

Amicus

CURIAE

*Terhadap perkara nomor
1186/pdt.g/2024/pn.jkt.sel*

**TERKAIT
GUGATAN
PERKUMPULAN
TRANSFORMASI
UNTUK
KEADILAN
TERHADAP BANK
MANDIRI ATAS
DUGAAN
PENDANAAN
PERUSAK HUTAN
OLEH PT ASTRA
AGRO LESTARI.**

*Menagih Tanggung Jawab
Perbankan atas Pendanaan yang
Merusak Lingkungan Lingkungan
Hidup dan Melanggar Hak Asasi
Manusia!*

*Disusun dan Diajukan oleh:
WAHANA LINGKUNGAN HIDUP
INDONESIA (WALHI) RIAU
Pekanbaru, Indonesia
Mei 2025*

AMICUS CURIAE

CASE NUMBER: 1186/PDT.G/2024/PN.JKT.SEL
AT THE SOUTH JAKARTA DISTRICT COURT

BETWEEN

TRANSFORMASI UNTUK Keadilan Indonesia

Plaintiff I

Ahmad, SH

Plaintiff II

Herni Ramdhaningrum, M.P.P.

Plaintiff III

Harvina Nurul Fatimah

Plaintiff IV

AGAINST

PT. Bank Mandiri (Persero) Tbk

Defendant I

PT. Astra Agro Lestari Tbk

Co-Defendant I

PT. Agro Nusa Abadi

Co-Defendant II

**WAHANA LINGKUNGAN HIDUP INDONESIA
WALHI Riau
2025**

No. : /WALHIRiau/V/2025
Attachments : 1 File
Matter : Written Statement from WALHI Riau as a Friend of the Court (Amicus Curiae)

Your Honor,
Head of the South Jakarta District Court
Cq. Panel of Judges for Case Number: 1186/PDT.G/2024/PN.JKT.SEL
In Jakarta

With respect,

Our greetings and prayers, we hope that the Panel of Judges in the case of the Panel of Judges Case Number: 1186/PDT.G/2024/PN.JKT.SEL is under the protection of God Almighty.

Indonesian Environmental Forum (WALHI) Riau is one of 29 WALHI Foundation Representative Offices spread across Indonesia. WALHI Riau in its human rights and environmental advocacy activities is bound by the principles and values contained in the WALHI Foundation's articles of association and bylaws.

Please allow WALHI Riau to convey through this letter amicus curiae to our respected Panel of Judges. Amicus curiae this is related to the lawsuit Transformation Association for Justice, et al. The lawsuit substantially encourages the responsibility of all parties, especially banking institutions (Bank Mandiri) in the spirit of honoring human rights and the environment.

According to WALHI Riau, this case is an important momentum for the South Jakarta District Court to correct and encourage banks, regulators, and the government in funding activities for plantation and extractive industry activities. Funding processes that are carried out carefully and cautiously will reduce the negative impacts caused by these activities.

Thus is this amicus curiae document conveyed. We would like to thank the Honorable Panel of Judges for their attention and cooperation in case Number: 1186/PDT.G/2024/PN.JKT.SEL

To environmental justice and sustainability!

Pekanbaru, May 27, 2025

With courtesy,

Regional Executive of WALHI Riau



WALHI
Eksekutif Daerah Riau

Boy Jerry Even Sembiring
Director

Copy:

1. Chief Justice of the Supreme Court
2. Association of TuK INDONESIA
3. Arsi

FOREWORD

With due respect, addressing the Panel of Judges in case Number:
1186/Pdt.G/2024/PN.Jkt.Sel

WALHI Riau as a legal entity is part of the Indonesian Environmental Forum Foundation (WALHI). This organization carries out mainstreaming of justice issues in human rights and environmental advocacy activities. The WALHI Foundation has been carrying out such advocacy work nationally since October 1980. Meanwhile, its activities in Riau have been intensively carried out since February 2003. Since then, WALHI Riau has consistently carried out human rights and environmental advocacy work consistently throughout the Riau region and parts of the Riau Islands.

