POSITION PAPER

SUSTAINABLE PALM OIL INDUSTRY IN INDONESIA

INDONESIAN CIVIL SOCIETY GROUPS

SERIKAT PETANI KELAPA SAWIT (SPKS) - LEMBAGA EKOLABEL INDONESIA (LEI)-FOREST WATCH INDONESIA (FWI) - JARINGAN PEMANTAU INDEPENDEN KEHUTANAN (JPIK) - KAOEM TELAPAK - YAYASAN SUMBERDAYA DUNIA INDONESIA - GREENPEACE INDONESIA - YAYASAN MADANI BERKELANJUTAN - INSTITUTE FOR ECOSOC RIGHTS - GAIA - TROPICAL FOREST FOUNDATION (TFF) -PADI INDONESIA, KALIMANTAN TIMUR - JASOIL, PAPUA BARAT - UNO ITAM, ACEH - LEMBAGA TIGA BERADIK (LTB) JAMBI - EVERGREEN, SULAWESI TENGAH - YAYASAN PUSAKA - SAYOGYO INSTITUTE – INDONESIA CENTER FOR ENVIRONMENTAL LAW – KEMITRAAN - GERAK ACEH - STABIL KALIMANTAN TIMUR - MATA ACEH - PERKUMPULAN BANTUAN HUKUM KALIMANTAN - PPLH MANGKUBUMI - JAPESDA GORONTALO - GRID KALIMANTAN BARAT – LPMA BORNEO, KALIMANTAN SELATAN - YAYASAN PEDULI NANGGROE ATJEH (PENA), ACEH - JIKALAHARI, RIAU - LEMBAGA TIGA BERADIK ¬(LTB) JAMBI - QBAR, SUMATERA BARAT

SUSTAINABLE PALM OIL INDUSTRY IN INDONESIA MUST BE BASED ON THE VISION TO

# # #

Stop deforestation rates and degradation of the environmental function and biodiversity within remaining forest cover

Stop conversion and increase forest protection and total protection on peat ecosystem; and

Give legal guarantee on the fulfillment of the rights of affected communities, including but not limited to indigenous communities, local communities, and small-holders and worker in significant and consistent manners.

#1 BACKGROUND

Palm oil is one of the prominent agriculture products in most part of Indonesia. Indonesia is the biggest palm oil producer in the world with production rate more than 30 million tons in 2015[1], though its production rate still below Malaysia. More than 70% of total production exported to international market[2] that includes India, Europe, and China, and other 60 countries[3]. In early 2017, the Government of Indonesia (GoI) set a target of producing 40 million tons of crude palm oil (CPO) by 2020[4].

In the global market, palm oil is the favorite vegetable oil compared to other vegetable oils due to its highest productivity rates. The demand from global market makes palm oil sector in Indonesia contributes to the state's income as much as USD 15 billion per year from total export (3% from Indonesia's Gross Domestic Product). Moreover, palm oil industry is also a source of livelihood for 4 millions of family consist of landowners and plantation workers, and 16 millions of family as indirect workers[5]. More than 40% of palm oil industry consists of small-scale farmers, which means palm oil sector is a driver for development at the village level[6].

However, on the other side, concerns are emerged from Indonesia and global communities on several issues related to palm oil plantations. On the legal matters, there are a lot of palm oil companies that operates without clean and clear permits status, such as in Central Kalimantan, 300 plantation business units operate covering 1.7 million hectares area, and only 85 units have permits that comply with clean and clear criteria[7]. Expansion of palm oil plantations during 2009 to 2013 has destroyed at least 515,964 hectares of natural forest[8] that caused the loss of biodiversity. Until 2013, around 1.54 million hectares of peat land were cleared and converted into palm oil plantation[9]. Expansion of palm oil also caused forest and land fires in 2015, and emitted greenhouse gasses. Economic cost for environment health due to forest destruction and land and forest fires that must be borne by the society reached up to USD 16.1 billion[10]. Moreover, from the social aspect, there are at least 776 conflicts between the communities and palm oil plantation recorded in 2015. Those concerns drive public demand to the GoI to improve governance on the palm oil sector in Indonesia.

The GoI policies on the sustainability and improvement of palm oil governance started in 2008 through the establishment of Indonesian Sustainable Palm Oil (ISPO) certification scheme in 2011, which then revised in 2015. The GoI has also ratified Paris Agreement on COP 21, and committed to reduce greenhouse gas emission, including through the establishment of National Peat Restoration Agency, moratorium of new concession development on peat land, and plan to issue policy on new permits moratorium for palm oil and mining sector.

