

Pandangan terhadap Usulan Forest Investment Program (FIP) Indonesia

Aksi, Solidaritas Perempuan, 'Ulu Foundation

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Pandangan ini ditujukan terhadap usulan Forest Investment Program (FIP) Indonesia, draft dokumen tertanggal 2 Maret 2012 (versi Inggris dan Bahasa Indonesia) dan sebuah revisi Bab 6 (versi Inggris) tertanggal 9 September 2012.

Meskipun draft dokumen usulan FIP Indonesia dalam bahasa Inggris telah tersedia bagi publik dalam situs Departemen Kehutanan pada tanggal 2 Maret 2012 dan versi Bahasa Indonesia tersedia beberapa minggu setelahnya sesuai desakan CSOs Indonesia, namun draft revisi Bab 6 yang disirkulasi tanggal 9 September 2012 belum tersedia versi Bahasa Indonesia dan belum tersedia di situs Departemen Kehutanan. Bab 6 merupakan bagian penting dalam draft dokumen usulan FIP Indonesia karena di situlah letak usulan rencananya, sementara bagian-bagian lain merupakan latar belakang dan lain-lainnya. Sudah seharusnya Bab 6 tersebut diterjemahkan secepatnya ke Bahasa Indonesia dan dipublikasikan.

Mempelajari usulan FIP Indonesia berdasarkan dokumen-dokumen tersebut, kami melihat bahwa ada 6 persoalan besar yang terkandung dalam usulan FIP Indonesia tersebut, yang justru akan mengakibatkan FIP Indonesia menjadi kontra-produktif terhadap usaha-usaha menghadapi deforestasi dan degradasi hutan di Indonesia secara khusus maupun persoalan perubahan iklim secara umum, serta meningkatkan persoalan-persoalan akut yang selalu mendamping masalah di sektor kehutanan Indonesia, yaitu korupsi, kekerasan terhadap warga dan pelanggaran Hak Azasi Manusia dan Hak Azasi Perempuan.

Enam (6) point keprihatian kami terhadap dokumen usulan FIP Indonesia yaitu sebagai berikut:

1. Tidak cukup strategis untuk menangani persoalan deforestasi dan degradasi hutan
2. Menyediakan 'jalur bebas hambatan untuk penetrasi sektor swasta terutama penyebab utama deforestasi dan degradasi hutan
3. Tidak berdasarkan pendekatan hak-hak masyarakat
4. Tidak dibangun sesuai dengan ketentuan safeguards MDBs
5. Tidak memenuhi persyaratan konsiderasi gender MDBs
6. Terdapat ketidakakuratan penerjemahan dokumen FIP

Penjelasan butir-butir di atas adalah sebagai berikut:

1. Usulan FIP Indonesia tidak cukup strategis untuk menangani persoalan deforestasi dan degradasi hutan

1.1. Mengacu pada Stranas REDD+ yang masih bermasalah:

Usulan FIP Indonesia dibuat berdasarkan dokumen Stranas REDD+ yang masih mempunyai permasalahan tersendiri karena tidak cukup akurat dalam mengadopsi hasil-hasil konsultasi public di 7 regional. Dokumen Stranas REDD+ memberikan gambaran situasi kehutanan yang berbeda jauh, bahkan cenderung menyederhanakan masalah deforestasi dan degradasi hutan yang sebenarnya terjadi di berbagai tempat di Indonesia.

Beberapa dari kami terlibat dan memantau proses penyusunan Stranas REDD di 7 region dan menemukan bahwa dokumen Stranas telah mereduksi sejumlah “drivers factors” deforestasi dan degradasi hutan, dari apa yang sudah disepakati didalam konsultasi publik di tujuh region selang September-Oktober 2010. Beberapa contoh:

- Didalam dokumen Stranas REDD+ 23 September 2010, yang digunakan dan disepakati bahkan disempurnakan oleh peserta konsultasi public di tujuh region, menyebutkan bahwa penyebab utama terjadinya deforestasi dan degradasi adalah: (1) tata ruang yang lemah, (2) unit manajemen yang tidak efektif, (3) tata kelola pemerintahan yang lemah, (4) dasar dan penegakan hukum yang lemah (mencakup: dasar hukum yang lemah, hukum yang memberi peluang eksploitasi, benturan/ ketidakharmonisan, ketidaklengkapan, penegakan yang tidak jelas dan tegas), serta (5) aspek tenurial yang tidak jelas/mengambang.

Dokumen ini memang tidak mencantumkan dengan lebih rinci aspek ketidakadilan gender. Oleh karena itu proses konsultasi di tujuh region menyepakati perlunya pencantuman aspek pemetaan ketidakadilan gender dan elaborasi aspek tenurial dan perlindungan hak-hak masyarakat adat atas tanah dan sumberdaya kehutanan.

- Didalam dokumen Stranas 16 November 2010 yang sudah diubah di Bappenas, masih mencantumkan 5 aspek di atas walaupun dengan elaborasi yang sudah berbeda, walau masih mencantumkan empat penyebab dasar yaitu: (1) perencanaan Tata Ruang tidak efektif dan tenurial yang lemah, (2) manajemen hutan yang kurang efektif, (3) kelemahan tata kelola (*governance*) di sektor kehutanan, dan (4) dasar Hukum yang belum lengkap dan jelas serta penegakan hukum yang lemah.