WALHI Riau's participation in this *amicus curiae* is a form of solidarity with our friends *Transformasi untuk Keadilan Indonesia, et al.* for their lawsuit at the South Jakarta District Court. The lawsuit which substantially encourages the responsibility of all parties, especially banking institutions (Bank Mandiri) in the spirit of honoring human rights and the environment. For us, this solidarity is important to provide input to the Honorable Panel of Judges to produce an impartial decision, but firmly ensure good things in honoring human rights and the environment. This solidarity is also a form of gratitude from WALHI Riau to all parties, including *Transformation Association for Justice, et al.* who have given solidarity to our work in defending human rights and the environment. Solidarity that is beyond the boundaries of any administrative area.

This solidarity is also given, because there are similar issues related to palm oil plantation activities directly affiliated with PT Astra Agro Lestari Tbk in Riau. There are several companies directly affiliated with PT Astra Agro Lestari Tbk indicated to be related to the Forest and Land Fires (Karhutla), agrarian conflicts, and several other environmental issues. We do not specifically include these findings, but the Honorable Panel of Judges can see this by visiting our website, at www.walhiriau.or.id or www.eyesontheforest.or.id.

In our position as friends of the court, we hope that the *amicus curiae* can be considered seriously by exploring, following, and comprehending the development of legal values that exist in society, environmental justice values and human rights values in general.

We hope that what we have conveyed can help produce a decision that breaks the chain of funding for palm oil plantation businesses and other businesses that threaten the fulfillment of human rights and environmental protection. We hope that in the future, such funding will be carried out more seriously by paying attention to the principles of fairness, thoroughness, and caution—No longer a scourge for society and the environment. Appropriate funding will contribute to ensuring a more humane and better world for the next generation.

To environmental justice and sustainability!

Pekanbaru, May 27, 2025

With courtesy,

WALHI Riau

Boy Jerry Even Sembiring

Director

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I. INTEREST OF THE AMICI

Your Honor,

Before we express our views in this Amici, first allow us to explain our interests in the case *a quo*, our statement of interests is as follows:

1. That the **Indonesian Environmental Forum (WALHI) Riau** is one of 29 Branch offices of the **WALHI Foundation Representative Offices** in Indonesia ("Hereinafter referred to as Amici);
2. That WALHI is a national environmental organization in Indonesia which was founded on 15 October 1980 and has been intensively carrying out work to defend human rights and the environment in Riau since February 2003;
3. That WALHI was founded to encourage recognition of the right to the environment and to protect and fulfill human rights as a form of state responsibility for fulfilling the people's sources of life;
4. That in order to achieve these goals, WALHI carries out environmental and human rights advocacy work in activities which include: (1) environmental rescue; (2) organizing the people; (3) critical education; (4) campaigns and research; (5) litigation (*public interest litigation*); (6) building alliances and civil society strength; and (7) building public support;
5. That in carrying out its work and activities, WALHI is bound and oriented towards several values, namely human rights, democracy, gender justice, ecological justice, intergenerational justice, social brotherhood, anti-violence, and diversity;
6. That for almost half a century, WALHI has been carrying out environmental and human rights advocacy work, WALHI has initiated, opened and contributed to legal developments through cases with a Public Interest dimension (*public interest litigation*) and the Environment in Indonesia, some of these important cases are as follows:
 - a. WALHI's lawsuit vs PT Inti Indorayon Utama (IIU) and 5 Government Agencies at the Central Jakarta District Court in an Environmental Pollution case, in 1988;
 - b. WALHI's Pretrial Lawsuit Vs Mojokerto District Attorney's Office in the Case of Termination of Prosecution against PT. Pabrik Kertas Indonesia (PT. Pakerin) which pollutes the environment; and
 - c. WALHI's lawsuit vs President of the Republic of Indonesia at the Jakarta State Administrative Court in the case of the Issuance of Presidential Decree No. 42 of 1994 concerning Loan Assistance Originating from Reforestation Funds to PT. Industri Pesawat Terbang Nusantara (PT. IPTN), in 1994;
7. That according to *Prof. Paulus Effendie Lotulung, SH* in his book *The Role of Jurisprudence as a Source of Law, 1997/1998 (pp. 15 and 20)*, The decision of the Central Jakarta District Court in 1988 in the lawsuit case by the WALHI Environmental Organization against PT. Indorayon Utama in the matter of environmental pollution, can be said to be a *milestone* or as a *Landmark decision* because he has participated in developing legal science and has become a source of inspiration for the emergence of articles of *legal standing (ius standi)* in environmental organizations;
8. That until now, WALHI has consistently represented the interests of the environment and future generations in its various lawsuits. In addition to the scope of litigation, WALHI has consistently

