

## BRIEFING PAPER

# The Coalition of Civil Society Organizations for the Rescue of Indonesian Forest and the Global Climate

### READING

## THE PRESIDENTIAL INSTRUCTION NO. 10 YEAR 2011 REGARDING THE POSTPONEMENT OF ISSUANCE OF NEW LICENSES AND IMPROVING GOVERNANCE OF PRIMARY FOREST AND PEAT LAND

### Background

Indonesia's commitment to reduce emissions by 26%-41% from BAU (Business As Usual) was initially announced in Pittsburgh during a meeting of states grouped in G20 in September, 2009. The announcement of the commitment was met with warm welcome from the states of G20, even from the international community hoping that the commitment would change the dynamics of the climate change negotiation for the better.

The commitment was reaffirmed in the presidential speech during the Peak Summit on Climate Change in Copenhagen, December 2009<sup>1</sup> in which President SBY clearly stated in his speech his intention to preserve the forest than to cut it down: *"Keep the trees up than chop them down... the only dogma is human survival."* It became a distinctive note, especially from a country which 80% of emissions came from deforestation and forest land use change (LULUCF). From the political side, it was a step forward from a commitment.

Indonesia's commitment to reduce emissions received a good response from donor states, especially Norway, intending to help to achieve the reduction of emissions. It led to the signing of a Letter of Intent, in which Norway would give a fund of US\$ 1 billion while Indonesia would implement several measures, among others are: Choosing a Pilot Province; Drafting a National Strategy for REDD+; Establishing a REDD+ Implementing Body; Building the mechanism and institutions for Monitoring, Reporting, and Verification (MRV); and Building a Funding Body, and distribution mechanism. It was also mentioned that Indonesia would postpone the issuance of new licenses on natural forests for the period of two years. Besides, conflict resolution was one of things being paid attention to in the Letter of Intent signed on May, 26, 2010.

The Letter of Intent signed with Norway was only one of several assistances offered that showed the support to Indonesia's commitment in reducing emissions. Others included aid from the Government of Australia through IAFCP, the Government of Germany with the REDD+ pilot project in South Sulawesi and several other assistance initiatives.

The postponement of new licenses of forest utilization (read: moratorium) was hoped to be the starting point of the improvement of governance in forestry sector in Indonesia. After five months of delay from the initial plan, eventually the Government issued the

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<sup>1</sup> <http://www.presidensby.info/index.php/eng/pidato/2009/12/17/1274.html>  
<http://www.youtube.com/watch?v=DFAN7Uvbt14>

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Presidential Instruction (INPRES) No. 10 Year 2011 regarding the Moratorium. Politically, it can be called a step forward. Nevertheless, such step forward is not followed by a meaningful substance for the rescue of Indonesian forest and reduction of emissions.

### **Reading the President's Instruction**

There is nothing new in the substance of the INPRES No. 10/2011 because the objects of moratorium, namely primary natural forests and peat lands, are in average located in the protected and conservation areas that have been protected under the existing Indonesian legal umbrella.

Chronologically, the regulation regarding moratorium was initially proposed in the form of Presidential Regulation (PERPRES). However, along the way, the proposal changed into Presidential Instruction (INPRES). Hierarchically, a regulation in the form of INPRES is internally binding in the cabinet structure. Related to that, a number of questions arise about how this moratorium will be legally enforced and the effectiveness of the measure. This question refers to several INPRES(s) that have been issued that are not very effective in terms of enforcement. Another thing is the relation of such Instruction to the regional governments, who received direct instruction from the President but are not directly elected by the people. It also becomes one of the indicators that will be measured (as agreed upon in the Joint Concept Note), regarding how the regulation on moratorium has a legally binding power to the regional governments.

Besides, in this Instruction, there is nothing new regulated, meaning the the Instruction only affirms the tasks that have been assigned to the President's subordinates, that are not implemented well. So, it is only a reaffirmation of old tasks that have not been implemented.

The substance of primary natural forest as the object of Moratorium also generated a big question regarding the absence of the terminology and definition of Primary Forest in the Forestry Act. Such Act only recognizes the terms and definition of forest and forest areas based on ecological and administrative function/status. The question of enforcement also becomes important because first of all, there must be a clarity of object and if the object is legally unfamiliar, it raises a concern that the enforcement will be very elusive.