- Namun demikian, didalam dokumen 26 Agustus 2011 yang diterbitkan oleh Satgas REDD+ yang dikoordinasikan oleh Kuntoro Mangkusubroto, pengelompokan masalah disederhanakan menjadi tiga aspek yaitu (1) perencanaan Tata Ruang yang tidak efektif dan tenurial yang lemah, (2) manajemen hutan yang kurang efektif, dan (3) tata kelola (*governance*) dan penegakan hukum yang lemah.
- Pada dokumen Stranas 16 November 2010 dan dokumen Stranas 26 Agustus 2011, aspek keadilan gender maupun aspek tenurial tetap saja tidak dicantumkan sesuai apa yang sudah disepakati didalam konsultasi publik di tujuh region. Bahkan aspek "*penguatan dasar/sistem hukum dan penegakan hukum*", sudah diformulasikan dengan sangat umum dan menghilangkan rumusan lengkap mengenai aspek: (1) *dasar hukum yang lemah*, (2) *hukum yang memberi peluang eksploitasi*, (3) *hukum yang diwarnai benturan/ ketidakharmonisan*, dan (4) *penegakan hukum secara adil dan tegas*.
- Masalahnya kemudian adalah, dokumen FIP (para 17) justru membuat pelemahan lebih lanjut terhadap dokumen Stranas 26 Agustus 2011 versi Satgas REDD+ yang memang sudah lemah. Selain tidak mencantumkan dengan jelas aspek keadilan gender dan aspek tenurial dan perlindungan atas hak-hak masyarakat adat, sebagaimana dokumen Stranas, dokumen terakhir FIP malah mereduksi hal penting menyangkut penyebab degradasi dan deforestasi, yaitu "dasar hukum dan penegakan hukum". Didalam dokumen FIP direduksi menjadi "**Tata Kelola Pemerintahan dan Penegakan Hukum yang Lemah**". Substansinyapun disederhanakan menjadi "*kurangnya koordinasi antar lembaga yang mengeluarkan ijin penggunaan lahan telah berkontribusi terhadap tumpang-tindih tuntutan dan konflik penggunaan lahan hutan dengan masyarakat setempat yang telah dikeluarkan dari proses perijinan/lisensi. Hal ini seringkali menyebabkan kurangnya iklim yang mendukung untuk bisnis pada sektor hutan*".
- Hal ini penting untuk dilihat kembali karena problematika kehutanan sangat diwarnai oleh sistem yang berbasis pada beberapa ketentuan perundangan yang saling bertabrakan. Bahkan sistem saat ini malah menyediakan "ruang ruang" korupsi bahkan mata rantai pencucian uang dalam bisnis kehutanan skala besar. Jika hal-hal menyangkut soal penataan dasar hukum kebijakan dan penegakan hukum yang berbasis pada hukum yang jelas, adil dan tepat, tidak dilihat sebagai masalah penyebab deforestasi dan degradasi, maka bukan tidak mungkin aliran investasi atau utang-utang baru yang berbasis

pada dokumen FIP, akan berjalan seperti pada era Soeharto. Artinya korupsi, pencurian uang dan pelanggaran hak-hak masyarakat, ketidakadilan gender, dan penghancuran ekosistem kehidupan akan berjalan sebagaimana yang terjadi pada saat ini.

1.2. Persoalan dalam Pengelolaan Hutan Produksi

Usulan FIP mengabaikan atau luput memetakan beberapa *drivers* (pemicu/ penyebab) utama deforestasi dan kerusakan hutan di Indonesia. Karenanya akan cenderung membuka ruang bagi berlanjutnya sejumlah persoalan penghancuran ekosistem hutan, diantaranya pengeluaran 17 juta ha hutan alam menjadi areal pemanfaatan lain (APL) sebelum pemerintah menetapkan moratorium penebangan hutan. Penetapan ini tentu saja makin memperparah kerusakan ekosistem hutan akibat ekspansi perkebunan kelapa sawit skala besar dan massif, perluasan hutan tanaman industri (HTI) dan ekspansi industri pulp dan paper, serta *illegal logging* dan *destructive logging*.

Kutipan penting dibawah ini justru ditempatkan pada bagian Annex dan bukan menjadi bagian dari analisis drivers:

“Sembilan dari 33 propinsi di Indonesia, bertanggungjawab terhadap perubahan tata guna lahan di Indonesia sebesar 85% dan emisi karbon hutan. Hutan Produksi berkontribusi terhadap porsi terbesar dari emisi ini antara tahun 2000 dan 2005. Hampir dari setengah hutan tanaman (30 juta hektar) tidak memiliki ijin atau konsensi, yang membuat mereka menjadi rentan terhadap eksploitasi dan pelanggaran serta konflik akan tata guna lahan dan tenurial. Kinerja yang buruk terkait isu lingkungan-sosial pada kawasan konsesi hutan produksi semakin memperparah terjadinya pelanggaran dan pembalakan ilegal, yang membuat Kementerian Kehutanan membatalkan 163 izin konsesi dan menghentikan izin operasional pada konsesi lainnya sejak tahun 2002. Disamping itu, proses perencanaan tata ruang dan tata batas lahan yang kurang melibatkan masyarakat setempat ikut memberikan andil permasalahan. Terlebih, kemungkinan untuk terjadinya deforestasi dan degradasi hutan cenderung lebih tinggi jika kawasan hutan produksi berdekatan dengan hutan konservasi yang berpotensi tinggi” (versi Bahasa Indonesia: Lampiran 1, butir A1.1.2 Permasalahan, hal 83; atau versi Inggris: di Annex 1, Section A1.1.2, p.59).

Melihat pernyataan di atas, sudah seharusnya rencana FIP Indonesia memasukkannya sebagai bagian dari persoalan mendasar yang ada di hutan produksi tersebut.

1.2. Persoalan Pencucian Uang dan Manipulasi Pajak

Masalah illegal logging dan manajemen kawasan hutan produksi maupun hutan alam juga memberi sumbangsih bagi berkembangnya manipulasi pajak dan pencucian uang dalam pasar hasil produksi kehutanan. Menurut Interpol pemerintah Indonesia kehilangan potensi penghasilan pajak antara satu dan dua milyar dollar AS per tahun dalam bentuk pajak dan iuran (fees) yang tidak dibayar oleh pengusaha kehutanan. Interpol bahkan memperkirakan bahwa

pemerintah Indonesia mengalami kerugian 125 juta USD 125 juta per-tahun sebagai akibat dari kegiatan 18 conglomeratsyndikat illegal logging.¹ Illegal logging tidak hanya merusak kawasan hutan tetapi juga merupakan bisnis global yang bermotivasi mencari untung melalui manipulasi pajak dan pencucian uang. Oleh karena itu FIP seharusnya mencermati keterkaitan antara buruknya sistem/ kebijakan sektor kehutanan dengan maraknya illegal logging dan upaya menekan praktek pencucian uang melalui UU 8 th 2010 tentang pencucian uang dan upaya menekan praktek manipulasi pajak melalui UU perpajakan.