carried out environmental and human rights advocacy, such as assisting victims of agrarian and natural resource conflicts, publishing various legal opinions, research publications, campaigns and raising public support for environmental protection and human rights;

9. That as an extension of WALHI in Riau Province and an institution that is concerned with environmental protection in general, WALHI Riau views that this case *a quo* has a very close relationship with the concern and work carried out by Amici, therefore Amici feels it is important to convey their views on the matter *a quo*.

II. POSITION OF AMICI CURIAE IN INDONESIAN COURTS:

10. That Siti Aminah's *Becoming a Friend of Justice: Guide to Preparing an Amicus Brief, 2014* (p.11), explains the origin of *amicus curiae* from Roman Law. Since the 9th century, this practice has become common in countries with a tradition of legal systems in *common law*, especially in the appellate courts or in major and important cases. Later in the 17th and 18th centuries, participation in *amicus curiae* was widely recorded in the *All England Report*. From this report we know several descriptions related to *amicus curiae*:
 - a. The main function of *amicus curiae* is to clarify actual issues, explain legal issues and represent certain groups;
 - b. *Amicus curiae*, relating to facts and legal issues, does not have to be prepared by a lawyer;
 - c. *Amicus curiae* may not be related to the plaintiff or defendant, but has an interest in a case;
 - d. Serves as a license to participate as *amicus curiae*.
11. That *Amicus Curiae* is a legal term, which literally comes from Latin meaning "*friend of the court*". The United States Supreme Court defines *amicus curiae* as (Siti Aminah:2014, page 8): "*A person or group who is not a party to a lawsuit, but has a strong interest in the matter, will petition the court for permission to submit a brief in the action with the intent of influencing the court's decision.*"
12. That the elements of an *amicus curiae* can be described as follows (Siti Aminah: 2014, page 11):
 - a. A person, group of people or organization who has no relationship and interest with the parties in a case;
 - b. have an interest and concern regarding the results of court decisions;
 - c. by means of give opinion/information based on his competence regarding legal issues or legal facts or other matters related to the case to the court;
 - d. for assist the court in examining and deciding cases (becoming a friend);
 - e. in a way voluntary and self-initiative, or because the court requests it;
 - f. in the form of provide a "legal opinion", or provide information at trial, or through scientific work;
 - g. is intended for cases relating to public interest, and
 - h. the judge has no obligation to take it into consideration when deciding the case.

13. That according to its meaning and purpose, *Amicus Curiae* is a legal term, which literally comes from Latin, meaning "*friend of the court*", are usually filed for cases that are in the judicial process and issues of public interest, such as social issues or civil liberties that are being debated, where the judge's decision in the case in question will have a broad impact on the rights of the community. In relation to the purpose of *Amicus Curiae*, there can be reference to three interests in which an *Amicus Curiae* is submitted, namely:
 - a. For one's own interests or group interests those represented who may be affected by the decision of the case, regardless of the interests of the parties, so that the court does not decide only based on the reasons put forward by the parties;
 - b. For the benefit of one of the parties to the case are the Plaintiffs and help strengthen their arguments, so that the court has the confidence to "win" the party or grant their lawsuit;
 - c. For the public interest. In this case, the friend of the court provided information on behalf of the interests of the wider community who will be affected by the decision.

