



## REDD+ Update Report

# The Palm Oil Moratorium

Presidential Instruction No. 8 Year 2018  
on Suspension and Evaluation of Palm Oil Plantation Licenses  
and Improvement of Palm Oil Plantation Productivity

September 2018

### Contents

The Instruction .....	2
Actors and mandates .....	3
Objects .....	5
<i>Moratorium objects</i> .....	5
<i>Evaluation objects</i> .....	6
<i>Exceptions and loopholes</i> .....	8
Specific issues.....	9
<i>Smallholders</i> .....	9
<i>Sustainability</i> .....	9
<i>Productivity</i> .....	10
<i>Law enforcement</i> .....	10
Implementation issues.....	10
<i>Monitoring and enforcement</i> .....	10
<i>Information disclosure</i> .....	10
<i>Participation</i> .....	11
<i>Political context</i> .....	11
Perspectives of stakeholders .....	11
Government .....	11
Palm oil industry .....	12
Civil society .....	12
The bigger picture.....	14
Towards effective implementation.....	15

## The Instruction

- **Background.** After pending for more than two years (since April 2016), President Joko Widodo officially signed palm oil moratorium into policy in the form of Presidential Instruction No. 8 Year 2018 on 19 September 2018. The Instruction binds eight officials who receive it: district heads/mayors, governors, and six ministers/head of agency under Jokowi's administration. Although there has been a two-year lapse before the plan was signed into official policy, the Ministry of Environment of Forestry (MoEF) claimed that they have been enforcing palm oil moratorium as early as May 2016.<sup>1</sup> However, no data have been disclosed regarding how many forest area release/exchange proposals for palm oil plantation have been turned down by MoEF.
- **Legal status.** The policy takes the form of Presidential Instruction or Inpres. It is a quasi-legislation and not a part of Indonesia's law hierarchy. It must be implemented by the instructed but any violation cannot be brought to the court.
- **Validity.** In the beginning of its formulation in 2016, the moratorium was set for five (5) years but eventually reduced to only three (3) years. This means that the moratorium will be lifted on 19 September 2021 and that the current administration only has one year before the 2019 election to implement all the tasks contained in the Instruction. The tasks under the Instruction are quite herculean, starting from mapping all palm oil plantations at district level up to evaluating palm oil licenses that have been issued as well as initiating law enforcement measures for illegal palm oil plantations and other recommendations resulting from the evaluation.
- **Coverage.** The moratorium is only applicable for palm oil licenses that are proposed **in forest area**. Palm oil licenses that are proposed in area classified as non-forest area or Area for Other Uses (*Area Penggunaan Lain/APL*) can still be granted. According to MoEF's statistics, currently there is a significant 6.9 million ha of natural forests in APL (8% of all natural forests left), 5.4 million ha of which are secondary forests that are not protected by the 2011 moratorium policy.<sup>2</sup>

The policy brings hope for forest protection and community rights because it:

- **Protects the least protected forests.** It temporarily halts further expansion of palm oil plantations to Indonesia's forests area and the remaining natural forests within it, which would otherwise drive more deforestation. Currently, 12.8 million ha of forest area in Indonesia is classified as 'forest area for conversion' or HPK, which is eligible for conversion to palm oil plantation. The HPK still contains 2.5 million ha of primary forest, which is currently protected from new licenses by the 2011 moratorium (until July 2019) as well as 3.8 million ha of secondary forest, which is not protected by the moratorium.<sup>3</sup> The palm oil moratorium protects the 6.3 million ha of natural forests in HPK at least for three years (with some exceptions).
- **Targets existing problematic licenses.** This policy is also promising because it instructs evaluation of forest area releases or exchanges (*SK Pelepasan/Tukar Menukar Kawasan Hutan*) that have been granted for large-scale palm oil plantations to find instances where

---

<sup>1</sup> <https://www.cnnindonesia.com/nasional/20160520193802-20-132340/klhk-tahan-izin-850-hektare-pelepasan-lahan-hutan>

<sup>2</sup> Ministry of Environment and Forestry, State of Indonesia's Forests 2018

<sup>3</sup> Ministry of Environment and Forestry, State of Indonesia's Forests 2018

there are still **productive forests** that have not been converted inside the plantations and can still be saved or if there are legal violations, including palm oil plantations operating in forest area, operating without proper licenses, or in violation of the spatial plan. According to MoEF, they have identified **1 million hectares** of palm oil plantations operating illegally in forest area.<sup>4</sup> Meanwhile, 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).<sup>5</sup> President Jokowi has ordered that smallholders' plantations be released from forest area (as long as they are not in conservation and protection forest).<sup>6</sup> CSO's numbers are higher. According to Auriga, **3.4 million hectares** of palm oil plantations are planted inside forest area.<sup>7</sup> Based on the evaluation, the MoEF through Governor's recommendation can 'return' areas with productive forests to become forest area once more. Evaluation of existing licenses is quite groundbreaking, something not seen in the previous moratorium

- **Tackles the data problem.** The policy purports to address one of the most pressing problems in palm oil governance in Indonesia, which is lack of reliable data of palm oil plantations; their owners, locations, planting year, size, area status, completeness of license, etc., starting from mapping all palm oil plantations (both belonging to large companies and smallholders) and identifying plantations operating in forest area. Whether or not the data will be disclosed to public is uncertain.
- **Tries to save the remaining forests inside plantations.** Quite progressively, the policy contains a clause for evaluation of development of HCVF (High Conservation Value Forest) in forest areas that have been released for palm oil plantations. This is progressive because HCVF is not yet explicit in the prevailing laws and regulations. However, what to do with the evaluation result remains unclear.
- **Addresses community land rights smallholders.** This Instruction explicitly orders acceleration of issuance of land titles for smallholders and empowerment of smallholders so that their plantations can produce better yields. It also orders evaluation of the '20% rule' (mandatory allocation of 20% of area planted by large-scale palm oil plantations, HGU, and forest area released for large-scale palm oil plantations for communities/people's plantation).

## Actors and mandates

The eight state officials that receive the Instruction are as follows:

1. The Coordinating Minister of Economic Affairs (as coordinator)
2. The Minister of Environment and Forestry
3. The Minister of Agriculture
4. The Minister of Agraria and Spatial Planning
5. The Minister of Interior
6. Head of Investment Coordination Agency (BKPM)
7. Governors
8. Head of Districts