Since the implementation of ISPO in March 2011 to February 2016, there were 225 ISPO certificates issued, which cover a total area of around 1.4 million hectares (until February 2017) and certified CPO as much as 5.9 million tons per year.

In one year since February 2016, there was a significant increase on issuance of ISPO certificates, reaching 290% from average number of certificates issued per year since ISPO certification applied in 2011. Unfortunately, the increasing number of companies that

obtained ISPO certificates is not followed by improvement of palm oil industry governance. It is marked through many problems such as:

a. Legality issues related to Business Use Rights (HGU)/ Plantation Business Permit (IUP) in forest areas in relation to the Provincial Spatial Plan, including the issuance of permits through non-procedural practices;
b. Hazardous and Toxic (B3) Waste Management Permit;
c. Planting on the riparian area;
d. Implementation of policies on peat land ecosystem protection;
e. Protection of high conservation values (HCV) and high carbon stock (HCS) areas.

High number of issuance of ISPO certificates is not followed by improvement on sustainable palm oil industry governance. It shows and affirms the low credibility and accountability of current ISPO system.

The low credibility and accountability in ISPO certification implementation, exacerbated by weak law enforcement on various violations have caused low acceptance from the market. There is a window to improve the sustainable palm oil industry, especially after 14 April 2016 when President Joko Widodo stated the commitment on palm oil moratorium[11]. This is the moment for Indonesia to reform palm oil industry to be more competitive and focus on the sustainability of environmental and social aspects.

The ISPO system supposed to be one of the keys of transformation process towards sustainable palm oil in Indonesia, not only by compliance with relevant regulations and other legality aspects, but also by implementing robust sustainability standards. It should include peat and forest protection, and recognition of rights of the workers, local and indigenous communities. Strengthening ISPO certification system that includes development of principles, criteria, and implementation mechanism must be done through credible participative process with multi-stakeholder and cross-sectoral involvement.

#2 PROCESS UPDATE

In June 2016, Coordinating Ministry on Economic Affairs established ISPO Strengthening Team through the Secretary of Coordinating Ministry of Economic Decree No. 54 Year 2016 on Indonesian Sustainable Palm Oil Certification System Strengthening Team. This team intended to do fundamental reform on certification and standardization system of sustainable palm oil industry in Indonesia. Until December 2016, the team conducted series of limited discussions with the stakeholders to promote and formulate **ISPO redesign focus.**

In a limited discussion attended by stakeholders including the government, academics, private/ industry sector, and civil society groups conducted in December 2016, there was an agreement on nine principles on ISPO certification standards[12] and several clauses in ISPO draft policy. The agreed principles and points will be followed up and further discussed through more extensive consultation process in 2017.

However, in January 2017, the Government conducted limited discussion on ISPO standard and neglected the prior agreement related to nine substantial principles of ISPO standard. It includes removal of two principles: traceability and transparency, and respect to Human Rights. It undermined the multi-stakeholder processes that have been conducted and there is a concern that the ISPO policy and regulation cannot be fully accepted by all stakeholders.

We, as the representatives of Indonesian civil society who have concerns on sustainable palm oil industry fully support the GoI spirit to redesign the certification system of the palm oil industry in Indonesia. However, we believe that the positive spirit has to be operationalized through participative, inclusive, transparent, and accountable processes.

In order to realize sustainable palm oil industry in Indonesia that emphasizes the sustainability aspect, we are expressing our position as open recommendations as follow:

CIVIL SOCIETY JOINT VISION

Transformation of sustainable palm oil in Indonesia must be based on the joint vision to:

- Stop deforestation rates and degradation of the environmental function and biodiversity within remaining forest cover;
- Stop conversion and increase forest protection and total protection on peat ecosystem; and
- Give legal guarantee on the fulfillment of the rights of affected communities, including but not limited to indigenous communities, local communities, and small-holders and worker in significant and consistent manners.

The joint vision formulated in order to support Indonesia's agenda on: (i) adressing challenges on climate change mitigation and improvement of natural resources governance through policy framework and its implementation; (ii) improving market acceptance for

palm oil as one of the strategic commodity; and (iii) ensuring protection, respect, and fulfillment of human rights.

MAIN OBJECTIVES OF INDONESIAN SUSTAINABLE PALM OIL CERTIFICATION SYSTEM

Considering the problems stated previously, therefore the certification system should pay attention to the following:

1. The certification system must be implemented with the main objectives to ensure sustainable implementation of palm oil sector in Indonesia based on the above joint vision;
2. Legal compliance with policy and regulations is an initial step towards the objectives and that the system is one of the instruments to ensure all fresh palm fruit bunches (TBS) produced in Indonesia come from legal sources, processed and distributed based on existing policy and regulations[1]; and
3. The certification system must aim to improve governance of palm oil plantation sector and natural resources management in general.