14. That the spirit of *amicus curiae*, namely to help judges to be fair and wise in deciding a case, has been recognized and practiced in the legal system in Indonesia. *Amicus curiae* has been submitted by WALHI in several cases, including:
 - a. *Amicus Curiae* Case for Application for Material Review Rights with registration number Number 53 P/HUM/2015 against Joint Regulation of the Minister of Home Affairs, Minister of Forestry, Minister of Public Works and Head of the National Land Agency Number 79 of 2014, Number PB.3/Menhut-II/2014, Number 17/PRT/M/ 2014, Number 8/SKB/2014 concerning Procedures for Settlement of Land Ownership Located in Forest Areas and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 9 of 2015 concerning Land Management Procedures. Method of Determining Communal Rights to Land of Customary Law Communities and Communities Residing in Certain Areas, submitted by WALHI, Epistema Institute, AruPa, Young Indonesian Foresters (RMI), Agrarian Reform Consortium (KPA), Association for Community-Based and Ecological Legal Reform (HuMa) Indonesia, Institute for Economic and Social Research, Education and Information (LP3ES), Participatory Mapping Network (JKPP), Customary Territory Registration Agency (BRWA), Auriga Foundation, Pusaka Bentala Rakyat Foundation, Institute for Community Study and Advocacy (ELSAM), Betang Borneo Foundation (YBB), Temanggung Rural Development Study Circle (LSPP), Village Study Institute for Farmers (LSDP) SD INPERS, 2015;
 - b. *Amicus Curiae* in the murder case of Indra Pelani at the Jambi District Court, filed by WALHI, KPA, ELSAM, the Commission for Missing Persons and Victims of Violence (KontraS), and Transformation for Justice (TUK) Indonesia, 2015;
 - c. *Amicus Curiae* in the Criminal Case against Bongku Bin Jelodan in Criminal Case Number 89/Pid.B/LH/2020/PN BIs at the Bengkalis District Court, filed by WALHI, 2020;
 - d. *Amicus Curiae* in State Administrative cases with registration numbers 29/G/2021/PTUN.JPR, 30/G/2021/PTUN.JPR, 31/G/2021/PTUN.JPR, and 32/G/2021/PTUN.JPR at the Jayapura State Administrative Court (PTUN), filed by WALHI Papua Regional Executive, Pusaka Bentala Rakyat Foundation, Indigenous Peoples Alliance (AMAN) of Sorong Raya Region, Greenpeace Indonesia, 2021;

- e. Amicus Curiae in the case of PT Trisetia Usaha Mandiri (TUM) vs. Regent of Pelalawan Riau, regarding the revocation of the company's Cultivation Plantation Business License (IUP-B) on Mendol Island, at the Medan State Administrative High Court (PT TUN), filed by WALHI, KPA, ICEL and the Indonesian Legal Aid Foundation (YLBHI), 2023;
 - f. Amicus Curiae Case of Haris Azhar case register number 202/Pid.Sus/2023/PN Jkt.Tim and Fatiah Maulidiyanti case register number 203/Pid.Sus/2023/PN Jkt.Tim at the East Jakarta District Court, filed by WALHI and ICEL, 2023.
15. That the concept of *amicus curiae* is also contained in the Constitutional Court Regulation No. 2 of 2021¹, which explains the related parties who have direct and indirect interests, namely:

Article 26:

- (1) The **Related Parties** consist of:
 - a. Related Parties with direct interests;
 - b. Related parties who have indirect interests.
 - (2) The Related Party with a direct interest as referred to in paragraph (1) letter a is a party whose rights and/or authority are directly affected by the interests of the subject of the Application.
 - (3) Indirectly interested related parties as referred to in paragraph (1) letter b are parties whose rights, authority and/or interests are not directly affected by the subject matter of the Application but due to their concern for the Application in question, may submit their statement as ad informandum.
16. That the Judge's obligation is to explore, follow and understand the legal values and sense of justice that exist in society as regulated in Article 5 paragraph (1) of Law No. 48 of 2009² open up information and opinions as widely as possible from various groups, both those who are the parties to the case, or through input from parties outside the parties to the case, including space for *amicus curiae*.

