oil plantation implements ISPO.

Instructions for The Minister of Agraria and Spatial Planning

The Minister must:

- Develop inventory and verify data regarding: (i) Location Permits and (ii) HGU (name, number, location, size, issuance data, uses, planted size, year of planting);
- Evaluate whether:
 - The HGUs are in harmony with Spatial Plan;
 - The HGUs are realized in according with its purpose (for palm oil plantation and nothing else);
 - The HGUs are not transferred to another party without registering it in the National Land Agency.
 - And report the results to the Work Team.
- Follow-Up the Work Team's recommendation regarding:
 - determination of forest area released/exchanged for palm oil plantation as abandoned land (that must be returned to the state);
 - Suspension of HGU issuance;
 - Revocation of HGU;
 - Return of forest land that has been released/exchanged to forest area.

- Accelerate the issuance of land titles for communities as an implementation of the 20% rule (companies' obligation to develop smallholders' plantation with the size of 20% of their HGU) and issue land titles for palm oil plantations.

Instructions for the Minister of Home Affairs

- Assist and monitor/supervise governors and district heads/mayors in the implementation of the Instruction.

Instructions for the Head of Coordinating Agency for Investment (BKPM)

- Suspend request for new investment for palm oil plantations or expansion of existing plantations, which land is from forest area release/exchange, except for permits that are processed through the special amnesty mechanism (Article 51 of PP 104/2015 – see chart above).

Instruction for Governors

- Suspend issuance of recommendations/permits for palm oil plantation and permits to clear new land for palm oil plantation in forest area, except for permits that are processed through the special amnesty mechanism (Article 51 of PP 104/2015 – see chart above).
- Collect and verify data regarding: (i) map of Location Permits, (ii) map of Plantation Business Permits (IUP and STDUP)
- Report data of Plantation Business Permits to Ministry of Agriculture and data of Location Permits to Ministry of Agraria and Spatial Planning.
- Revoke Plantation Business Permits (IUP/STDUP) located inside forest area as per the Work Team's recommendation.