1.3. Restorasi Ekosistem yang Berpotensi Merusak Ekosistem Hutan

FIP memasukkan soal IUPHHK-Restorasi Ekosistem tetapi tidak membahas dampak RE (ERC) terhadap masyarakat setempat. Padahal pelajaran dari IUPHHK-RE generasi pertama, yang dikelola PT REKI di Jambi, menunjukkan bahwa tindakan Kementerian Lingkungan Hidup dan Kementerian Kehutanan yang membebaskan perusahaan dari persyaratan AMDAL malah telah menimbulkan konflik dengan masyarakat setempat. Didalam FIP tidak ada persyaratan perlunya audit terhadap ERC generasi pertama dan dokumentasi tentang konflik tanah, konflik hutan, konflik sosial dan dokumentasi tentang sejauh mana standard-standard dan safeguards untuk perlindungan masyarakat dan lingkungan hidup telah diimplementasikan. FIP seharusnya mempersyaratkan bahwa semua ERC mesti melalui proses AMDAL dan mesti memenuhi syarat perlindungan lingkungan dan masyarakat sebelum FIP mendukung ERC.

1.4. Korupsi

Usulan FIP Indonesia telah melihat korupsi dinilai sebagai resiko, namun tidak dikembangkan upaya pencegahan korupsi dalam implementasi FIP. Terutama dalam bentuk penataan terhadap sistem perizinan dan kelembagaan kehutanan yang membuka peluang terjadinya korupsi maupun peluang terjadinya manipulasi pajak dan pencucian uang.

Dalam struktur kebijakan perijinan ini, peluang korupsi di sektor kehutanan tetap besar. Masalanya adalah, detil berkaitan dengan sebab dan peluang korupsi di sektor kehutanan seperti ini tidak ditemukan dalam dokumen draft FIP. Padahal selama ini korupsi merupakan salah faktor yang selalu membuka ruang bagi ekonomi biaya tinggi maupun berbagai bentuk pelanggaran hukum bahkan pelanggaran HAM oleh pelaku bisnis kehutanan.

1.5. Situasi Masalah Tenurial

Sebagaimana terdapat dalam Angka 7 butir 1 draft FIP, tampak bahwa FIP tidak cukup mempertimbangkan aspek tenurial dan situasi pertanahan di Indonesia, di mana mayoritas lahan masyarakat tidak bersertifikat, termasuk tanah komunal

¹ INTERPOL, The World Bank. Chainsaw Project: An INTERPOL perspective on law enforcement in illegal logging, 2010, pg.6

masyarakat adat. Rumusan pada paragraf 107, butir 1: “pengakuan yang lebih baik terhadap hak-hak yang sah atas lahan dan penurunan konflik yang terjadi yang berkaitan dengan perebutan klaim atas lahan dan yang berkaitan dengan lahan”, justru berpotensi merugikan masyarakat yang selama ini menguasai tanah/lahan secara turun temurun tanpa alas hak yang berbentuk sertifikat atau bukti kepemilikan tertulis lainnya. Dari aspek gender, pendekatan formalistik seperti ini justru makin meminggirkan akses dan control perempuan terhadap tanah/lahan yang selama ini ditentukan berdasarkan garis patriarki.

1.5. Kekerasan terhadap warga dan Intervensi Militer

Tidak memasukkan faktor kekerasan terhadap warga sehingga tidak diantisipasi sebagai resiko dan tidak ada upaya pencegahan. Padahal sejarah sektor kehutanan sangat diwarnai oleh konflik dan kekerasan, terutama yang melibatkan sector bisnis, dan selalu merugikan masyarakat di sekitar hutan. Konflik-konflik ini juga sering melibatkan kehadiran militer atau aparat kepolisian dengan pengerahan operasi bersenjata.

Dalam konteks situasi seperti itu FIP justru mengabaikan adanya Perjanjian Kerjasama antara Panglima TNI dan MenLH No. 9 Tahun 2010 dan KERMA No. 2/VI/2010 tertanggal 3 Juni 2010 dan Perjanjian Kerjasama Menhut dan Panglima TNI No. 6 Tahun 2011 dan KERMA No. 7/III/2011, tertanggal 24 Maret 2011. Perjanjian ini merupakan upaya yang dimulai secara diam-diam oleh Menteri Negara Lingkungan Hidup dan Menteri Kehutanan untuk melibatkan militer dalam proyek-proyek penanaman pohon di berbagai wilayah konservasi atau wilayah REDD yang tersebar di 10 wilayah Komando Daerah Militer (Kodam) di Indonesia. Keterlibatan militer tentu saja tidak hanya akan memperparah konflik yang terjadi di berbagai kawasan hutan, tetapi juga berpotensi menggusur warga masyarakat dari sumber-sumber kehidupannya, sebagaimana yang terjadi selama era orde baru.

2. Usulan FIP lebih menyediakan ‘jalur bebas hambatan untuk penetrasi sektor swasta terutama pelnyebab utama deforestasi dan degradasi hutan

Pilihan kegiatan yang ditawarkan FIP tidak ditujukan untuk menghadapi ‘drivers’ deforestasi dan degradasi hutan, melainkan lebih terfokus pada aspek peningkatan stok karbon dan peluang-peluang lainnya bagi sektor swasta untuk terlibat dalam carbon trading. Padahal menghadapi ‘drivers’ deforestasi dan potensi kelanjutannya harus diprioritaskan. Sektor kertas dan bubur kertas dan sawit misalnya, memiliki dampak besar terhadap hutan Indonesia, namun FIP tidak menunjukkan komitmen untuk menghadapi masalah ini.

FIP sama sekali tidak mendasarkan rumusannya pada analisis secara mendetail dan transparan mengenai rencana ekspansi sektor-sektor tersebut. Dengan demikian usulan FIP hanya menyediakan “jalur bebas hambatan” untuk penetrasi sektor swasta. Terutama melalui “financial intermediaries” yang tidak transparan, oleh pelaku degradasi hutan dan pelanggar HAM, yaitu pemilik IUPHHK-HA (Izin

Usaha pemanfaatan Hasil Hutan Kayu-Hutan Alam), HTI, Perkebunan Sawit, dan potensi penyalahgunaan SVLK oleh perusahaan.