“Judges and constitutional judges are required to explore, follow, and understand the legal values and sense of justice that live in society.”

17. Thus, an *amicus curiae* can be used as a matter of consideration by the Panel of Judges in exploring the legal values and sense of justice that exist in society when examining, considering and deciding cases. Apart from that, the function *amicus curiae* namely to advance the development of law, because *amicus curiae* can provide an overview of the law and its cases, especially its impact on other parties who are not involved in the case in court, and also assess the law and its cases impartially and fairly (*impartial and fair*).

¹ Indonesia, Constitutional Court Regulation on Procedures in Testing Laws, PMK No. 2 of 2021,

² Indonesia, Judicial Power Law, Law No. 48 of 2009, State Gazette No. 157 of 2009, TLN No. 5076;

III. OPINION OF THE AMICI:

III-1. IMPLEMENTATION OF HUMAN RIGHTS PRINCIPLES IN BANKING:

18. That Banks, either directly or indirectly, can cause and contribute to or impact on human rights conditions. This can occur either through their activities, products or services through their financial services policies, or through their knowledge and level of involvement with parties or projects financed by them. In contrast, through appropriate and adequate policies, Banks can also prevent, mitigate and remediate unintended negative impacts from their activities. In general, there are currently several initiatives from banks such as initiatives to create safeguards to address social and environmental impacts.
19. That as part of a business entity, banks also have a responsibility to comply with business and human rights guidelines and principles. Under the second pillar of the UNGPs, banks as companies must respect human rights;
20. That because the risk of serious human rights violations increases in conflict-affected areas, States through the Bank should help ensure that business entities operating in such areas are not complicit in human rights violations, including by³:
 - a) Engage as early as possible with business entities to help them identify, prevent and mitigate human rights risks in their business activities and relationships;
 - b) Provide adequate assistance to business entities to assess and address increased risks of violations, with particular attention to gender-based and sexual violence;
 - c) Denying access to public assistance and services to business entities involved in gross human rights violations and refusing to cooperate in resolving the situation;
 - d) Ensure that policies, legislation, regulations and enforcement measures are effective in addressing the risks of business involvement in gross human rights violations.
21. That in the case *a quo*, the Panel of Judges is expected to explore to what extent the human rights principles as referred to have been implemented before the Bank provided the loan;

³ Office of the High Commissioner for Human Rights: Guiding Principles on Business and Human Rights: Implementing United Nations Framework: Protect, Respect and Remedy, p. 9

III-2. IMPLEMENTATION OF PRUDENTIAL BANKING PRINCIPLES

22. That one of the important principles in law, especially environmental law, is *precautionary principle* or what is commonly known as the precautionary principle.
23. That the precautionary principle is a principle that has developed and is widely applied in the environmental legal regime, which emphasizes the importance of taking early preventive measures against potential environmental damage, even though there is no full scientific certainty regarding the impacts that will arise.
24. That in general, a *precautionary principle* is interpreted as an obligation to take preventive measures to avoid or minimize the possibility of negative impacts on the environment before these impacts actually occur.
25. That the principle of banking prudence in the case *a quo* cannot be measured using environmental principles as well as the principle of prudence/early prevention (*precautionary principle*) which has been agreed in the Rio Declaration (*Rio Declaration on Environment and Development*) 1992, which in Article 15 explains:
"In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."
26. That in essence, this principle emphasizes how a legal entity carries out early prevention so that there is no decline in the quality of the environment due to pollution, and regulates preventive measures so that pollution and environmental damage do not occur. This prevention is carried out on activities and/or businesses that are not yet known. how extensive and large the loss and/or damage is. Prevention is carried out by taking real steps, even though there is no solid scientific evidence regarding how extensive and large the possible consequences are. This principle can apply to activities that have serious impacts and the damage cannot be restored (*irreversible damage*);
27. That the principle of prudence is closely related to actions taken by the government, public institutions, and financial institutions such as banks, especially in their relations with citizens as legal subjects who are affected by the policies or decisions taken.
28. That the application of the precautionary principle is very important to prevent failure or error in the decision-making process by the government or other public institutions, which has the potential to cause serious harm to the human rights of citizens.