Instruction for District Heads/Mayors

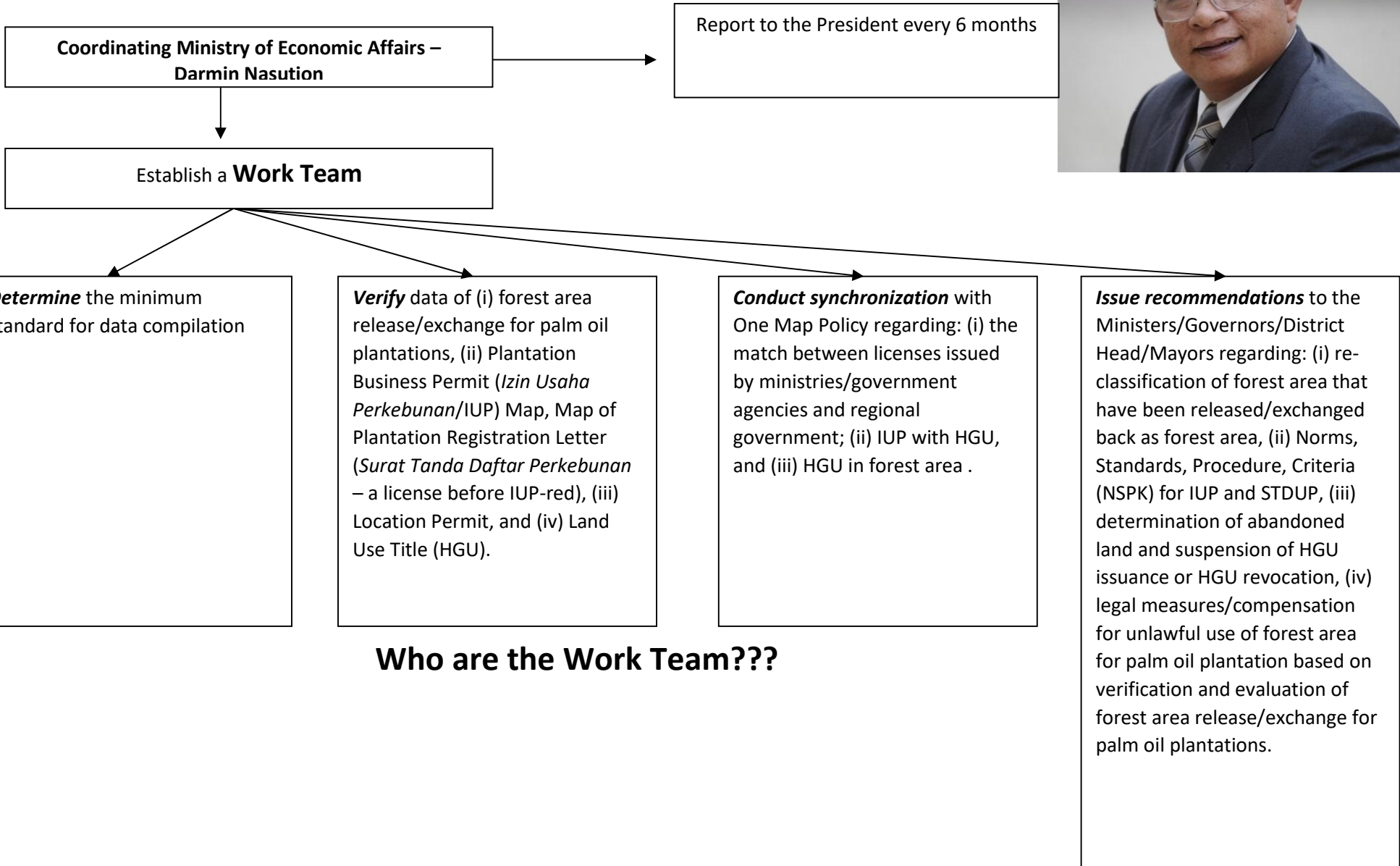
- Suspend issuance of recommendations/permits for palm oil plantation and permits to clear new land for palm oil plantation in forest area, except for permits that are processed through the special amnesty mechanism (Article 51 of PP 104/2015 – see chart above);
- Collect data and conduct mapping of all palm oil plantation areas in their jurisdiction, including those managed by enterprises or individuals (uses, size planted, year of planting);
- Collect and verify data and maps of: (i) Location Permits, (ii) Plantation Business Permits (name, number, location, size, issuance data, uses, planted size, year of planting);
- Collect data and maps of smallholders' plantations in their jurisdiction that are located (i) inside forest area, (ii) outside forest area (APL);

- Submit all data above to the Governor, cc-ing Minister of Agriculture, Minister of Environment and Forestry, and Minister of Agraria and Spatial Planning.
- Revoke Plantation Business Permits (IUP/STDUP) located inside forest area as per the Work Team's recommendation.