---

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

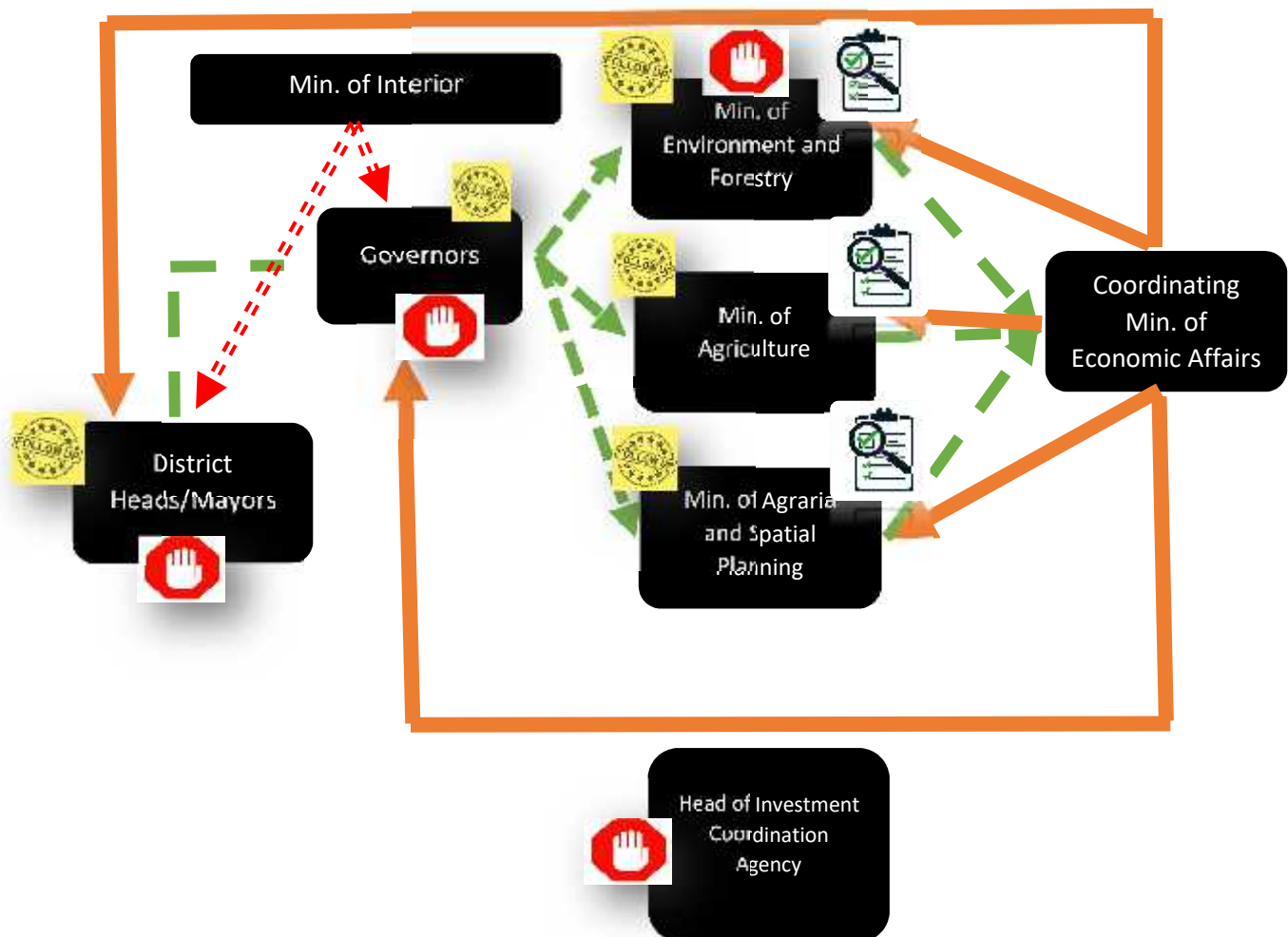
<sup>5</sup> <https://www.infosawit.com/news/7275/nasib-kebun-sawit-swadaya-di-kawasan-hutan>

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

<sup>7</sup> Wiko Saputra, Auriga, "Selamat Datang Moratorium Sawit," Op-Ed Tempo, 26 September 2018.

- In a simplified way, the relationship between the eight officials under this Instruction can be seen in Picture 1, with **green arrows (dashed)** representing submitting/reporting data to, **red arrows (dashed)** representing assisting and monitoring of, and **orange arrows (solid)** representing giving recommendations/conveying results of coordination to.
- The **red stop sign** represents state officials that must suspend issuance of palm oil-related licenses (in forest area) according to its respective authority and the **loop sign** represents state officials that must conduct evaluation of palm oil-related licenses.

**Picture 1.** Relationship between eight officials under the Instruction



- As we can see from the chart above, only four (4) institutions are mandated to temporarily stop the issuance of palm oil-related licenses in forest area, namely: (i) District heads/mayors, (ii) Governors, (iii) Minister of Environment and Forestry, and (iv) Head of Investment Coordination Agency. Meanwhile, only three (3) institutions are mandated to conduct evaluation of palm oil-related licenses according to each respective authority, namely: (i)

Minister of Environment and Forestry, (iii) Minister of Agriculture, and (iv) Minister of Agraria and Spatial Planning. Lastly, five (5) institutions are mandated to take follow-up measures following the evaluation, namely: (i) District heads, (ii) Governors, (iii) Minister of Environment and Forestry, (iv) Minister of Agriculture, and (v) Minister of Agraria and Spatial Planning. Only the MoEF is mandated to conduct the three: suspension, evaluation, and follow-up measures at the same time, indicating its utmost importance. See Table 1 below for distribution of mandates under the Instruction.

**Table 1.** Distribution of mandates in the palm oil moratorium

No.	Institution	Mandates				
		Mapping	Data Collection/ Organizing and Verification	Suspension of Licenses	Evaluation of Licenses	Follow-Up Measures
1.	District Heads/Mayors				-	
2.	Governors	-			-	
3.	Minister of Environment and Forestry	-				
4.	Minister of Agriculture	-		-		
5.	Minister of Agraria and Spatial Planning	-		-		
6.	Head of Investment Coordination Agency	-	-		-	-
7.	Minister of Interior	-	-	-	-	-
8.	Coordinating Minister of Economic Affairs	-	-	-	-	-

## Objects

### *Moratorium objects*

- Palm oil-related licenses, which issuance must be suspended under this Instruction can be seen in the Table 2 below.