29. That this principle was later adopted in Article 2 letter f of Law No. 32 of 2009⁴, as follows:

“Environmental protection and management are implemented based on the principle of: f. precaution”

“What is meant by “principle of precaution” is that uncertainty regarding the impact of a business and/or activity due to limited mastery of science and technology is not a reason to postpone steps to minimize or avoid threats to environmental pollution and/or damage”
30. Although the precautionary principle initially developed in the realm of environmental law, conceptually it is possible to expand its application, particularly in the context of accountability for actions that impact the wider community.
31. That the expansion of the application of the precautionary principle is based on the scope of the substance of the principle which basically covers two main areas, namely environmental protection and health protection, both of which are closely related to the basic rights of citizens.
32. That the *precautionary principle* is a legal principle that has developed not only in the realm of public law, but also in private law, and is recognized and applied in both national legal systems and international law.
33. That in the context of civil law in Indonesia, the principle of prudence is also known and applied specifically in the field of banking law through the concept *prudential banking*, which emphasizes the importance of caution in every action and decision taken by financial institutions.
34. That in *prudential banking*, the principle of prudence is interpreted as a basis for ensuring truth in thinking and acting, which means that every decision taken must be based on mature, accurate considerations and avoid risks that could harm other parties, especially customers or the public.
35. That according to *Black's Law Dictionary*, legally the term *prudence* defined through several key terms, namely *carefulness*, *precaution*, *attentiveness*, and *good judgment*. These terms refer to the standard of care applied in an action or decision, which refers to the degree of care demanded by the situation or circumstances in which the principle is applied.
36. That in legal terminology, the term *prudence* generally associated with attitude *care* and *diligence*, as opposed to *negligence* or negligence, thereby demonstrating a legal obligation to act with care in the face of potential risks or losses;
37. That the Bank is guided by and applies the principle of prudence. This principle is manifested in the form of consistent application based on good faith towards all requirements and laws and regulations related to the provision of credit by the bank concerned (Jessy Darmawan, 2008);

⁴ Indonesia, Environmental Protection and Management Law, Law No. 32 of 2009, State Gazette No. 140 of 2009, TLN No. 5059.

38. That based on Article 8 paragraph (2) of Law No. 10 of 1998, Commercial Banks are required to have and implement credit and financing guidelines based on sharia principles, in full as follows.⁵:

“Commercial Banks are required to have and implement credit and financing guidelines based on Sharia Principles, in accordance with the provisions stipulated by Bank Indonesia.”

39. That furthermore, as explained in Article 8 paragraph (1) of Law No. 10 of 1998, Banks must pay attention to the results of AMDAL for large-scale and/or high-risk companies so that the projects they finance continue to maintain environmental sustainability, in full as follows:

“...in addition, banks in providing credit or financing based on Sharia Principles must also pay attention to the results of the Environmental Impact Analysis (AMDAL) for large-scale and/or high-risk companies so that the financed projects continue to maintain environmental sustainability.”

40. That in relation to the *precautionary principle*, Bryan A. Garner explains that etymologically the term *precaution* comes from the Latin “*prae*” which means “before”, and “*caution*” which means “security” or “protection”.
41. That in the *Black’s Law Dictionary*, the term *caution* is interpreted in two meanings, namely: (1) *security given to ensure performance of some obligations*, and (2) *the person who gives the security*.
42. That the explanation of the meaning confirms that the precautionary principle has a strong conceptual basis in law, which demands preventive measures, protection and responsibility as part of the general principle of caution in decision-making, especially when related to risks to the public interest or the rights of the community.
43. That in connection with this case *a quo*, the precautionary principle becomes very relevant considering that the policy in question has the potential, both directly and indirectly, to cause serious impacts that cannot be recovered (*irreversible*).
44. That precisely in conditions where there is the potential for serious and permanent impacts, the precautionary principle demands that early preventive measures be taken to prevent irreparable damage or loss.
45. That in applying the precautionary principle, scientific uncertainty or lack of definite scientific evidence regarding the consequences of a policy cannot be used as a reason to postpone preventive measures, as referred to in the essence of the *precautionary principle* itself.