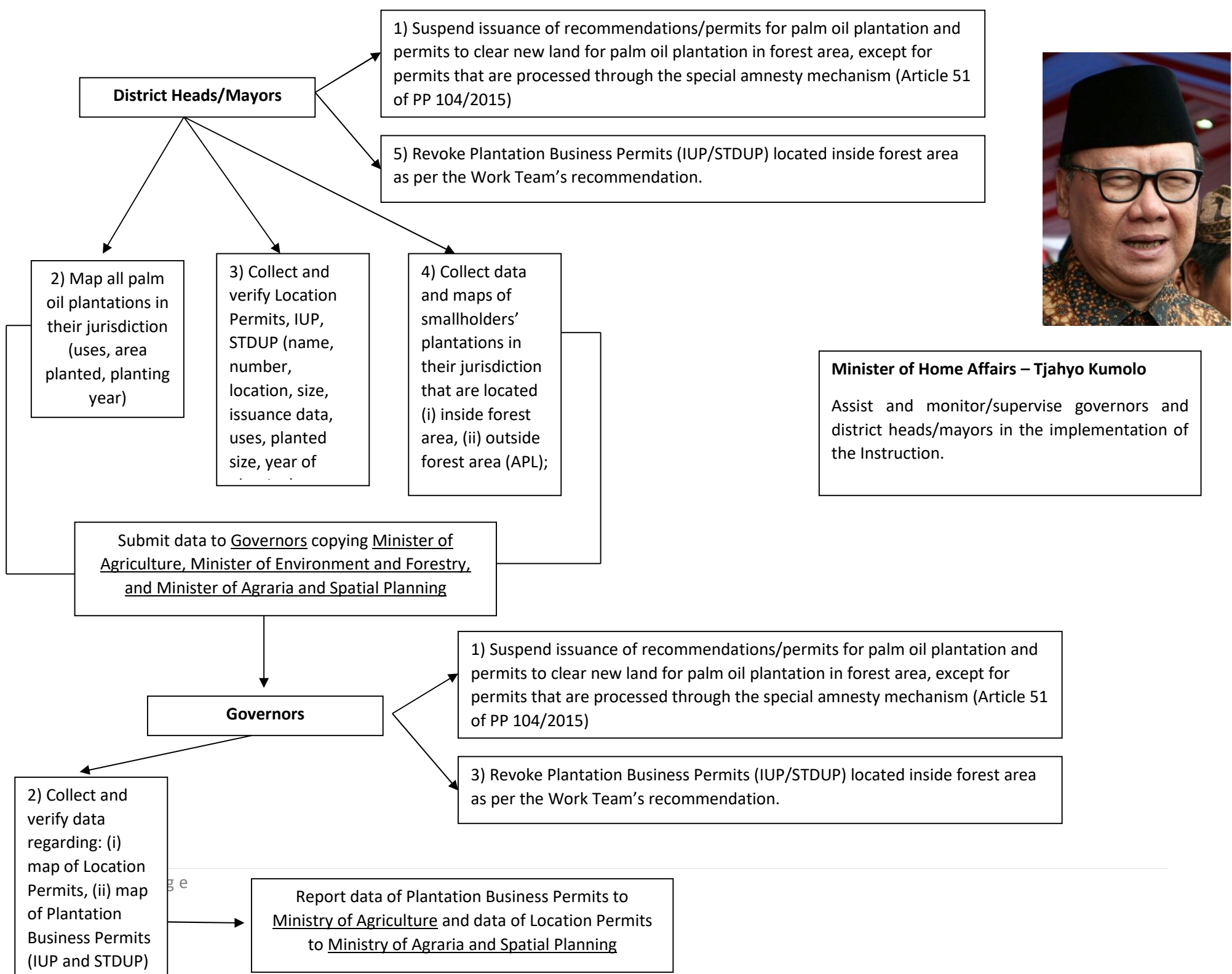
CSOs' response:

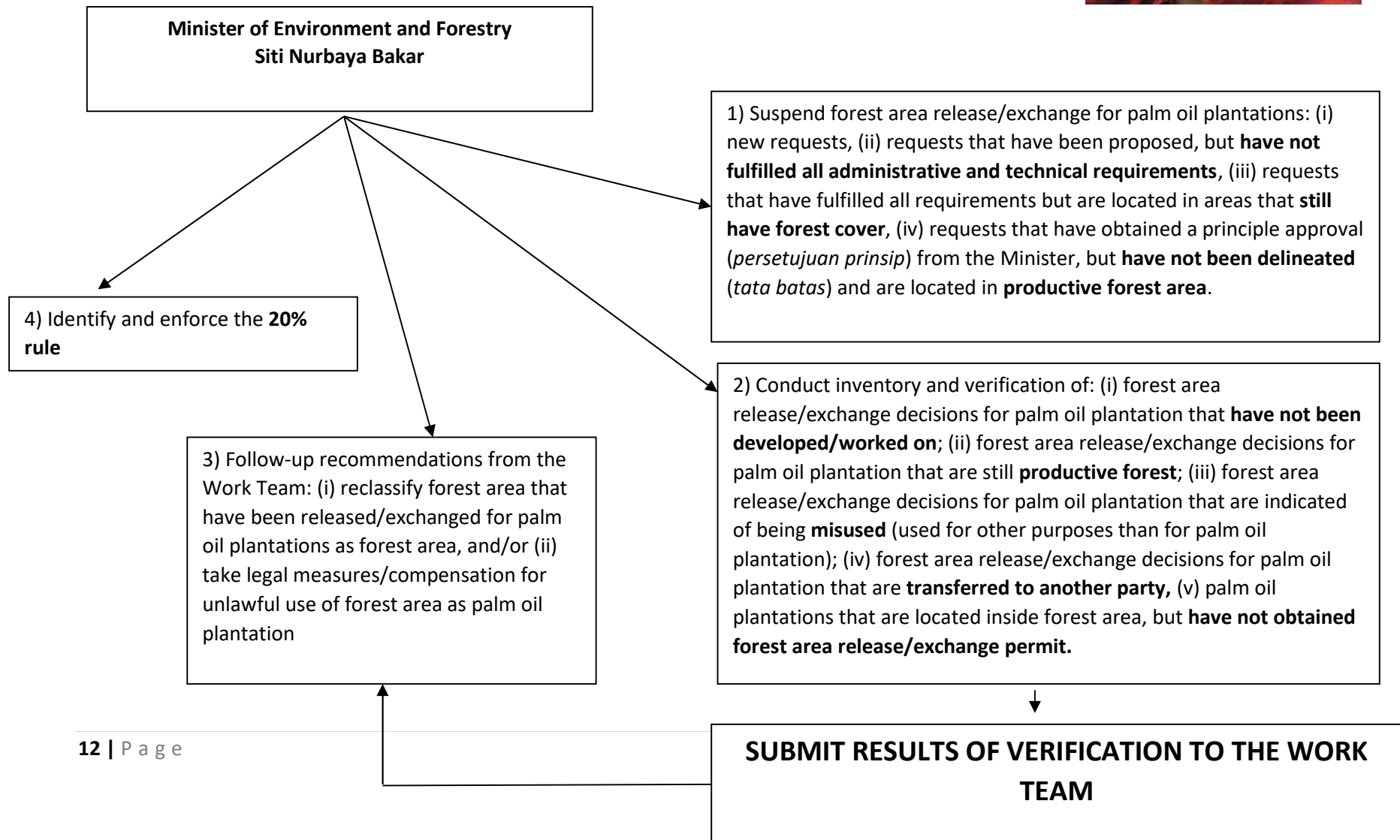
- ASAP. The Presidential Instruction must be issued as soon as possible because there are parties that seek to suspend this policy so that they could clear forests/further process licenses to release forest area.
- Not only in forest area. The suspension of palm oil license should also be applied in area for other uses and not only in forest area. This is because the existing land bank for palm oil (and areas covered by palm oil) is already very extensive, namely 18 million hectares (Auriga, 2018) and that the productivity is weak. Also because economically, the world is facing oversupply, which in turn depreciates the price, which leads to severe ecological and social crisis because of the lowering of environmental and social standards of palm oil industry to cut down costs (Auriga, 2018).
- Not limited by time but performance. The suspension and evaluation period must be determined by certain measurable indicators of performance and not by time. Three years will not be enough to conduct everything from mapping palm oil plantations in all districts in Indonesia to evaluate all of the licenses (Location Permits, IUP, HGU, Forest Area Release Decisions), especially since the evaluation entails also the process of issuing them (in the case of IUP). Three years will also not be enough for legal measures to be taken against illegal palm oil plantations. The ambiguous wording about the period of validity of the Instruction must be clarified. Suspension of palm oil licenses must apply immediately after the release of the Instruction while evaluation of all licenses must be concluded at the latest 3 years after the issuance of the Instruction. Meanwhile, the Instruction validity must not be limited by time.
- Work Team clarified. The powerful Work Team that will be established under the Coordinating Minister of Economic Affairs must be clarified, who will they be? Their work must be bound by several important principles, among others are: (i) transparency, (ii) information disclosure, (iii) public participation, (iv) independency – no palm oil companies must be allowed to become a part of the Work Team – there must be a system to protect the Team from undue influence.
 - Their work process must be synchronized with processes under Ministries, for example mapping process under Ministry of Agriculture: SIPRIBUN and SIPKEBUN.
 - Collaboration with KPK must be set up to follow-up results of KPK evaluation.
- Monitoring system built. A transparent Monitoring System or Mechanism where the public can participate must be built, including clarity and openness about the results of evaluation and legal measures taken against illegal palm oil plantations. Otherwise, the Work Team will be vulnerable to undue influence and corruption.