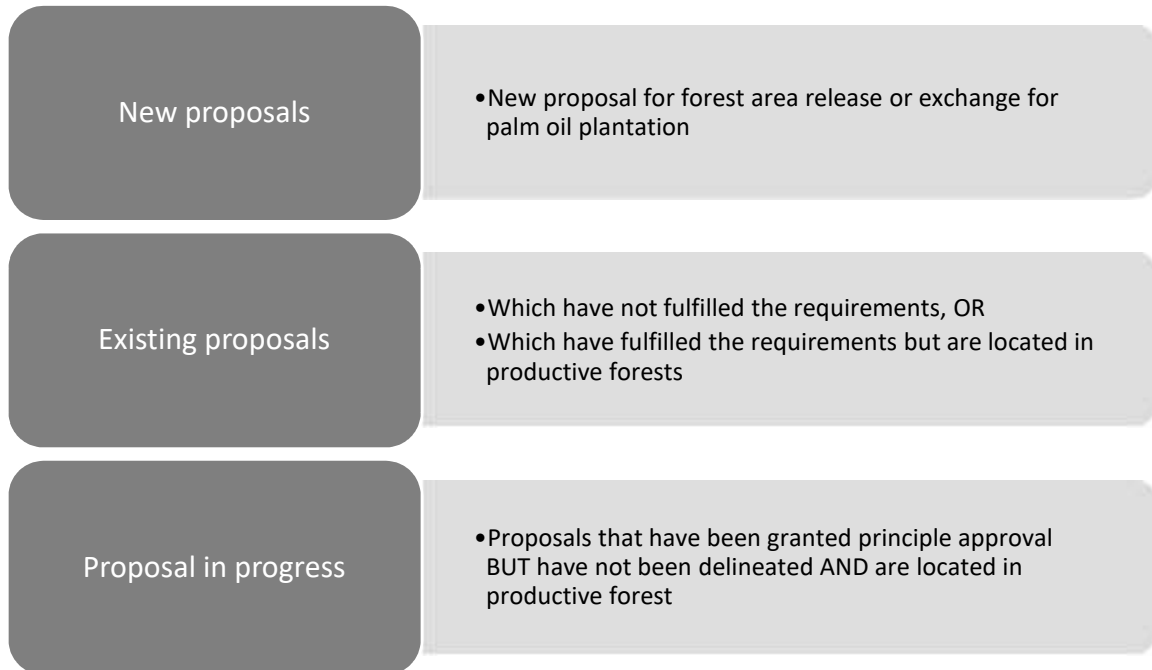
**Table 2.** Palm oil-related licenses that will be suspended under Presidential Instruction No. 8/2018

No.	Palm Oil-Related Licenses	Institutions	Subjects	Criteria
1.	Recommendation to obtain palm oil plantation license	District Heads/Mayors and Governors	Large-scale palm oil plantations (25 ha or more)	If the proposed location is in forest area
2.	Plantation Business License (IUP) – license to start plantation operation			
3.	License to clear land for new palm oil plantation			
4.	Forest area release or exchange for palm oil plantation	Minister of Environment and Forestry		See Picture 2
5.	New investment proposal for palm oil plantation	Head of Investment Coordination Agency		

6.	Expansion of existing palm oil plantation licenses			If the proposed location is in forest area
----	--	--	--	--

More specifically, the criteria for forest area release or exchange proposals (for palm oil plantation) that shall be suspended can be seen in Picture 2 below.

**Picture 2.** Criteria of forest area release or exchange for palm oil plantation that will be suspended



### *Evaluation objects*

There are three institutions/officials that are mandated with evaluating existing palm oil licenses, namely the Minister of Environment and Forestry, the Minister of Agriculture, and the Minister of Agraria and Spatial Planning, each according to its authority. See Table 3 for palm oil-related licenses that become the objects of evaluation under this Instruction.

**Table 3.** Palm oil-related licenses that will be evaluated under Presidential Instruction No. 8/2018

No.	Palm Oil-Related Licenses	Institutions	Evaluation Criteria
1.	Forest area release or exchange for palm oil plantation	Minister of Environment and Forestry	Forest area release or exchange for palm oil plantation that (i) have not been planted with palm oil, (ii) still have productive forests, (iii) are indicated of being misused, (iv) are transferred to another party
2.			Palm oil plantations operating inside forest area without forest area release or exchange

3.			Development of High Conservation Value Forest in forest area release for palm oil plantation
4.	Plantation Business License (IUP)	Minister of Agriculture	Issuance process and licenses that have been granted
5.	Plantation Business Registration Letter (STDUP)		
6.	Development of community palm oil plantation: 20% of the total land area cultivated by plantation company		Implementation
7.	Land Use Right (HGU)	Minister of Agraria and Spatial Planning	Compliance with spatial plan
8.			Realization of palm oil plantation development (cultivation)
9.			HGU transfer to another party without registration at the National Land Agency
10.			Development of High Conservation Value Forest in forest area release for palm oil plantation

### Follow-up measures

- Based on the result of the evaluation, five (5) institutions are mandated to conduct 'follow-up measures', decisions for which will be taken in 'coordination meeting' that will be held by the Coordinating Minister of Economic Affairs (in the previous draft, the follow-up measures were to be recommended by a 'Work Team' but the Team's authority might have been considered too big). The kind of follow-up measures instructed by this policy and who must enforce them can be seen in Table 4 below:

**Table 4.** Mandated follow-up measures based on evaluation result

<b>District heads and Governors</b>	<b>Revoke</b> plantation business license or plantation business registration letter (IUP/STDUP) located in forest area
<b>Min. of Agraria and Spatial Planning</b>	<b>Stop issuance of or revoke</b> HGU <b>Determine</b> HGU area as abandoned land <b>Re-classify</b> ex-HGU area as state land <b>Reclassify</b> area from forest area release for palm oil plantation as forest area (informed to Governor to be proposed by Governor to MoEF)
<b>Min. of Environment and Forestry</b>	<b>Reclassify</b> area from forest area release for palm oil plantation as forest area <b>Take legal measures/lawsuit</b> to get compensation for unlawful use of forest area for palm oil plantations
<b>Min. of Agriculture</b>	<b>Enact norms, standard, procedure, and criteria</b> (NSPK) for IUP and STDUP

### *Exceptions and loopholes*

- As for the 2011 moratorium of issuance of new licenses in primary forests and peatland, the palm oil moratorium carries an exception clause. It says that proposals for forest area release or exchange can still be granted for palm oil plantations that have been **planted and processed** based on Government Regulation (PP) No. 104 Year 2015, Article 51 concerning Forest Area Use and Function Change Procedure. The regulation granted a sort of ‘amnesty’ for palm oil plantation licenses that had been (otherwise illegally) granted by District Heads/Governors in forest area under a specific circumstance, namely where the licenses had been granted based on a Regional Spatial Plan (at district/provincial level) that had been sanctified by a Regional Regulation before the 2007 Spatial Plan Law was enacted, in areas which based on the 1999 Forestry Law were then classified as forest area. If the plantations are located in production forest for conversion (HPK), the areas will be released from forest area. If they are in production forest/limited production forest (HP/HPT), the areas must be exchanged. If they are in protection or conservation forest (HL/HK), the plantations can operate for **one cycle or fifteen years** since the planting and must not be replanted.
- Logical reading of the wording of the Instruction reveals a loophole in the moratorium besides the abovementioned exception clause, namely regarding proposals of forest area release or exchange for palm oil plantations that had been granted principle approval and had been delineated before the Instruction although the plantations may still have productive forests.

### **A case of exception or inconsistency?**

- According to Coalition of Community Organization Pro-Justice, Human Rights, and Environment in Papua, in the period of 2015-2018, the MoEF has granted forest area release

for palm oil plantations in Papua by the amount of **237,752 ha** for eleven companies.<sup>8</sup> If the number is accurate, it means that 78% of forest area release or exchange under granted by the Jokowi administration (2015-now) is for palm oil plantations and in Papua. As late as April 2018, a company named PT Sawit Makmur Abadi still managed to obtain forest area release for palm oil plantation with the size of **28,817 ha** in Nabire, Papua, which includes 8,825 ha of peat forest and 95 ha of primary forests (which are supposed to be protected by the 2011 moratorium) on indigenous people's land.<sup>9</sup>

- If the claim of MoEF that from 2016 to 2018 they have been suspending forest area release or exchange for palm oil plantations is true, why were these licenses in Papua granted? Due to lack of information disclosure, we don't know whether the 237,752 ha were qualified as exceptions or did not meet the criteria for moratorium (for example, whether the proposals had obtained principle approval and been delineated before the Instruction was signed) or whether it is a case of inconsistency of the current government in carrying out the palm oil moratorium. This is why built-in transparency and participation or monitoring mechanism is very important if the policy is to succeed.