3. Usulan FIP Tidak berdasarkan pendekatan hak-hak masyarakat

Draft dokumen usulan FIP Indonesia tidak memperlihatkan sebuah pendekatan berbasis hak-hak masyarakat yang kehidupannya bergantung pada hutan, baik laki-laki maupun perempuan. Tidak ada jaminan penerapan hak-hak yang telah diratifikasi oleh Pemerintah Indonesia, antara lain Kovenan Sipil Politik, Ekosob maupun CEDAW.

3.1 Pengabaian Terhadap Hak Atas Rasa Aman

Dalam draft dokumen Usulan FIP, tidak memuat aspek jaminan keamanan dan keselamatan bagi masyarakat. Hal ini sangat penting termuat dalam usulan FIP, mengingat bahwa banyak persoalan sosial dan konflik agraria yang terjadi di masyarakat yang kehidupannya bergantung pada sumber daya hutan.

3.2 Tidak ada Pengakuan dan Perlindungan Terhadap Perempuan.

Walaupun di beberapa paragraf telah menyebutkan pengarusutamaan gender, namun FIP tidak menunjukkan adanya pengakuan dan perlindungan terhadap perempuan, bahkan perempuan tidak disebutkan sebagai salah satu pemangku kepentingan. Penegasan ini tentu saja akan berimplikasi terhadap munculnya model implementasi yang tidak menyediakan prosedur dan fasilitas bagi perempuan. (versi Bahasa Indonesia: Para. 32, Para. 39.2, Para. 51).

3.3. Standar yang Merugikan Usaha Masyarakat

Orientasi arus modal FIP ditujukan untuk mendukung perusahaan yang “kecil” dan “sedang” dengan sokongan International Finance Corporation (IFC), tetapi istilah “kecil” dan “sedang” tidak didefinisikan dengan jelas didalam dokumen FIP. Hal ini bisa menimbulkan masalah karena kategori kecil dan sedang mengandung ukuran yang berbeda dengan definisi yang digunakan IFC. IFC menggunakan kategori “microenterprises”, yaitu usaha yang mempunyai kurang dari 10 orang anggota dengan aset/“turnover” kurang dari AS\$ 100,000 per-tahun. Ada juga kategori usaha yang disebut “kecil”, mempunyai 10 sampai 50 orang dan aset / masukkan antara AS\$ 100,000 hingga AS\$ 3 juta per tahun. Sedangkan yang disebut “sedang” (medium) mempunyai anggota 50 – 300 orang dengan aset / masukkan antara AS\$ 3 juta dan AS\$ 15 juta per-tahun.

Dengan demikian, rumusan FIP sangat berpotensi membatasi akses usaha kecil masyarakat yang selama ini sudah berjalan. Bahkan ke depan juga sulit dipenuhi oleh perusahaan sejenis yang ingin memanfaatkan peluang usaha. Karenanya bukan tidak mungkin hal ini makin membuka ruang bagi perusahaan-perusahaan besar untuk memanfaatkan proyek-proyek atau investasi dibawah mekanisme FIP.

3.4 Pengabaian Hak Atas Informasi

Usulan FIP, belum menempatkan masyarakat, laki-laki dan perempuan, terkena dampak yang tinggal dan hidup disekitar wilayah proyek sebagai subjek proyek.

Terlihat bahwa masyarakat, laki-laki dan perempuan, tidak ditempatkan sebagai individu yang penting mendapatkan informasi terhadap usulan dokumen FIP. Bahkan media yang digunakan tidak memperhatikan situasi masyarakat, laki-laki dan perempuan. (para 127, hal.45, dok versi Bahasa Indonesia)

Dengan menekankan pada penggunaan pendekatan secara online untuk tinjauan masukan publik, dapat disimpulkan bahwa proses ini justru makin meminggirkan hak masyarakat yang tidak memiliki akses terhadap teknologi online.

4. Usulan FIP Tidak dibangun sesuai dengan ketentuan safeguards MDBs

Dokumen FIP menyebutkan bahwa dana persiapan Forest Investment Program telah disetujui pada 21 Desember 2010 oleh MDB FIP Committe. Berbentuk Bantuan Teknis (Techical Assistance/ TA) dari ADB sebesar USD 225,000 untuk persiapan penyusunan dokumen usulan FIP Indonesia. Namun demikian, penyusunan dokumen ini tidak sesuai dengan ketentuan-ketentuan ADB dan MDBs lainnya dalam hal safeguards, keterbukaan informasi/komunikasi publik serta gender dan pembangunan, dan financial intermediaries. Juga tidak mengaplikasi prinsip 'do no harms', bahkan tidak menganalisis potensi resiko dan dampak serta upaya mitigasinya.

5. Usulan FIP tidak memenuhi persyaratan konsiderasi gender MDBs

ADB, Bank Dunia dan IFC sebagai penyedia dana untuk penyusunan dokumen FIP Indonesia, telah mempunyai Kebijakan prasyarat dan ketentuan mengenai konsiderasi gender, tidak saja pada 'Gender and Development Policy' (ADB dan Bank Dunia), melainkan juga pada safeguards (ADB) dan Performance Standards (IFC). Namun, usulan FIP Indonesia tidak memenuhi prasyarat konsiderasi gender MDB's, karena :

- Perempuan tidak diakui sebagai salah satu pemangku kepentingan atau disebutkan secara eksplisit, (Para. 32, Para. 39.2, Para. 51 dok. Versi Bahasa Indonesia)
- Tidak tersedia data dan informasi basis yang terpilah secara gender
- Tidak ada kajian mengenai penyebab utama deforestasi dan kerusakan hutan dalam perspektif gender
- Tidak ada kajian dampak dan resiko dalam perspektif gender, dan tidak dikembangkan upaya pencegahan dan perlindungan perempuan dari dampak dan resiko usulan FIP
- Tidak patuh terhadap persyaratan untuk mengembangkan usaha-usaha secara khusus untuk melibatkan perempuan dalam semua proses konsultasi dan pengambilan keputusan

- Tidak dikembangkan rencana aksi gender

6. Terdapat ketidakakuratan penerjemahan dokumen FIP

Dalam dokumen usulan FIP, masih terdapat beberapa ketidakjelasan makna, diantaranya :

- a. Penerjemahan istilah “legitimate rights” menjadi “hak-hak yang sah” (Para. 107 butir 1), penting untuk diperjelas. Karena memiliki makna yang sangat berbeda dan akan berpotensi terhadap perampasan lahan masyarakat, bahkan bagi perempuan Indonesia, yang masih kesulitan mendapatkan hak kepemilikan aset, terutama lahan. Penggunaan penerjemahan “hak-hak yang sah” akan memperkuat peminggiran hak perempuan atas kepemilikan lahan. Terjemahan ini juga akan menghilangkan hak kepemilikan lahan secara komunal.
- b. Penerjemahan “empowerment” menjadi “pendayagunaan”. Makna tersebut sangat bertentangan.