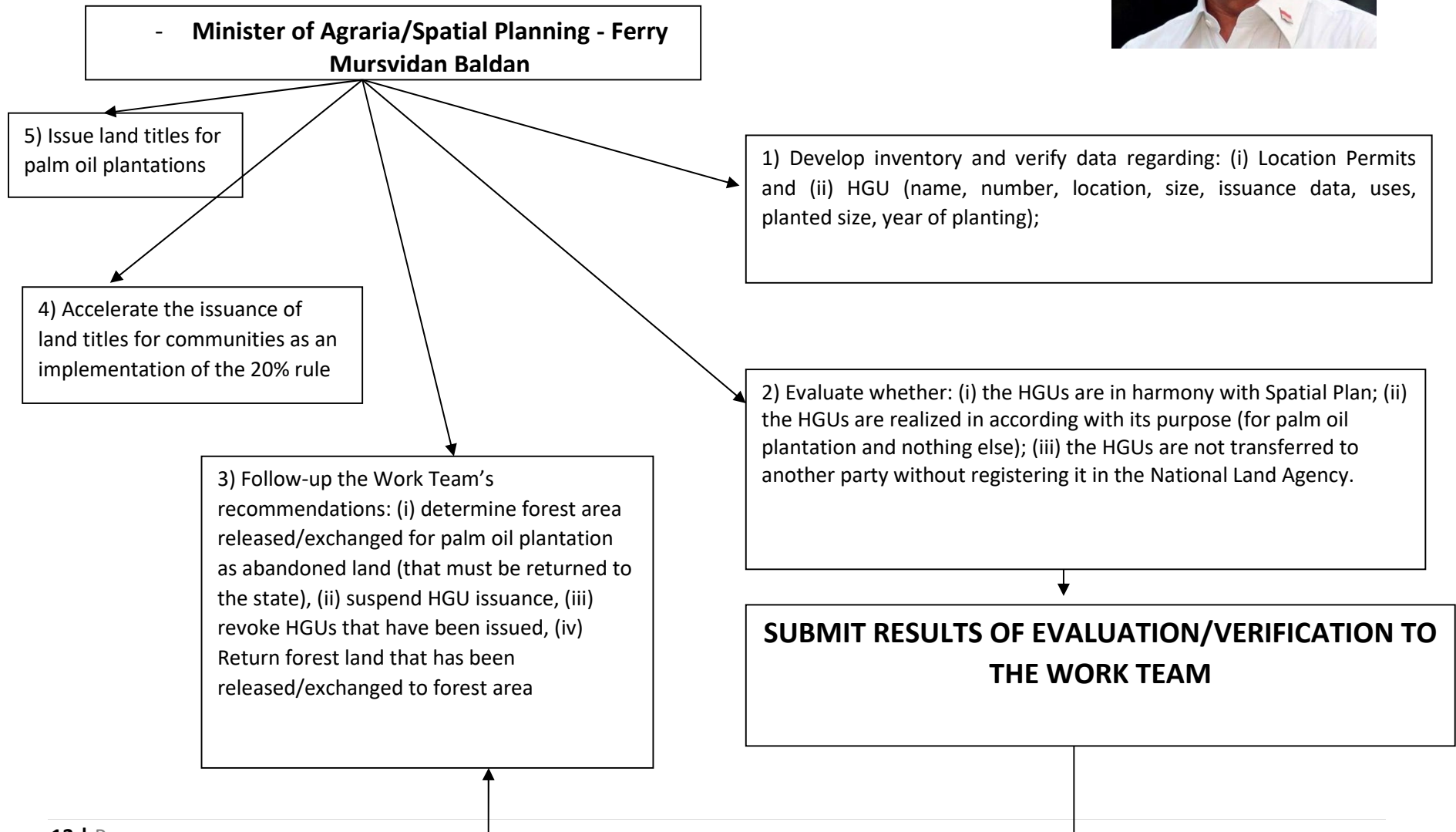
- Exception clause. The exception clause must be removed because it provides a legal loophole that can undermine the whole Instruction.
- Beware legalization modus. The moratorium process must anticipate forest area release attempts or legalization of illegal palm oil plantations attempts by large-scale permit holders using the façade of smallholders through Agrarian Reform schemes (TORA).
- Social indicators in evaluation of licenses. Aside from spatial plan considerations and process of permit issuance, the evaluation process of licenses must also look into violations of FPIC, human rights, and other social indicators.
- Compliance of regional governments. Learning from the inefficacy of moratorium in primary forest and peatland, there must be a sanction system for regional governments that do not comply with the instruction. Instructions for Governors must be synchronized with those for District Heads/Mayors, including to conduct evaluation of licenses under their authority.