SPECIFICALLY, SYSTEM REDESIGN AND STRENGTHENING MUST IMPLEMENT THINGS AS FOLLOW:

1. FUNDAMENTAL PRINCIPLE

Implemented scheme must emphasize good governance principles that include: (i) transparency; (ii) accountability; (iii) responsible; (iv) impartial; (v) independency; (vi) fairness and equality; and (vii) multi-stakeholders[13].

2. IDENTIFICATION OF ACTORS IN SUPPLY CHAIN OF PALM OIL SECTOR IN INDONESIA

The main actors identified in palm oil supply chain are: (i) smallholder farmers – based on the classification in the policy and regulations [14]; (ii) plantation company; (iii) intermediary/ collector; (iv) palm oil factory; (v) refinery; (vi) trader, including non-producer. In order to effectively implemented, the scope of certification system must cover all those actors. Moreover, various schemes for verification and facilitation of actors such as smallholder farmers and intermediary/ collector need to be identified and formulated.

3. PRINCIPLES AND CRITERIA MUST BE BASED ON THE SUPPLY CHAIN STRUCTURE

Formulation and implementation of standard principles, criteria and indicator in this system need to consider supply chain structure, including all actors, their conditions and capacity. Implementation of principles and criteria can be done gradually with legal compliance as the minimum compliance for all actors as the precondition towards sustainable practices[15].

4. LEGALITY ASPECT IN ISPO

Legality in ISPO is based on existing policy and regulations at the national and local level that includes legal compliance on licensing, production, environment, and social aspects. Considering the impact of sustainable palm oil plantation industry is not limited only in one sector, legality aspect cannot be perceived in sectoral scope, but must be seen holistically by considering legal compliance with other sectors related to sustainable palm oil plantation industry. It includes but not limited to Consumer Law, Human Rights Law, Law on Environment Protection and Management, and Forestry Law.

5. GOVERNANCE AND PROCESS OF CERTIFICATION SYSTEM REDESIGN

- **Fundamental Principle for System Redesign Process**

  Redesign process must be conducted (i) transparently, with open access to information through wide publication, easy-to-access and can be understood by each stakeholder; (ii) in participatory manner, with stakeholders (government, non-government, private, civil society, and community) actively involved in the decision making processes; and (iii) with open mechanism through public consultation at the national and local level by ensuring equality on capacity.

- **Stop Expansion of Palm Oil Plantations**

  Based on the President Jokowi statement which followed by related ministries[16], governance reform or certification system must be started with concrete steps to stop expansion of pam oil plantations. Therefore, the main focus is on the intensification of existing plantations and adjustment on the achievement target of national palm oil export.

- **Review on Land Legality of Existing Palm Oil**

  The redesign process must prioritize review of palm oil land legality to support improvement of land governance. Review and identification of land status will show: (i) proportion of palm oil plantations that operate without permit and/ or operate in forest or protected and conservation areas; (ii) proportion of land managed by the company and communities; and (iii) process of permits issuance chronologically. The result of the review will become real basis for the GoI to decide the follow up actions on law enforcement, improvement of permit and licensing system, support program for smallholder farmers and local communities, and conservation program.

- **Strengthening the affected communities (including but not limited to smallholder farmers, workers, indigenous communities, and local communities)**

  The system redesign process must prioritize capacity building for affected communities related to social, economic, and environmental aspects by considering approaches of High Conservation Value (HCV), High Carbon Stock (essential ecosystem), Free Prior Informed Consent (FPIC), and fair and equal partnership.

- **Policy and Regulation Framework Reform towards Sustainable Palm Oil Plantation**

  The system redesign process must drive policy and regulation frameworks reform towards transformation of sustainable palm oil plantation industry. Some examples include sustainable peat land governance and President Jokowi's statement related to peat land total protection, licensing review and increasing palm oil production

capacity through intensification. Concerning the matters, the 40 million tons target by 2020 must be reviewed because it can potentially trigger uncontrolled expansion of palm oil plantation, which is not in line with the current government's commitment and policy.

- **Reform of Bureaucracy and the Stakeholders' Capacity**

  This system redesign process must be conducted in parallel with the bureaucracy reform and capacity building for government in various level and/ or other stakeholders who are key to effective system implementation and acceleration towards sustainable palm oil transformation.