Sebagai tambahan, dalam dokumen FIP para. 107 butir 3 terjadi penyempitan makna hubungan antara perempuan dan hutan. “Meningkatkan mata pencaharian masyarakat lokal melalui pengembangan peluang pendapatan alternatif yang tidak memberikan tekanan kepada hutan”

Berdasarkan keprihatian tersebut, maka kami merekomendasikan kepada DKN dan Tim FIP untuk :

1. Memprioritaskan penanganan terhadap ‘drivers’ (pemicu/pelaku) deforestasi dan degradasi hutan
2. Memperhitungkan persoalan korupsi, kekerasan dan pelanggaran HAM
3. Menggunakan pendekatan berbasis hak.
4. Menempatkan perempuan sebagai pemangku kepentingan, khususnya dalam setiap proses pengambilan keputusan, dengan menggunakan pendekatan yang inklusif, sensitif dan responsif gender.
5. Memuat kajian mengenai penyebab utama deforestasi dan kerusakan hutan dalam perspektif gender
6. Memenuhi persyaratan konsiderasi gender sesuai safeguards MDBs

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Catatan:

Kami juga menyertakan dokumen tambahan yang disiapkan secara khusus oleh 'Ulu Foudation. Dokumen ini merupakan bagian yang tidak terpisahkan dari dokumen "Pandangan terhadap Usulan Forest Investment Program (FIP) Indonesia Aksi, Solidaritas Perempuan, 'Ulu Foundation" ini.

Annex 1

1. Production Forests, Organized Crime, Money Laundering and Tax Law
2. Funding new forest degradation?
3. Ecosystem Restoration Concessions, safeguards for all concessions, plantations
4. Small, medium and large enterprises?

1) Production Forests, Organized Crime, Money Laundering and Tax Law

The following sentences in this draft arguably describe some of most important statements relevant to Indonesia's FIP:

"Nine of Indonesia's 33 provinces account for about 85% of Indonesia's land use change and forestry emissions. Production forests accounted for the largest portion (73%) of these emissions between 2000 and 2005." Annex 1, Section A1.1.2, pg 59 (English language version.)

In 2010, land use change and forestry emissions made up 60% of Indonesia's GHG emissions. (pg 3, section 1.3, para 10).

Since production forests, according to this draft, have already accounted for the majority of Indonesia's emissions to date, and illegal logging has traditionally been a significant issue associated with production forests, a sharp focus on addressing the drivers of illegal logging should be a centerpiece of the FIP.

A report published in 2010 by INTERPOL cites estimates which "suggest that [as a result of illegal logging] the Indonesian government is losing one to two billion US dollars per annum in unpaid taxes and charges, other [report]s suggest that Indonesia loses \$125 million a year due to the activities of just 18 illegal logging syndicates."² "The World Bank estimates the economic loss from illegal trade to be approximately 10 billion US dollars annually, and losses due to tax evasion and royalties on legal sanctioned logging to be approximately 5 billion US dollars."³

The spectacular importance of illegal logging in Indonesia's climate equation cannot be overstated. While the FIP does make reference to illegal logging, the manner in which it does and the proposed remedies are surprisingly weak and appear to

² INTERPOL, The World Bank. Chainsaw Project: An INTERPOL perspective on law enforcement in illegal logging, 2010, pg.6

³ Ibid, pg. 4

depend primarily on Indonesia's National Forestry Law, the enforcement of which, over the decades has proven woefully inadequate to address the sophisticated criminal financial networks engaged in illegal logging.

Illegal logging is not just something that happens in the forest. It is a profit-motivated global business which is potentially best addressed with financial tools, allowing the identification and seizure of the assets derived from the proceeds of criminal activity. Such criminal activity may include illegal logging, associated money laundering or tax evasion.

INTERPOL states what may be obvious: "The principal motivation behind illegal logging is profit. Timber is a commodity no different [in that respect] from narcotics, weapons, vehicles, or any other internationally traded goods that can generate profit. The illegal trade in timber is business-like in its structure, with both provider and buyer companies."⁴

According to INTERPOL, "Illegal logging represents the starting point of a complex process of interconnected organized criminal activities undertaken at an international level. When it comes to breaching national and international laws, undertaking and developing illegal activities at transnational level and jeopardizing public safety, illegal logging becomes a criminal issue and individuals responsible for illegal logging become criminals subject to sanctions. ... Timber trafficking is a succession of criminal activities undertaken at an international level by a network of organized criminals."⁵

According to INTERPOL, "In Southeast Asia, illegal logging is often perpetuated or facilitated by military groups and corrupt government officials. Both are able to exert a high level of control over access to natural resources and have a strong presence throughout the whole process of illegal logging and timber trafficking. They exert influence on the granting of forest concessions, harvesting and transporting of the logs, and processing and timber trade. Opportunities for corruption multiply and initiatives of good governance and capacity building are annulled."

"Organized Crime

Illegal logging encompasses a number of sophisticated forms of enterprise and fraudulent practices which encompass a wide range of unlawful activities and consequently requires a significant degree of organization. The harvesting, shipping, processing, and trading of timber is more likely to be coordinated by a network of criminals, rather than one isolated individual. ...

Transnational Crime

Illegal logging is a cross-border issue. Timber may be transported through several countries before reaching its final destination; logging companies may be based in different countries; and profits made may be invested in tax haven countries or re-

⁴ Ibid, pg. 4

⁵ Ibid, pg. 3.

circulated into other legal or illegal enterprises...”⁶

Indonesia’s large forest sector conglomerates are known to have assembled mazes of opaque offshore subsidiaries in domiciles such as the Cayman Islands, the British Virgin Islands, Mauritius, etc. These “shell companies” appear to serve no productive function and seem to act to funnel money from one country to another.