⁵ Indonesia, Banking Law, Law No. 10 of 1998, State Gazette 1998 Number 182, TLN Number 3790

46. That the application of the precautionary principle in the banking sector cannot be separated from the developing global trend in order to encourage environmental protection.
47. That the development of this concept in the financial sector is known by the term *green economy*, which is an approach in which banking institutions take a strategic role as intermediaries between economic development and environmental protection through support for sustainable, environmentally friendly and socially responsible investments.
48. That in another sense, *green economy* also includes the banking sector's commitment to reduce carbon emissions comprehensively and encourage business practices that reduce the carbon footprint of banking activities, with the aim of creating a balance between economic benefits and ecological responsibility.
49. That in its further development, in order to reduce the negative impact on the environment caused by banking sector activities, the concept of *green banking* has been introduced and is beginning to be widely adopted by various financial institutions around the world.
50. That *green banking* is an approach that aims to create a sustainable and environmentally friendly banking system through the implementation of strategies that include reducing carbon emissions, efficiency in the use of resources, and financing projects that support environmental sustainability.
51. That the implementation of *green banking* is not only expected to make a positive contribution to environmental protection, but also to play a role in strengthening the image of financial institutions and creating sustainable economic benefits in the long term.
52. That in the case *a quo*, considering the importance of consistent implementation of Green Banking in Indonesia, Amici hopes that the Panel of Judges examining the case will be able to apply the principle *precautionary principle* in court, which according to Brian J Preston (2017), there are several criteria that can be applied⁶:
 - a. **Proportionality**: The judge's actions in implementing *precautionary principle* must be proportional, linked to ecosystem protection objectives.
 - b. **Non-discrimination**: In implementing *precautionary principles*, do not differentiate with situations that are relevant for comparison in the application of other cases (*comparable situation*).
 - c. **Consistency**: Actions taken must be consistent with the steps (*measures*) which has been adopted under similar conditions (*in similar circumstances*).
 - d. **Testing** (examining) the benefits and costs (*cost-risk analysis*) of *action* and *lack of action*.

⁶ Brian J Preston, 'The Judicial Development of the Precautionary Principle' (2018), *Environmental and Planning Law Journal* 123 (2018), quoted from the Expert Statement of Dr. Mas Achmad Santosa, SH, LL.M in Case Number 35/PUU-XXI/2023 of the Constitutional Court of the Republic of Indonesia

- e. **Testing and reviewing scientific developments.** Implementation steps and actions *precautionary principle* must be based on *new-scientific data (updated data)*, if necessary, modified based on the results of the latest research related to this issue or expert testimony that provides more information that is *up-to-date*.
 - f. **Reducing uncertainty:** to reduce scientific uncertainty, a certain level of caution is required from the courts (*prudence*) by temporarily stopping development plans, programs or projects until relevant and convincing information is obtained.
 - g. **Judges can apply an *Adaptive Management Approach*,** among others: 1) monitoring the impact of a decision based on agreed indicators; 2) promoting research, to reduce scientific uncertainty; 3) ensuring regular evaluation of implementation; 4) reviewing and adjusting newly adopted measures or decisions; 5) establishing effective and efficient compliance mechanisms;
53. That therefore the principle of prudence and banking risk management must include the obligation to conduct human rights audits on financing or credit provision has the potential to impact or violate human rights and environmental protections. Banks must establish and develop a system that is responsive to public complaints and take the necessary steps to address and remedy any impacts caused or that are the reason for the complaint.