6. STRUCTURE OF THE INSTITUTIONAL SYSTEM

- To be able to implement the scheme consistently with the fundamental principle, then the institutional structure must be: (i) credible; (ii) put forward public participation; (iii) open; and (iv) accountable through check and balance system.
- The institutional structure can be realized through formulation of roles and responsibility distribution as follows:

Regulator | Roles of the Government

a. *The government is the developer as well as the owner of the certification system.*
b. *The developed standard, registered to the National Standardization Agency (BSN) to be established as Indonesia National Standard (SNI).*
c. *The government gives authorities of accreditation to the National Accreditation Committee (KAN) to accredit Certification Body (LS).*
d. *The government gives space and guidance, and protection to the Independent Monitor to monitor the implementation of certification system as check and balance mechanism.*
e. *The government develops a committee to implement dispute resolution mechanism if there is any grievance submitted by the communities and independent monitor, which cannot be resolved at the LS level.*
f. *The government follows up audit reports to ensure continuous improvement of palm oil business actors' performance.*
g. *The government develops certification information system through internet platform (and other means) as public information to strengthen market competitiveness and develop policies.*

Accreditation Body | National Standardization Body (BSN) – National Accreditation Committee (KAN)

a. *BSN develops Technical Committee to develop special SNI for the certification system, by conducting all steps of programming – formulation of draft – opinion polling/ public consultation – agreement – establishment, and maintenance of the specific SNI.*
b. *KAN establishes requirements that must be fulfilled by LS and procedure of accreditation that must be followed by LS.*
c. *KAN accredits LS as one of the requirements to obtain designation from the government.*

Certification Body (LS)

a. *LS are independent or third party institutions that conduct audit on compliance, conduct decision-making mechanism on certification, and issue certificate for plantation business.*
b. *LS must fulfill KAN accreditation in order to be designated by the government as LS that can conduct assessment/ audit.*
c. *LS must consult with the communities and independent monitor in all assessment or audit processes.*
d. *LS must address certification grievance submitted by the communities and independent monitors, and provide explanation and decision on that grievance.*
e. *LS are responsible to submit assessment results and audit reports to the government.*
f. *LS are responsible to publish resume of assessment results and audit reports on their website and the system's website.*

Independent Monitors (PI)

a. *Independent Monitors are Indonesian legal entity civil society, both individuals and institutions, who conduct monitoring function related to the implementation of public service.*
b. *Independent Monitors conduct monitoring on the implementation of the certification system as a check and balance system.*
c. *Independent Monitors perform their roles by utilizing available mechanism and following the guidance within the certification system.*
d. *Information and grievance submitted by the Independent Monitors become consideration in certification decision-making conducted by LS, certification dispute resolution managed by Certification Dispute Committee, accreditation of LS conducted by KAN and standard formulation done by the Technical Committee of BSN.*

Plantation Business Unit (UP) and supply chain actors

a. *Actors in supply chain who are responsible to implement certification system are: (i) smallholder farmers – based on the classification stated in the law and regulations[17]; (ii) plantation company; (iii) intermediary/ collector; (iv) palm oil factory; (v) refinery; (vi) trader, including non-producer.*
b. *The government is responsible to support independent smallholder farmers to get certified through the system's scheme and conduct sustainable practices.*

Information System

The Government develops and manages open, easy-to-access, valid, and current/ updated information system.

7. LAW ENFORCEMENT

The certification system for sustainable palm oil plantation business must be followed and strengthened by law enforcement against identified non-compliance and violations – despite non existent grievance or reports- and conducted by the authority in each level of government in high integrity, transparent and consistent manners.