There are massive levels of profits made in illegal logging, and significant losses to Indonesia as a result of tax evasion associated with both legal and illegal logging by well-coordinated sophisticated large-scale operators. The damage, not only to forests, but also to the Indonesian economy associated with the loss of tax revenues - - which could otherwise be used towards poverty alleviation, adaptation to climate change, etc. -- as a result of these crimes warrants a close examination of the financial flows of large conglomerates engaged in activities in Indonesia’s production forests and their associated companies and offshore holdings in order to identify any unusual financial patterns in excess of amounts officially reported to the Indonesian government as coming from legitimate legal operations as well as to identify any patterns of tax evasion.

Fortunately, Indonesia has a robust Anti-Money Laundering statute, UU 8, Tahun 2010 as well as the Anti-Corruption Commission. In addition, there are statutes pertaining to tax evasion.

The FIP does not require that any partnership efforts with large scale private sector actors in the forest and plantation sector, must only occur after such private sector entities have provided full public disclosure of their associated holdings, including those in secrecy jurisdictions including the British Virgin Islands, Cayman Islands, Mauritius, etc. and have allowed a full, transparent and independent audit (revenue transparency) of their financial records to (1) demonstrate that their asset bases as well as the amount of funds flowing through these entities are consistent with the amount of funds that could be reasonably expected to be derived from legally-sourced timber for which they have had legal permission to log and (2) that these companies have properly paid their required taxes in full to the Indonesian government.

The FIP fails to make the link with a “follow the money” strategy. For example, Paragraph 10, pg 2, Sept 9 revision, Section 6.1 (English Version, Indonesian version not provided) currently states:

“Translating national policies to the ground will require institutional capacity to integrate local communities into forest and land use plans, to improve access to land resources, and to improve the business-enabling environment for sustainable investments in forest an land use.”

There is no language to the effect that a goal of the FIP should be to monitor the financial aspects of timber harvesting as well as tracking financial flows in the forest

⁶ Ibid, pg. 5.

sector, including through the use of anti-money laundering measures and examination of tax revenues.

Recommendations:

Add language to the FIP, potentially in section 2.4, such as:

2.4 (pg 15, English Version (EV)) “Forest Law Enforcement and Illegal Logging” should be changed to “Law Enforcement and Illegal Logging” to reflect the fact that in addition to Forest Law, other laws, including laws, including Anti-Money Laundering and tax statutes, will play an important role in the fight against illegal logging.

In addition, this entire section should be enriched with a description of a “follow the money” approach to illegal logging, including reference to UU 8, Th 2010 on Anti-Money Laundering, as well as tax law.

Language should be added to Section 2.4, for example:

INTERPOL has found that illegal logging encompasses a number of sophisticated forms of enterprise and fraudulent practices which encompass a wide range of unlawful activities and consequently requires a significant degree of organization. The harvesting, shipping, processing, and trading of timber is more likely to be coordinated by a network of criminals, rather than one isolated individual.⁷

According to a recent INTERPOL report, "The principal motivation behind illegal logging is profit. Timber is a commodity no different [in that respect] from narcotics, weapons, vehicles, or any other internationally traded goods that can generate profit. The illegal trade in timber is business-like in its structure, with both provider and buyer companies.⁸...[P]rofits made may be invested in tax haven countries or re-circulated into other legal or illegal enterprises."⁹ Illegal logging measures under the FIP would focus on the innovative use of anti-money laundering statutes and tax law to address organized criminal activity in the forestry sector.

Given the substantial contribution of production forests to Indonesia’s greenhouse gas emissions, the FIP will focus on tracing the financial drivers and facilitators of illegal logging, and will utilize anti-money laundering and tax law to carefully examine the financial flows and tax records of those active in production forests. The FIP will support a sharp increase in international cooperation with Financial Intelligence Agencies in secrecy jurisdictions where the major large scale enterprises active in Indonesia’s forests domicile their offshore companies, including the British Virgin Islands, Cayman Islands and Mauritius. A sectoral financial audit should be

⁷ INTERPOL, The World Bank. Chainsaw Project: An INTERPOL perspective on law enforcement in illegal logging, 2010, pg.6

⁸ Ibid, pg. 4

⁹ Ibid, pg. 5.

conducted to fully examine the financial flows and tax status of the major companies and conglomerates active in the forest sector.

Any partnership efforts with large scale private sector actors in the forest and plantation sector, shall only occur after such private sector entities have provided full public disclosure of their associated holdings, including those in secrecy jurisdictions including the British Virgin Islands, Cayman Islands, Mauritius, etc. and have allowed a full, transparent and independent audit (revenue transparency) of their financial records to (1) demonstrate that their asset bases as well as the amount of funds flowing through these entities are consistent with the amount of funds that could be reasonably expected to be derived from legally-sourced timber for which they have had legal permission to log and (2) that these companies have properly paid their required taxes in full to the Indonesian government.

Paragraph 10, pg 2, Sept 9 revision, Section 6.1 (English Version, Indonesian version not seen) currently states:

“Translating national policies to the ground will require institutional capacity to integrate local communities into forest and land use plans, to improve access to land resources, and to improve the business-enabling environment for sustainable investments in forest an land use.”

Recommendation: ADD “and to monitor the financial aspects of timber harvesting as well as tracking financial flows in the forest sector, including through the use of anti-money laundering measures and examination of tax revenues.”

2. Funding new forest degradation?

Paragraph 29, pg 8, Sept 9 revision of Section 6.2, English Version states:

Anticipated upstream interventions include (i) community-based forest management enterprises and payments for environmental services (PES) on degraded forest and grassland; (ii) plantation management on degraded forest and grassland; (iii) production forestry and sustainable forest management on natural forest; and (iv) ecosystem restoration and sustainable forest management interventions will also involve downstream forestry and enterprises in other related sectors linked to deforestation.

This seems to lay out a clear plan to finance plantations (paper and pulp? Palm oil?), logging concessions (“production forestry”) and Ecosystem Restoration Concessions. The following paragraph (29) makes it clear that the use of financial intermediaries will be sought for these efforts. Financial intermediaries have proven problematic in terms of enforcing transparency requirements as well as environmental and social safeguards. See enclosed report on financial intermediaries.

The FIP proposal, with its fairly uncritical plan for the support of plantations, logging concessions, Ecosystem Restoration Concessions and financial intermediaries raises multiple concerns, given the track records of all of these

entities.