## Specific issues

### *Smallholders*

- Regarding smallholders, the Instruction mandates the following:
  - Strengthening smallholders' institutions through optimization and intensification of existing plantations (by Ministry of Agriculture)
  - The '20% allocation rule,' which includes:
    - 20% of **total land area 'worked on' by companies** to be built as community plantation (evaluation by Ministry of Agriculture)
    - 20% of **forest area released or exchanged for palm oil plantation** to be built as community plantation (identification and implementation by MoEF)
    - 20% of **HGU** to be built as community plantation (acceleration of land titles for communities and for community plantations)
    - The exact definition of the 20% rule is still contested by various parties. Palm oil companies tend to interpret that the 20% is in addition to the areas that have been granted for them (not a part of) while CSOs tend to interpret the 20% as a part of the licenses already granted for the companies. A modus operandi of companies building community plantations in forest area so that their HGU size is not reduced, thereby passing the buck of illegality to smallholders, has been a concern of CSOs.

### *Sustainability*

- There are two sustainability elements in this Instruction, namely: (i) acceleration of ISPO implementation (a mandate for Minister of Agriculture) and (ii) evaluation of HCVF development in forest area released for palm oil plantation and in HGU. However, there are no concrete follow-up measures Instructed for HCVF evaluation and the new ISPO, which regulation was almost issued, is not accepted by CSOs both in terms of formulation process

---

<sup>8</sup> Koalisi Organisasi Masyarakat Pro-Keadilan, HAM, dan Lingkungan di Tanah Papua, 2018.

<sup>9</sup> Ibid.

and content, especially with regards to lack of robustness in principle and criteria, certification mechanism, complaint mechanism, and independent monitoring.<sup>10</sup>

#### *Productivity*

- Productivity improvement is only mandated for smallholders, namely in terms of optimization and intensification to produce better yields.

#### *Law enforcement*

- The only institution with law enforcement mandate is the MoEF, who is tasked with taking legal measures against unlawful use of forest area for palm oil plantations, including a lawsuit to demand compensation.
- There are no law enforcement measures mandated for unlawful issuance of palm oil plantation licenses (IUP, STDUP, HGU) by various government agencies, including issuance of licenses in forest area without proper procedure and non-compliance with spatial plan, which should trigger not only administrative sanctions but also criminal sanctions.

### Implementation issues

#### *Monitoring and enforcement*

- In the wording of the Instruction, there is no built-in mechanism for both internal and external monitoring, unlike the primary forest and peatland moratorium in which the Cabinet Secretary is tasked to monitor implementation of the Instruction. It is however implicit that the monitoring task falls in the hands of the Coordinating Minister of the Economy who is named Coordinator of implementation. Meanwhile, the compliance of regional governments (District Heads and Governors) will be monitored by the Minister of Interior. The latter is a persistent problem in the implementation of the 2011 moratorium. There have been no known measures taken by the central government to discipline regional governments that breached the moratorium policy. In an evaluation of 6 years of moratorium by CSO, it was revealed that many of them were not even aware of the moratorium map or chose to ignore it and they can actually get away with it.<sup>11</sup>

#### *Information disclosure*

- The Instruction explicitly tasks the Coordinating Minister of Economic Affairs to ensure synergy between this policy and One Map Policy, which is said to be in its final stage before launching. The One Map Policy will be groundbreaking if successfully implemented because it purports to resolve spatial data conflicts between many natural resources sector (mining, forestry, plantation, infrastructure, AND IP territories). However, the spirit for governance reform was dampened when President Jokowi issued a Presidential Decree ruling that access to the spatial data will be kept restricted to only a number of state officials.<sup>12</sup> Whether or not the final One Map accommodates indigenous people territories that have been proposed by civil society also remains uncertain.
- Meanwhile, the government still shows a great reluctance to disclose information regarding palm oil plantation licenses although they are mandated by law to do so. For example, the Minister of Agraria and Spatial Plan has been legally obligated by the Supreme Court to hand in data and maps of palm oil plantation HGU in Kalimantan as a result of Forest Watch

---

<sup>10</sup> See CSO Joint Statement, "Penguatan ISPO Omong Kosong?", September 2018

<sup>11</sup> Madani, Evaluasi 6 Tahun Moratorium, 2017

<sup>12</sup> Presidential Decree No. 20 Year 2018.

Indonesia's lawsuit under the Public Information Disclosure Law. But after two years, the Minister still fails to comply and no one seems to be able to enforce law.

### *Participation*

- Civil society participation is not mentioned anywhere in the Instruction and there has been indeed no precedence that a Presidential Instruction carries such clause. However, this might present a formidable challenge in implementation of the policy. The moratorium and evaluation are time-bound, only three years with so many tasks to be done. Without concerted actions from the government, CSOs, donors, and close monitoring, the implementation may stall, especially now that the current administration's key persons are involved in fierce battle to win the 2019 election.

### *Political context*

- The 2019 presidential and parliamentary elections might provide unwanted distraction for the implementation of this Instruction, especially because many ministers are involved in supporting Presidential candidates.<sup>13</sup>
- Meanwhile, an analysis of result of the 2018 simultaneous regional election by Madani reveals that all newly elected Governors in 17 provinces constituting 63% of total Indonesia's forest area with 61.6 million ha of natural forests only have 'blanket concept' like sustainable development as their environmental platform (in their vision and missions during campaign). Some important regional leaders even emphasize increase of income from plantations and mining and only Papua explicitly mentions respect of the rights of indigenous people.<sup>14</sup> With high election costs and lack of monitoring, the risk of deforestation, legal and illegal, and proliferation of licenses remains high.

## Perspectives of stakeholders

- Statements in the media show that the government's emphasis is smallholder productivity, resolution of smallholder plantations operating in forest area (smallholder land legalization) and protection of forest area from palm oil plantations to improve governance. Meanwhile, the private sector emphasizes maintaining and improving productivity and resolution of illegal palm oil plantations in forest area or license conflicts (amnesty). Evaluation of licenses followed-up by law enforcement, improvement of transparency regarding palm oil licenses, and public participation are emphasized by civil society.

## Government

- **Coordinating Ministry of Economic Affairs**<sup>15</sup>
  - Palm oil moratorium can improve smallholder plantations productivity and clarify land ownership status to ease access to credit for smallholders.
  - Through the moratorium, (the government) will resolve and certify smallholder plantations that area located in forest area after the evaluation.

---

<sup>13</sup> For example, MoEF, Minister of Agraria and Spatial Planning, and Minister of Agriculture.