Furthermore, observing the second dictum in the INPRES, there are several exceptions made for:

- Holders of principle license
- Vital development projects: geothermal, oil and gas, power and electricity, paddy and sugarcane fields.
- Renewal of forest utilization license
- Restoration of ecosystem

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The problem with the dictum is that whatever mentioned in the exception renders the moratorium inapplicable. It was mentioned that the concession of the holders of principle license will not be subjected to the moratorium policy. To date, there is no official information regarding the excluded principle licenses, whether in terms of quantity, size, or location. Besides, principle licenses are not supposed to be excluded because the status is “not yet a license.” Thus, it is very strange that the effort that is supposed to be an improvement excludes principle licenses.

Although there is not yet an official data, the data that once circulated in the Ministry of Forestry stated that the principle licenses for plantation per December 2010 was 4,579,977 hecares in size. Part of it was problematic. There was even a license which boundaries were not yet clear since 1994 but had been planted with the size of thousands of hectares. There were also licenses that have received an order letter to immediately conduct a boundary setting since 1999 but are still now operating without any meaningful legal measure taken.

Another exception is related to the development of objects vital for the State, such as geothermal, oil and gas, and development of sugarcane and paddy fields that are of course done in a large scale. Currently, besides the MIFEE (Merauke Integrated Food and Energy Estate) that would sacrifice forests and peat lands, it is unknown where large scale projects for sugarcane and paddy fields will take place. The issue of food sovereignty becomes one of the excuses of conducting the development (read: expansion) of large scale monoculture plantation.

The Government does not seem to show a benign intention to improve all of the mess of forest and peat land management in Indonesia. It shows from the fact that almost the same moment, precisely on May, 19, 2011, the President issued Presidential Regulation No. 28 year 2011 regarding the Use of Protected Forest Area for Underground Mining. As known to us, the Presidential Regulation was the answer of the concerns raised by mining companies intending to open mines inside protected forests.

The third point of exception in the form of renewal of license raised a similar concern, namely how big is the size of primary forest and peat lands located in forest area or area for other use that have been burdened with licenses and that are already operating (requiring renewal in the next period of two years). Information regarding the size, location, and the names of the companies should be opened to public so that it will be clear how much the exception dictum will reduce the object of moratorium.

Calculated from the figure mentioned in the statements of several government officials regarding the size of the area that will be the object of moratorium, where the average size mentioned is around 64 million hectares, it needs to be ascertained how much is excluded based on the second dictum that will reduce the size of the object of moratorium.

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What is quite tickling is the inclusion of restoration of ecosystem in the dictum of exception because logically, the license of Restoration of Ecosystem cannot be implemented on the areas or Primary Forests or Peat Lands that are still good. Restoration of Ecosystem is supposed to rehabilitate degraded forests, not primary forests.

Observing the second dictum, it is clear that the Government favours the interests of businesspersons and extractive industries by allowing them to continue chopping down Indonesian forests and increasing carbon emissions from deforestation and peat lands opening. Not to mention the same practices that occur in almost every secondary forest and peat lands in Indonesia that are not protected by the INPRES of Moratorium.

The most important thing today is guaranting the effectiveness of monitoring and law enforcement. However, the firmness and consistency of the country's leader will be the determinant. Moreover, there are many issues in the INPRES requiring further explanation. It means that there are still many things that should be regulated in a more detailed manner for the Instruction to be able to be implemented in the field. It is important if we see the experience of implementation of many legislative regulations that is highly ineffective, which results are far away from the aims and hopes of such regulations. In general, observing the fact that enforcement of a provision of regulation is still weak, even for regulations in a higher level than INPRES, for instance Legislative Acts, then the effectiveness of INPRES of Moratorium for the rescue of forest and reduction of emissions is highly questionable.

Observing the institutions that received the Instruction, there are two ministries that factually contribute to forest destruction that did not receive the President's Instruction, namely the Ministry of Energy and Mineral Resources (ESDM) and the Ministry of Agriculture. Mining expansion that encroaches upon forest area should be enough reason to include ESDM as one of the parties to receive the Instruction. On the other hand, expansion of plantations are not free from the hands of Ministry of Agriculture. It is very relevant to include the Ministry of Agriculture as one of the parties mandated by the moratorium policy. Without the two ministries, institutionally, the INPRES is merely a lip service.