Welcome government initiatives regarding “low carbon development”, official climate planning documents have proposed a threefold increase in pulp production and the conversion of approximately 28 million hectares of additional lands – most likely “production forests” – to timber plantations.¹⁰ In addition, there are plans to more than double palm oil production which, at current yields, would require an increase of 8.6 million hectares over the 2008 plantation area, requiring the conversion of 5 to 7 million hectares of forested areas. Other government statistics call for land use by palm oil plantations and other estate crops to total 9 million hectares by 2030.¹¹ Analyses of documents from the Ministries of Forestry, Agriculture and Energy, planned expansion in pulp, palm oil, agriculture, biofuel and coal sectors could utilize 40% of Indonesia’s forest areas (37 million hectares), 80% of Indonesia’s peatlands and 50% of the country’s forested orang utan habitat.¹²

Any credible attempt at reducing deforestation would need to address these plans, directly, and achieve a significant reduction in planned forest conversion by large companies active in the forest-related sectors, specifically palm oil and pulp and paper production.

According to a 2010 assessment, “within the context of international negotiations to reduce GHG emissions, there is no single internationally-approved definition of ‘degraded land’, nor is there one definitive Indonesian law or policy.¹³ . . . Under FAO criteria, areas with more than 10% canopy cover are defined as forests.²²² . . . In relation to GHG emissions abatement plans, the DNPI–Central Kalimantan regional government report ‘Creating low-carbon prosperity in Central Kalimantan’ states that ‘degraded land’ is ‘defined by the Ministry of Forestry’ as ‘lahan kritis’ – critical land.²¹⁶ ‘Lahan kritis’ (literally ‘critical’ land) is land legally designated by the Ministry of Forestry as having reduced ecological functions.²¹⁷ The Ministry of Forestry identifies 59 million ha of ‘critical land’ within the Forest Estate and a further 41 million ha outside the Forest Estate.²¹⁸ The DNPI–East Kalimantan

¹⁰ NPI/UNFCCC (2009): 33 and MoFor (2007a): 11. Based on 2007 production levels of 5.7 million tonnes, i.e., increase to around 18.5 million tonnes of pulp production annually; DNPI (2010a): 19; Verchot et al (2010): 5 reports ‘total new production capacity of approximately 8 million tonnes of pulp’; Harahap (2010) citing Industry Minister M.S. Hidayat: 2009 production capacity 7.9 million tonnes. According to the Industry Minister, as of 2009 Indonesia has an annual pulp production of 6.52m tonnes (Source: Harahap(2010)). MoFor (2008) Table IV 2.2.A gives HTI production as 22,321,885m³, which is sufficient to supply only 4.65 million tonnes pulp at a conversion factor of 4.8m³/tonne pulp, leaving 1.87 million

tonnes fibre (29%) that must come from other sources, assuming 2009 HTI production was on a par with 2008. 75% of fully granted HTI concessions (SK Definitif) were pulpwood, according to MoFor (2007b) (corresponding figure not available in following year’s report), cited in Greenpeace, Protection Money: How industry expansion plans would use climate funds to bankroll deforestation and undermine President Susilo Bambang Yudhoyono’s commitment to low carbon development, 2010.

¹¹ Ibid

¹² Ibid

¹³ Ibid, pg. 34

government report 'East Kalimantan Environmentally Sustainable Development Strategy' specifically singles out 'critical' and 'very critical' land as degraded land with abatement opportunities. It defines these areas as having forest cover of up to 40% and 20%, respectively, and cites the Ministry of Forestry as the source.²²¹ Given the relatively high forest cover levels within the definition, it is clear that relocating plantation development to 'critical' land is not synonymous with stopping deforestation of carbon-rich forests and peatlands."¹⁴

Despite the significant impact of the paper and pulp and palm oil sectors on Indonesia's forests, the FIP does not require a detailed analysis of current plans to expand paper and pulp production (including in South Sumatra) and palm oil production, including the number of additional hectares planned to be utilized given current growth rates and production practices.

There is no discussion of the fact that, according to various official and industry analyses¹⁵, with improved management practices, it is possible to double the current yield of palm oil plantations without any expansion onto additional land.

The FIP does not require that, partnership efforts with large scale private sector actors in the forest and plantation sector, should only occur with companies which have fulfilled the public disclosure of their offshore holdings described above. Nor does it require an independent credible audit to determine if proposed partner companies have engaged in illegal logging, have engaged in any of the predicate offenses associated with Indonesia's Anti-Money Laundering statute and are in compliance with national tax laws.

The definition of "degraded land" is not stated and the FIP does not ensure that any "degraded" lands are truly "bare" scrub-lands, not lands with forest cover. In addition, the FIP does not state that it requires that a social impact assessment be conducted to ensure that these lands are not currently occupied, managed or used by local communities.

Recommendations:

Given the significant impact of the paper and pulp and palm oil sectors on Indonesia's forests, the FIP should include a detailed analysis of current plans to expand paper and pulp production (including in South Sumatra) and palm oil production, including the number of additional hectares planned to be utilized given current growth rates and production practices.

According to various official and industry analyses¹⁶, with improved management practices, it is possible to double the current yield of palm oil plantations without any expansion onto additional land. Given the substantial room for increase in palm

¹⁴ Ibid, pg. 34

¹⁵ Ibid, pg. 43

¹⁶ Ibid, pg. 43

oil production yields, FIP support should only be provided for management-related yield increases and not for any physical expansion onto additional lands by the palm oil sector.

In addition, partnership efforts with large scale private sector actors in the forest and plantation sector, should only occur with companies which have fulfilled the public disclosure of their offshore holdings described above and after an independent credible audit determines that these companies have not engaged in illegal logging, have not engaged in any of the predicate offenses associated with Indonesia's Anti-Money Laundering statute and are in compliance with national tax laws.

The definition of "degraded land" must be clearly stated and must ensure that any "degraded" lands are truly "bare" scrub-lands, not lands with forest cover. In addition, there must be a social impact assessment to ensure that these lands are not currently occupied, managed or used by local communities.