<sup>14</sup> Madani, Hasil Pilkada dan Nasib Hutan dan Gambut, 2018, <https://madaniberkelanjutan.id/2018/08/07/laporan-terkini-hutan-indonesia-dalam-pemilu-2019/>

<sup>15</sup> Liputan 6, statement by Prabianto Mukti Prabowo, Assistant Deputy of Energy, Natural Resources, and Environment Coordination, 20 September 2018, <https://www.liputan6.com/bisnis/read/3648519/presiden-jokowi-teken-inpres-moratorium-perkebunan-sawit>

- **Ministry of Agriculture<sup>16</sup>**
  - Land legality aspect is a main barrier for ISPO certification. More than 100 certificates cannot be issued due to legality of land.
  - Palm oil plantations must have plantation business license as well as land rights (HGU) to run the plantation business.
- **Ministry of Environment and Forestry<sup>17</sup>**
  - Forest area that still have productive forests will not be released for palm oil plantation.
  - Three years, even two years, is enough for the moratorium if the evaluation says that palm oil is good, replanting is good, etc.

### Palm oil industry

- **Indonesian Palm Oil Business Association (GAPKI)<sup>18</sup>**
  - Emphasizes evaluation of existing licenses “to maintain productivity.”
  - Moratorium must be accompanied by **productivity increase**, otherwise Indonesia will “lose opportunity.”
  - The Instruction should serve as a legal umbrella to **resolve license conflicts** (overlaps) in forest area.
  - Forest area release for palm oil plantation must consider the problems of **forest definition and forest area definition**.
- **Indonesian Palm Oil Council (DMSI)<sup>19</sup>**
  - The policy should ensure **land redistribution for smallholders**.
  - **Regional governments’ compliance** with the policy must be ensured to prevent issuance of palm oil plantations licenses by regional governments.
- **Indonesian Palm Oil Smallholder Association (APKASINDO)**
  - The policy must give **legal certainty** to smallholders.<sup>20</sup>
  - The policy must **improve land administration**.

### Civil society

- Civil society organizations welcome the long-awaited policy. Walhi, Sawit Watch, Madani, Kaoem Telapak, Auriga and Greenpeace have been recorded in the media in the wake of the issuance of the policy. All support the policy but also give notes to the government regarding its implementation. Evaluation of licenses followed-up by law enforcement, improvement of transparency regarding palm oil licenses, and public participation in palm oil moratorium implementation are three messages emphasized by many CSOs. See Table 6 below.

**Table 6.** CSOs initial reactions to palm oil moratorium

<sup>16</sup> Ibid.

<sup>17</sup> Mongabay, statement by Minister of Environment and Forestry, Siti Nurbaya, 25 January 2018, <http://www.mongabay.co.id/2018/01/25/moratorium-sawit-segera-terbit-berikut-poin-poin-draf-inpresnya/>.

<sup>18</sup> Kompas, 21 September 2018, statement by General Chief of GAPKI (*Gabungan Pengusaha Kelapa Sawit Indonesia*), Joko Supriyono.

<sup>19</sup> Kompas, 21 September 2018, statement by Sahat M. Sinaga, Deputy Chief of Indonesian Palm Oil Council (*Dewan Minyak Sawit Indonesia/DMSI*)

<sup>20</sup> Kompas, 21 September 2018, statement by Gulat Manurung, Head of Regional Leadership Council of APKASINDO Riau.

No.	Organization	Calls/Notes	Media /Date
1.	Walhi	<ul style="list-style-type: none"> <li>▪ The Instruction must be followed-up with law enforcement</li> <li>▪ Capacity of state officials to monitor palm oil plantation licenses and law enforcement related to palm oil moratorium</li> <li>▪ The implementation must be accompanied with transparency of process and information disclosure regarding licenses</li> <li>▪ Public participation</li> </ul>	Kompas (21/9)
2.	Sawit Watch	<ul style="list-style-type: none"> <li>▪ The Instruction must be in synergy with other policies</li> <li>▪ Monitoring at the site level</li> </ul>	Kompas (21/9)
3.	Madani	<ul style="list-style-type: none"> <li>▪ There must be strong political leadership from the President and strong public support and monitoring with increased transparency as the prerequisite.</li> <li>▪ The 2019 election may present distraction for state officials tasked with implementing the Instruction.</li> <li>▪ Evaluation must be followed by law enforcement.</li> <li>▪ Verification process must consider social indicators, including FPIC in issuing licenses.</li> <li>▪ Must prevent an MO of using agrarian reform scheme for large companies to gain more land.</li> </ul>	Antara (24/9) Mongabay (25/9) Media Indonesia (25/9) Satu Harapan (22/9)
4.	Kaoem Telapak	<ul style="list-style-type: none"> <li>▪ The validity of moratorium should be based on attainment of certain criteria and indicators, such as emissions reduction, governance improvement, law enforcement, etc. and not just three years</li> </ul>	Mongabay (25/1)
5.	Greenpeace	<ul style="list-style-type: none"> <li>▪ Licenses that have been issued must be evaluated followed up with law enforcement, including revocation of problematic licenses.</li> <li>▪ License evaluation must be used to attain One Map to prevent clearing and forest and peatland.</li> <li>▪ Palm oil moratorium must address licenses in non-forest area too, including in areas designated as food security areas. There are many cases in recent years where paddy fields and other food crops areas are converted to palm oil.</li> </ul>	Mongabay (25/1)
6.	Auriga	<ul style="list-style-type: none"> <li>▪ The moratorium can address CPO oversupply of 4.8 million tons.</li> </ul>	Tempo (26/9)

	<ul style="list-style-type: none"> <li>▪ Indonesia has plantation oversupply of 960,000 up to 1 million ha.</li> <li>▪ Palm oil plantation in Indonesia has reached 16.6 million ha. Palm oil planted area located in forest area reaches 3.4 million ha in 2018.</li> <li>▪ The most pressing problem is no reliable data regarding lands that become objects of the moratorium (Location Permit, IUP, STDB) and there is no map of palm oil cover in Indonesia</li> </ul>	
--	---	--

## The bigger picture

- **NDC.** One of the explicitly stated objectives of the palm oil moratorium is to reduce GHG emissions. It then falls within the framework of attaining NDC targets, especially within reducing deforestation and forest degradation activities (REDD+). However, this Instruction relegates the issue of sustainability in palm oil industry to the ISPO (Indonesian Sustainable Palm Oil) certification system, which new regulation is said to have been finalized despite criticisms from civil society.
- **ISPO Revision.** The process to strengthen ISPO's principle and criteria and make the certification system more robust has been carried out for years under the leadership of the Coordinating Ministry of Economic Affairs. In the beginning, CSOs were widely consulted resulting with extensive inputs to the draft Presidential Regulation. Nearing the end, however, the process became less and less transparent and CSOs monitoring ISPO under FKMS (Civil Society Coordination Forum) think that the final draft regulation is so much weaker and not credible than during the public consultations. Kaoem Telapak has sent a letter to the President asking that the regulation content be improved and that a national public consultation held before it is issued.<sup>21</sup>
- **Agrarian Reform and Social Forestry.** On September 24, the President signed Presidential Regulation on Agrarian Reform. The regulation is issued to accelerate agrarian reform, which has been incorporated in Indonesia's Medium-term Development Plan 2015-2019 (ending next year). Under the target, the government is to legalize 4.5 million hectares of people's land/assets and redistribute 4.5 million hectares of land to the people. According to MoEF's latest data, the realization of social forestry has increased around 200,000 ha since June 2018 with the total amount of 1.9 million ha (998,944 ha of village forest, 466,161 ha of community forestry, 291,304 of community timber plantation, 136,369 ha of forestry partnership, and 25,110 ha of customary forest). Customary forest is still the least of the numbers.<sup>22</sup>
- **What about conflict resolution and corruption eradication?**
  - Corruption is a cross-cutting issue in natural resources management in Indonesia. In 2016, Commission for Corruption Eradication (KPK) released a study regarding Palm Oil Management System highlighting three core problems in palm oil sector, namely: (i) unaccountable monitoring of palm oil licenses, (ii) ineffective export levy of CPO,