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[1]http://ksp.go.id/presiden-siapkan-moratorium-lahan-kelapa-sawit-dan-lahan-tambang/
[1] Those nine principles are: 1) Legality of Plantation Business/ Complying Regulation applied in Indonesia; 2) Plantation management; 3) Protection on primary forest and peat land from utilization; 4) Management and monitoring of environment/ protection on environment through responsible plantation practices; 5) responsibility to the workers; 6) social responsibility and Communities Economic Empowerment/ empowerment of small scale farmer, indigenous and local communities; 7) Improvement of sustainable business/ sustainable improvement; 8) tracking and transparency; and 9) respect to human rights.
[14] Summarized from several resources, such as Law No.28/1998 on Statecraft Clean from Corruption, Collusion, and Nepotism; the UN Development Program on Good Governance Principles, *UNDP Forest Governance Index*, 2014
[15] With considering needs to accommodate several typology of additional smallholder farmers and other actors in supply chain, such as (i) hereditary smallholder farmer; (ii) worker/ smallholder farmer who do not own the land (transmigration, migrations due to poverty, etc.); and (iii) big scale farmers (between 4-25 hectares). Reference: Research conducted by *RCCC-UI, INOBU and Daemeter.*
[16]In the compliance context, this system also must consider the roles of government to facilitate independent smallholder farmers who need to get intensive support.
[17] http://www.setneg.go.id/index.php?option=com_content&task=view&id=11271&Itemid=55 and Circular Letter of Minister of Agraria and Spatial Plan No. 4252/14.3/IX/2016 on moratorium of new or exploitation of peat land for forestry and plantation business.
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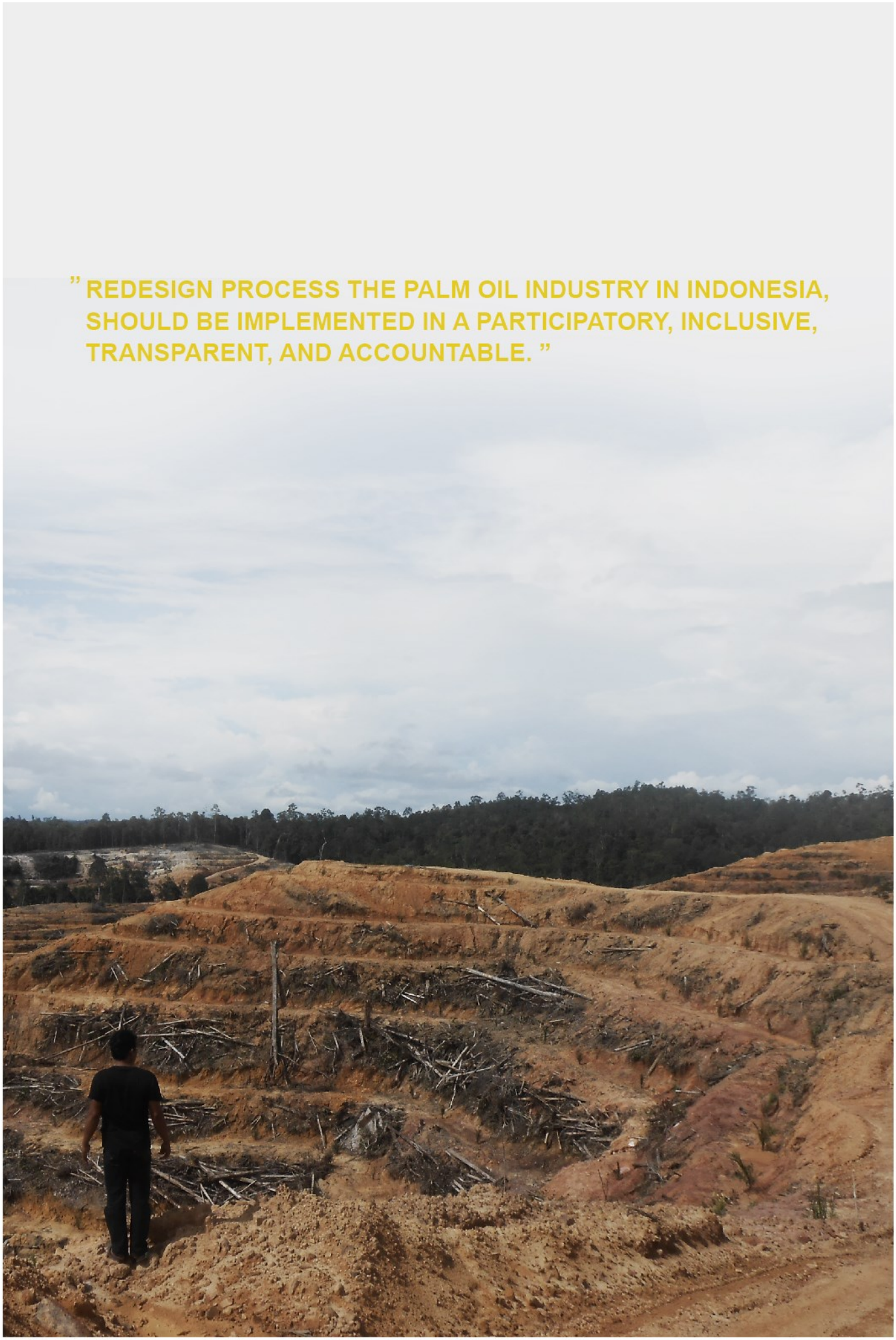
” REDESIGN PROCESS THE PALM OIL INDUSTRY IN INDONESIA, SHOULD BE IMPLEMENTED IN A PARTICIPATORY, INCLUSIVE, TRANSPARENT, AND ACCOUNTABLE. ”