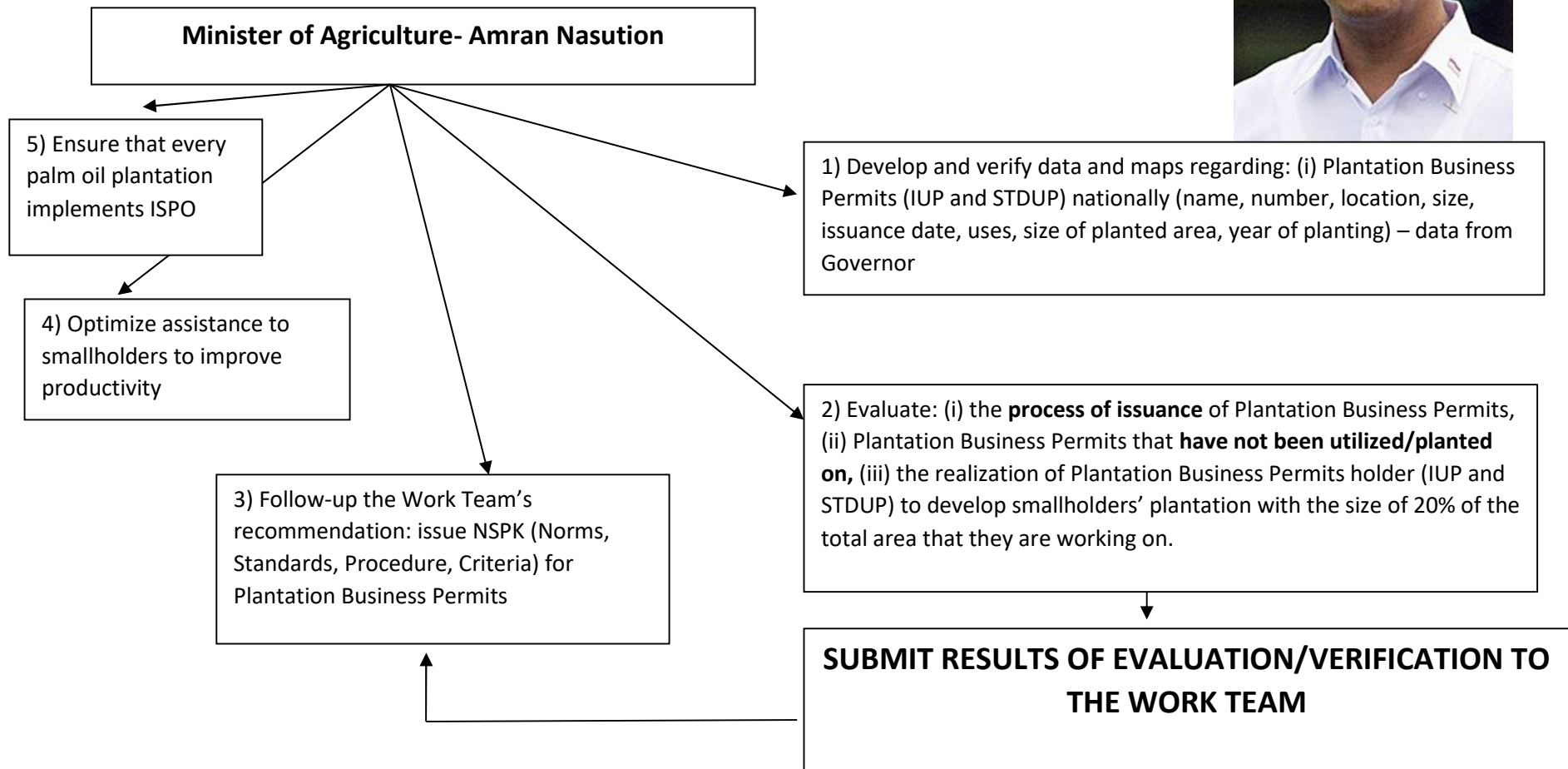


Who are the Work Team???









**Head of Coordinating Agency
for Investment (BKPM)
Thomas Lembong**

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