<sup>21</sup> <http://www.mongabay.co.id/2018/09/19/organisasi-lingkungan-khawatir-ispo-makin-lemah-mengapa/>.

<sup>22</sup> <http://www.mongabay.co.id/2018/09/24/kado-hari-tani-2018-presiden-tandatangani-perpres-reforma-agraria/>

- (iii) unoptimal taxation in palm oil sector.<sup>23</sup> According to KPK, overlapping palm oil licenses amount to 4.69 million ha.<sup>24</sup> KPK found 3 million ha of HGU overlapping with mining concessions, 534,000 ha with industrial timber plantation, and 349,000 ha with logging. They also found 801,000 ha of HGU in peat domes.<sup>25</sup> Corruption eradication is one thing that can help solve other problems. It is unfortunate that under this Instruction, there is no mandate to the related ministries to follow-up KPK's recommendation or at least coordinate with KPK to address the findings.
- In 2017, palm oil plantation is said to dominate agrarian conflicts in Indonesia with 208 conflicts (32%).<sup>26</sup> Conflict resolution is not mentioned in this Instruction, but it is hoped that in the mapping process of all palm oil plantations at the district level, District Heads/Mayors can also be persuaded to map conflicts in palm oil concessions as an initial step.

## Towards effective implementation

- **Political leadership.** The year of 2018 and 2019 are busy political years. It takes a strong political leadership from the President and the Coordinating Minister of Economic Affairs to enforce the moratorium and move things on the ground (starting from mapping at the district level). This is why the President's unwavering resolve in pushing his ministers to implement this Inpres is important.
- **Transparency and monitoring.** In order for the palm oil moratorium to be effective, there must be a mechanism for information disclosure of palm oil related licenses to some degree to enable CSO monitoring and/or a mechanism through which CSOs can submit their data and monitoring reports on the ground regarding palm oil licenses. Transparency can also take the form of periodic reporting that can be accessed by public.
- **Participation and collaboration platform.** Many CSOs stress the importance of public participation for the success of implementation of palm oil moratorium. One of the possible participation avenues is in the Work Team that will be established by the Coordinating Minister of Economic Affairs. CSOs urge that civil society and indigenous people representatives be a part of the Work Team. Alternatively, there must be other participation/collaboration mechanisms in which CSOs are engaged in discussion regarding implementation of the policy. In addition to that, CSOs and donors can create a communication and collaboration platform to enable support for implementation of this Inpres, for example through funding supporting activities (mapping etc.), public monitoring, and independent reporting.

\*\*\*

---

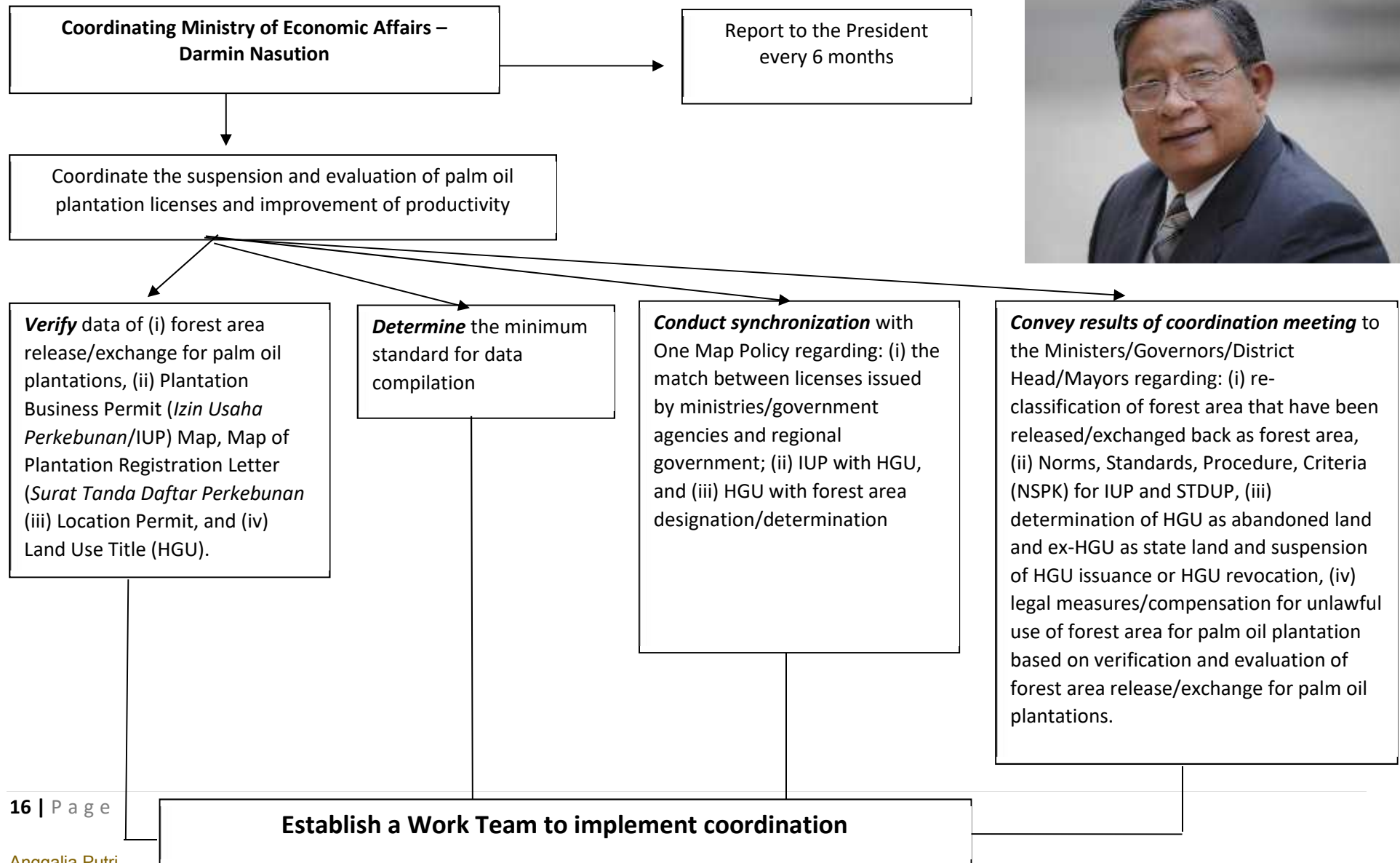
<sup>23</sup> KPK, Kajian Sistem Pengelolaan Komoditas Kelapa Sawit.