The INPRES does not in the least promote efforts to improve the governance of forestry sector that goes beyond business as usual. In the third dictum, the Ministry of Forestry is mandated to improve the governance policy only for borrow-use license and the license of forest results utilization in natural forest and not for the whole structure of forest management that the Ministry of Forestry has for decades failed to manage. At the same time, the third dictum does not give a space for any third party to provide an appropriate diagnose for forestry governance, but instead entrusts the design of governance to the Ministry of Forestry that has for a long time been mismanaging forest. It is highly unreasonable to entrust a patient that has been ill for decades to cure its own disease.

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The INPRES also does not answer the problem of forestry conflict that has caused many souls to be lost. The status of land tenure of 25,000 villages or more than 50 million of Indonesian citizens that intersect with or are located within forest area is not clear enough. Instead, the INPRES still endorses the operation of licenses and approval of problematic principle licenses admitted by the Ministry of Forestry itself as causing problems that cannot be handled (IFCA, 2007). Without attempting to address this problem, the INPRES does not in the least touch the issue of the rights of communities that have been firmly written as a commitment of the Government of Indonesia in the Joint Concept Note (JCN) with the Government of Norway and that has been mentioned over and over again in the public statement of the Government of Indonesia in international negotiations, among others is the COP-16 in Cancun.

Holistically, the INPRES No. 10 year 2011 does not mean much for the protection of forests and the commitment of Indonesia's emission reduction.

### **Reading the Indicative Map for the Postponement of New Licenses**

Until today, the Indicative Map for the Postponement of New Licenses issued as an annex is not followed by an official number showing the real size of primary natural forests included in the policy. Several figures were mentioned by related government officials, but they vary in number. Meanwhile, the Indicative Map for Moratorium attached is highly unrepresentative with the scale of 1: 19,000,000 while other Indicative Maps of Moratorium that are more representative and accurate are neither unavailable or unaccessible by public, including the newest basic map of forest coverage (2009/2010).

Based on the reality, the analysis conducted was based on the 2006 data of forest coverage issued by the Ministry of Forestry that is the only official data currently accessible by the public; the size of Indonesian natural forest<sup>2</sup> coverage in 2006 is 95,356,882 Ha and peat lands (non-forest) is 9,190,991 Ha. Analysis from the 2006 data of Indonesian forest coverage shows that the remaining primary forests are 45,353,393 Ha. Out of the size of the area, around the quarter of it (12,452,548 Ha atau 27%) is located in areas that have been burdened by licenses (IUPHHK-HA; HTI; Plantation and Mining). Meanwhile, primary forests located in the protected and conservation areas are 24,113,366 Ha. So, additional protection of primary forest (after being substratced by the areas of primary forest that have been burdened by the exercise of rights and primary forests in protected and conservation areas that have been protected by legislation) is only around 8,787,479 Ha (around 19% of the total primary forest).

It means that the licenses that have been issued on primary forests, which consist of IUPHHK-HA/HPH (10,453,535 Ha)<sup>3</sup>; IUPHHK-HT/HTI (919,781 Ha)<sup>4</sup>; Palm-Oil

<sup>2</sup> The definition of forest based on the definition mentioned in Act No. 41/1999 on Forestry, Chapter 2, General Provision, part One: General Definition, Article 2 verse b. *Forest is an integrated ecosystem in the form of a land overlay consisting of bio-natural resources dominated by trees in a unified manner with its natural environment, which cannot be separated from each other.*

<sup>3</sup> Based on the data of concession of IUPHHK-HA issued by the the Ministry of Forestry, October 2010

<sup>4</sup> Based on the data of concession of IUPHHK-HT issued by the the Ministry of Forestry, October 2010

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Plantation (602,009 Ha)<sup>5</sup> and Coal Mining (477,223 Ha)<sup>6</sup> before the INPRES of Moratorium is issued has the opportunity to continue destroying primary forests which nobody can stop.