3. Ecosystem Restoration Concessions; Safeguards for all concessions and plantations

The Ministry of Environment issued a letter on behalf of Indonesia's first ERC stating that it should be exempt from Indonesia's environmental impact assessment requirements (AMDAL) on the grounds that "there is no significant negative impact on the environment" from restoration activities. Instead a much weaker "Environmental Management Effort" and "Environmental Monitoring Effort" (UKL-UPL) was felt to be sufficient.¹⁷ This sets a worrying precedent for a number of reasons, including the fact that an AMDAL requires an assessment not only of environmental impacts, but also of social impacts. The early stages of the first ERC were marred by high levels of community conflict as well as the criminalization of forest farming communities unfortunate enough to be located in the area that was designated as an ERC without their knowledge or consent. Had a full AMDAL been carried out, it is possible that some of these conflicts might have been avoided.

The discussion of ERCs in the FIP document pertains solely to the difficulties faced by ERCs and the need to streamline the process by which they obtain permits and the need reduce their fees. There is no discussion about the potential impacts of ERCs on local communities, or analysis of the impacts of the first ERC on local communities, nor the high level of conflict associated with this ERC.

In 2011, operators of the first ERC and the Ministry of Forestry applied to the World Bank for GEF funding for a program to teach others how to implement Ecosystem

¹⁷ The implementation of the Environmental Impact Assessment of the forest restoration activities in South Sumatra Province, letter from State Ministry of the Environment, Republic of Indonesia to Director General of Forestry Product Development, Ministry of Forestry, 11/6/2006.

Restoration concessions and to speed up their approval and implementation.¹⁸ Initially World Bank Board approval for the proposed project was scheduled for November 2010, was postponed until November 15, 2011 and then was not implemented.

The Environmental and Social Management Framework for Ecosystem Restoration Concessions drafted by the ERC concession-holder and the World Bank, is nonetheless useful. The document states that, "In all instances ER activities are designed to restore the forests with native species and are not expected to have any adverse environmental or social activities."⁹² It positions forest-based communities as dangerous and notes "the threats that communities pose to biodiversity through a sense of exclusion, lack of awareness and understanding, and poverty."⁹³

The goal of the project was similar to that described in the FIP, that is, to "provide a level of comfort to the authorities enabling them to speed up the issuance of new licenses for ERCs."⁹⁴

Unlike the language of the FIP, however, the original plan proposed to develop a set of management standards, to promote the inclusion of local communities and to train other ERCs in the use of World Bank Safeguard Policies which include a requirement for "broad community support" for a project, for relatively robust information disclosure in the context of a lack of coercion, and other actions including social and environmental protections which are not mentioned in the discussion of ERCs in the FIP. This earlier proposal required other Ecosystem Restoration Concession holders to establish "working agreements between concession holders and local communities concerning the sharing of responsibilities and benefits in the use and management of ERCs. ."⁹⁶ Worryingly enough, in terms of potential impacts on local communities, the document listed six planned Ecosystem Restoration Concessions with a total of 180,000 people surrounding the concessions.⁹⁸ This would appear to imply the clear potential for significant social impacts.

The documentation drafted by the ERC and the World Bank is quite useful as a reference point because it underscores the intention of and feasibility of requiring ERC operators and other concession or plantation license holders – including for timber, pulp and palm oil -- to commit to meeting relatively robust safeguard standards, including those pertaining to consultation, transparency, disclosure and lack of coercion. These social and environmental standards should be a minimum requirement for ERCs as well as for other actors supported by FIP in the forestry sector.

In the FIP, there is no commitment that the FIP will require *prior moving forward with*

¹⁸ World Bank Project Information Document, Report No. 62314, 5/18/11; WB, PID, Report No. AB52050, 11/1/09, World Bank, Draft Environmental and Social management Framework for Ecosystem Restoration Concessions, 5/27/11.

any support for new ERCs, an independent audit of the first ERC, including a thorough independent documentation of land and forest conflicts, an analysis of the extent to which social and environmental safeguards have been implemented, and an analysis of the implementation of the terms of the ERC agreement with the Ministry of Forestry which stipulates that

“If in the IUPHHK Ecosystem Restoration of Natural Forest [concession] in production forest there are lands belonging to villages, fields, rice fields or those which have already been occupied and farmed, officially, by third parties, those lands shall be removed from the IUPHHK Ecosystem Restoration of Natural Forest [concession] work area.”

Recommendation: *We recommend that, prior moving forward with any support for new ERCs, the FIP should arrange for an independent audit of the first ERC, including a thorough independent documentation of land and forest conflicts, an analysis of the extent to which social and environmental safeguards have been implemented, and an analysis of the implementation of the terms of the ERC agreement with the Ministry of Forestry which stipulates that*

“If in the IUPHHK Ecosystem Restoration of Natural Forest [concession] in production forest there are lands belonging to villages, fields, rice fields or those which have already been occupied and farmed, officially, by third parties, those lands shall be removed from the IUPHHK Ecosystem Restoration of Natural Forest [concession] work area.”

“Apabila didalam areal IUPHHK Restorasi Ekosistem dalam Hutan Alam pada hutan produksi terdapat lahan yang telah menjadi tanah milik perkampungan, tegalan, persawahan atau telah diduduki dan digarap oleh pihak ketiga secara sah, maka lahan tersebut dikeluarkan dari areal kerja IUPHHK Restorasi Ekosistem dalam Hutan Alam.”

In addition, environmental and social safeguard standards, no less stringent than those agreed to by the first ERC in the draft Environmental and Social Framework, must be required of any ERC -- as well as any logging concession or plantation -- supported by the FIP.

All concessions, plantations and ERC must carry out a full Environmental Impact Assessment, which includes an assessment of social impacts.

4. Small, medium and large enterprises?

We note that the FIP makes reference to partnerships, ostensibly carried out by the IFC, with small and medium enterprises.

Our understanding is that the IFC definitions are as follows:

Microenterprises: <10 people, total assets or turnover < US\$100,000 per year

Small enterprises: 10 to 50 employees and total assets and/or annual sales between US\$100,000 and US\$3 million

Medium enterprises: 50 to 300 people, with total assets and/or annual sales between US\$3 million and US\$15 million

Recommendations: In the context of Indonesia, then, the FIP should include a clear definition of the enterprises to be targeted, most likely, what the IFC calls microenterprises, in addition to cooperatives instead of so-called “small” and “medium” enterprises with US\$3 million to US\$15 million in assets.