<sup>24</sup> <http://www.mongabay.co.id/2017/04/26/kajian-kpk-temukan-masalah-sawit-dari-perizinan-sampai-pungutan-pajak/>

<sup>25</sup> KPK, Kajian Sistem Pengelolaan Komoditas Kelapa Sawit.

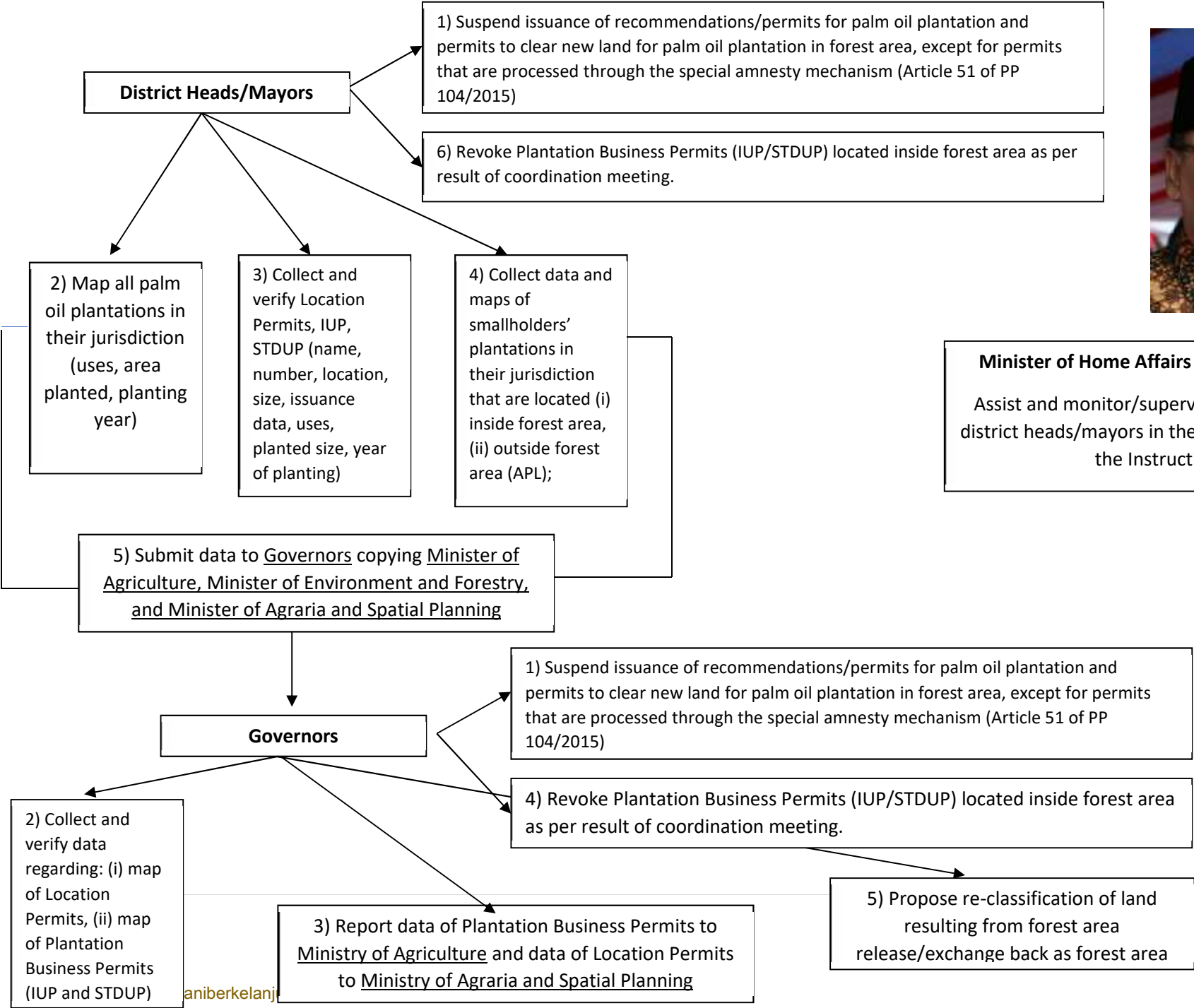
<sup>26</sup> Data from Agrarian Reform Consortium (KPA), <https://www.cnnindonesia.com/nasional/20171227134315-20-264984/peneliti-perkebunan-sawit-dominasi-konflik-tanah>

**ANNEX. Instructions per Actor**





**Minister of Home Affairs – Tjahyo Kumolo**  
Assist and monitor/supervise governors and district heads/mayors in the implementation of the Instruction.





Minister of Environment and Forestry  
Siti Nurbaya Bakar

1) **Suspend** forest area release/exchange for palm oil plantations: (i) new requests, (ii) requests that have been proposed, but **have not fulfilled all requirements**, (iii) requests that have fulfilled all requirements but are located in areas that **still have forest cover**, (iv) 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**.