On the other side, peat lands with the total size of 21,432,811 Ha consist of 9,190,991 Ha of peat lands (non-forest) and 12,241,820 Ha of peat lands in the areas of primary forest. Once more, these non-forest peat lands are not free from being overlapping with the existing concessions. From the analysis of the data, the location and size of the concessions overlaid with the location and size of peat lands (non-forest) is

- Located in the concession of IUPHHK-HT (HTI) with the size of 2,613,096 Ha
- Located in the concession of IUPHHK-HA (HPH) with the size of 2,030,937 Ha
- Located in the concession of Palm-Oil Plantation with the size of 2,525,381 Ha
- Located in the concession of Coal Mining with the size of 96,132 Ha

The total size of peat lands (non-forest) that have been burdened by licenses is 7,265,546 Ha, meaning that (9,190,991 Ha - 7,265,546 Ha) 1,925,445 Ha of peat lands (non-forest) becomes the object of moratorium because it has not been burdened by licenses. Further analysis reveals the possibility that the area has in fact been burdened by licenses so that in the end, there is no peat land (non-forest) that will be protected.

From the above explanation, it can be concluded that based on the 2006 data of forest coverage (primary forest of 45,353,393 Ha) and with the assumption that the speed of deforestation is around 1 million hectares per annum, then the coverage of primary forest is smaller than what was mentioned verbally by the Government through his statements in the media. It has not taken into account the contribution of deforestation from illegal activities.

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<sup>5</sup> Based on the compilation of data from the Ministry of Forestry, October 2010, BPN and Sawit Watch, 2008

<sup>6</sup> Based on the data of coal mining concession issued by Association of Indonesian Coal Mining 2009

**The Potential of Loss of the State from the “Business as Usual”**

KPK findings, for instance mining practices that violate the law in four provinces in Kalimantan located in the State’s forest area, have the potential to cause the State loss from the potential non-tax state income, which is Rp 15.9 trillions.

Another finding of KPK, a case related to the spending of RKT in Central Kalimantan in the period of 2003-2007 by Forestry Agency and the Ministry of Forestry is estimated to have caused the state loss by Ro 108.8 billions.

BPK in 2010 mentioned four cases of corruption in forestry sector by seven national private companies in Central Kalimantan that have violated the spatial planning and area planning with the state loss reaching Rp. 111.328 billions and 453,009.87 USD.

Based on BPK audit of forestry sector in Riau Province in the second semester of 2008 and the first semester of 2009, the indications of state loss from Riau forest management was Rp.491.591 billion.

KPK recommendation to pay attention to and re-open the Corruption Case and Illegal Logging in Riau, especially in Semenanjung Kampar that was stopped by SP3. The case indicates an involvement of two big pulp and paper companies.

**The Potential of Loss from a Bad Moratorium Policy**

From the above calculation and analysis, where there are still many operational obscurities on the implementation of moratorium and additional calculation of forest and peat land protection, the insignificant INPRES shows more of business as usual. Experience of several findings, whether by the Ministry of Forestry, Finance Investigation Agency (BPK), and Commission on the Elimination of Corruption (KPK), the State’s loss resulting from practices in the forestry sector and forest conversion exceeds the amount of the fund agreed by Indonesia-Norway, which is 1 billion USD ( $\pm$  Rp. 9,3 trillion).

From several examples mentioned above, which loss is calculated based on the potential loss of state Income, it is enough to illustrate that from the moratorium policy that tends to show ”business as usual,” a bigger number of potential loss of the state income will continue to happen. Moreover, the President’s Instruction does not involve the Ministry of Agriculture for plantation sector

and the Ministry of Energy and Mineral Resources for mining sector in a way that further weakens the moratorium policy.

All of the losses illustrated above have not taken into account the lost ecological function due to practices of deforestation in areas unprotected by the moratorium policy. Water function, biodiversity, including the loss of habitats and the increasingly threatened protected animals, the loss of carbon sink and the consequent emissions produced, the loss of sources of livelihood of around 60 millions people living in the surrounding areas

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of forest and also the potential of natural disaster due to the worsening deforestation. If all of it are taken into account, the loss caused by continued deforestation will result in a very fantastic figure.

Referring to the development mantra in the regime of President SBY, which is "*pro growth, pro poor, pro job, pro environment*", it is clear that what is set in INPRES No. 10 year 2011 is still far away from the development mantra and also the commitment of emission reduction.