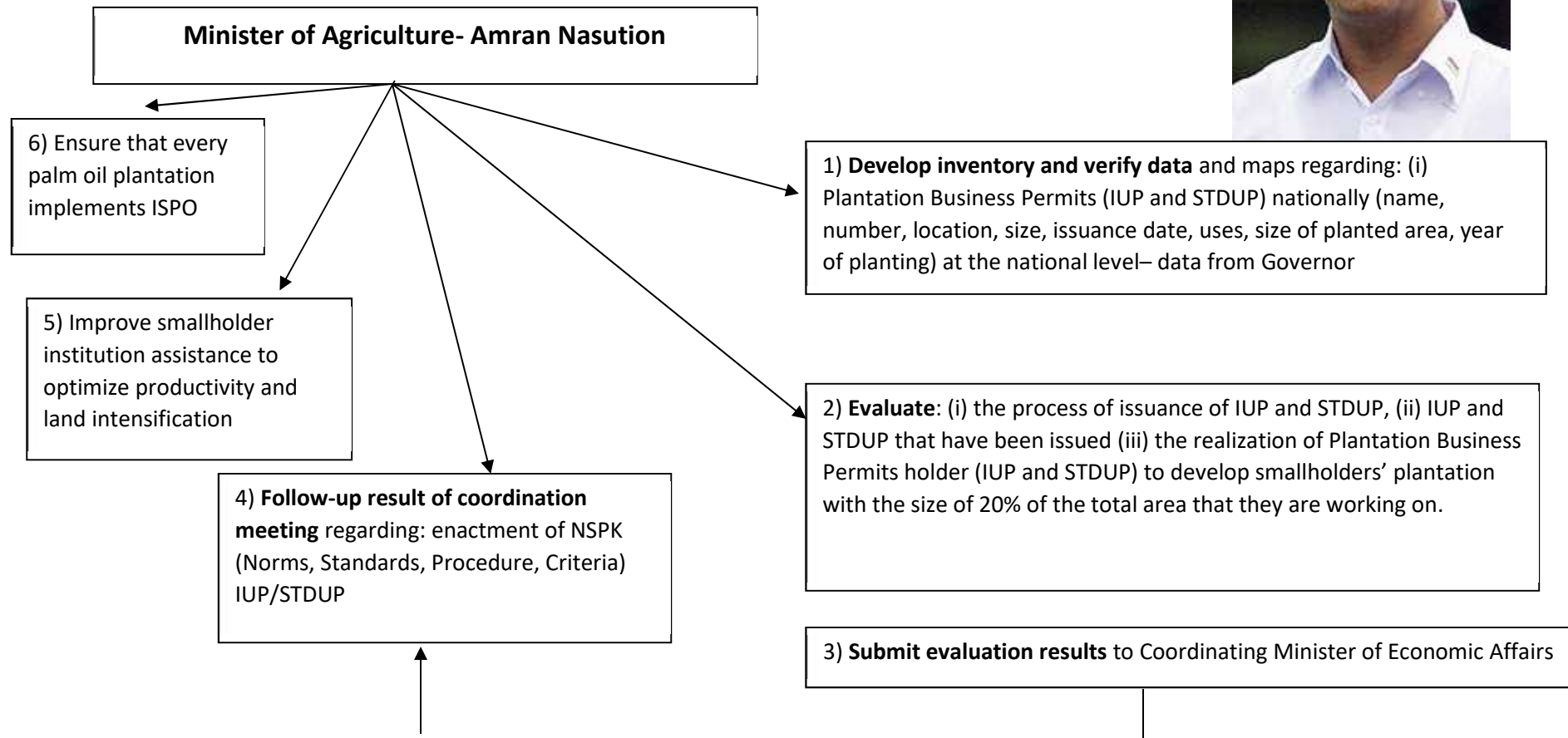
2) **Conduct inventory and verification** of forest area release/exchange decisions for palm oil (name and number, location, size, use, date of issuance)

3) **Conduct evaluation** of: (i) forest area release/exchange for palm oil plantation that **have not been developed/worked on**; (ii) forest area release/exchange decisions for palm oil plantation that are still **productive forest**; (iii) forest area release/exchange decisions for palm oil plantation that are indicated of being **misused** (used for other purposes than for palm oil plantation); (iv) forest area release/exchange decisions for palm oil plantation that are **transferred to another party**, (v) palm oil plantations that are located inside forest area, but **have not obtained forest area release/exchange permit**, (vi) implementation of **High Conservation Value Forest** from forest area release/exchange for palm oil plantation

4) **Report evaluation results** to Coordinating Minister of Economic Affairs

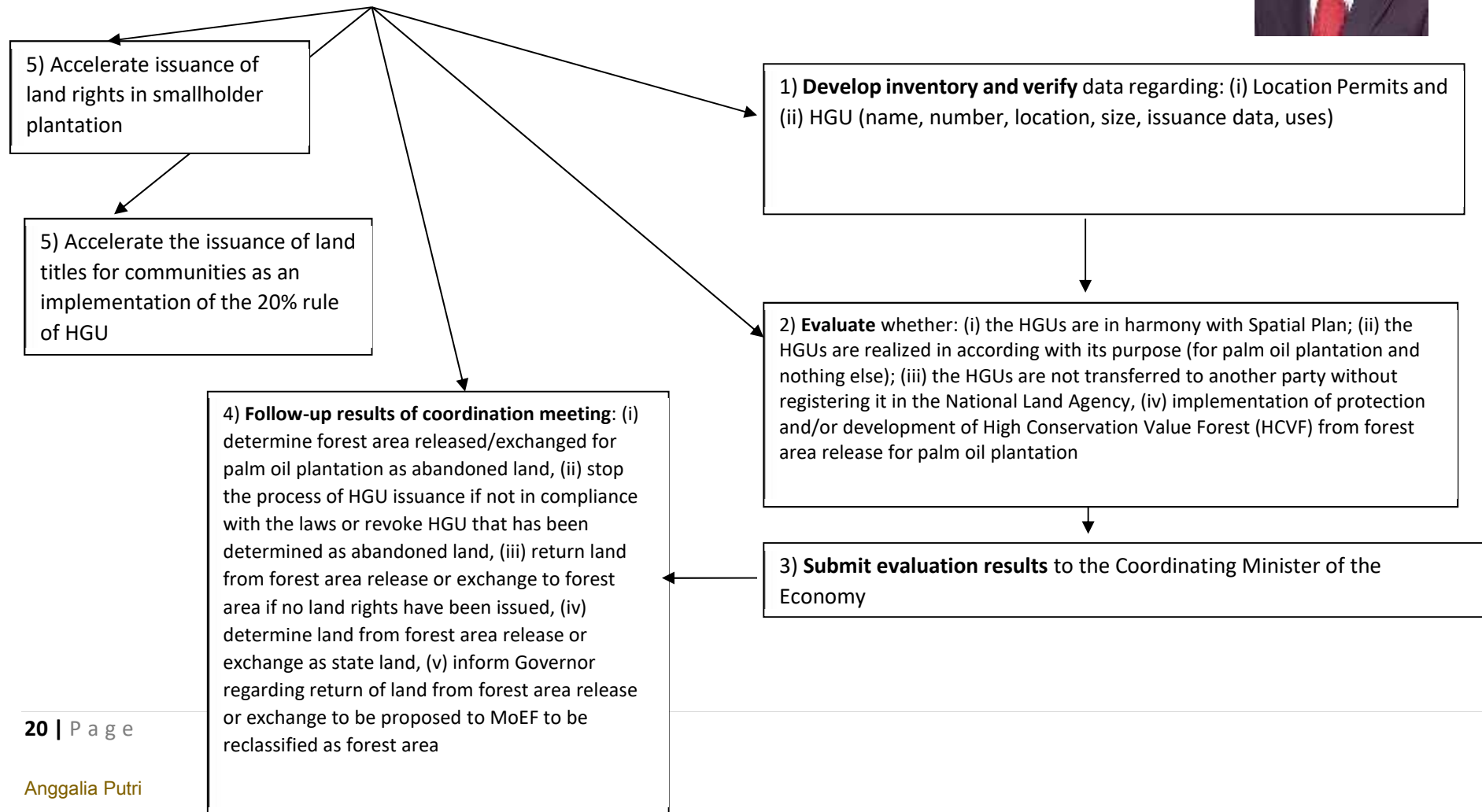
6) Identify and enforce the **20% rule** (20% of forest area release/exchange for community plantation)

5) **Follow-up coordination meeting results:**  
(i) reclassify forest area that have been released/exchanged for palm oil plantations as forest area, and/or (ii) take legal measures/compensation for unlawful use of forest area as palm oil plantation

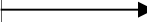




- **Minister of Agraria/Spatial Planning –  
- Sofyan Djalil**



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



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)