III-3. IMPLEMENTATION OF SUSTAINABLE FINANCE PRINCIPLES IN BANKING:

54. That the issue of *green banking* or *sustainable banking* in the world began to develop around the mid-1990s, especially in the northern hemisphere. Banks began to include environmental risk assessments in their lending or credit criteria to avoid legal liabilities and claims due to debt recovery and losses due to the decline in collateral value. Legal liabilities to lenders, and potential losses in terms of asset recovery and reputation issues were the initial motivations for banks to improve their policies and procedures to adapt to the trend of responsible credit (The Prakarsa);
55. That although bank operations do not directly pose risks to the environment, banks contribute to environmental degradation because they provide funding to companies whose operations have negative impacts on the environment. The focus on social and environmental risks has evolved into "*sustainable lending*". This type of loan emphasizes sustainability risk assessment where the debtor's loan repayment risk is assessed from environmental and social issues.
56. That in order to implement a lending policy that is more sensitive to social and environmental issues, it is mandatory to refer to the Colavecchio Declaration on Financial Institutions and Sustainability, which outlines six principles that must be implemented by financial institutions, namely a commitment to: 1) sustainability, 2) 'do no harm', 3) responsible, 4) accountability, 5) transparency and; 6) sustainable markets and governance (The Prakarsa);

57. That in addition to the Collevocchio Declaration, there are two important standards that have also been voluntarily agreed upon by several major financial institutions, namely *Equator Principles* (EP) and *Principles for Responsible Investment* (PRI). EP is related to the implementation of environmental and social standards to avoid risks in project financing by financial institutions (with a minimum value of US\$ 10 million), while PRI is related to the principles of ESG issue inclusion (*Environmental, Social and Governance*) in investment activities of financial institutions;
58. That *green banking* is a concept that integrates environmental sustainability principles into banking practices and activities, with the aim of creating an ecologically responsible financial system.
59. That the strategy of *green banking* can include various concrete efforts, including reducing carbon emissions through the use of renewable energy, optimizing the use of resources through energy efficiency and reducing paper consumption, and supporting financing for environmentally friendly projects that have a positive impact on ecosystem sustainability.
60. Referring to the writings of Theodor F. Cojoianu *et al.*, in an article entitled “*The City Never Sleeps: But When Will Investment Banks Wake Up to the Climate Crisis?*”, *Regional Studies* 57, no. 2 (2021): 268– 286, it is stated that *green banking* also includes the application of financial practices that take into account *Environmental, Social, and Governance* (ESG) factors in the decision-making process, both in providing credit and investment, to ensure that financing activities are aligned with sustainability goals.
61. For example, Sweden is one of the countries that is progressively implementing strict regulations regarding sustainable banking. Banks in the country are required to comply with provisions governing environmentally-based financing, to ensure that financing activities are in line with sustainability principles.
62. That in practice, banks in Sweden that apply *green banking* principles and are committed to sustainability have been proven to gain financial benefits, including through more rapid asset growth compared to banks that do not or pay less attention to environmental aspects.
63. Whereas in France, the government has adopted an ambitious policy through the enactment of the Climate Change Law, which requires all financial institutions, including banks, to integrate climate risks and sustainable practices into their business policies and operations.
64. That as part of these obligations, banks in France are required to regularly report on the environmental impact of their investment portfolios, which in turn encourages the banking sector to actively evaluate and mitigate climate risks in all financing activities.

65. That in the UK, the *Financial Conduct Authority* (FCA) has also introduced regulations requiring banking institutions to report on the climate risks and social impacts of their business activities, as part of environmental transparency and responsibility.
66. That banks that apply the *green banking* principle and comply with environmental regulations in various countries generally gain competitive advantages, including a more positive reputation in the eyes of the public and stakeholders, increased operational efficiency, and easier access to sustainability-based financing sources.
67. That in general, the implementation of *green banking* globally driven by a number of key factors, including increasing awareness of environmental issues, demands for corporate social responsibility, government policies and regulations, consumer market demand, potential financial gains, the need for better risk management, and increasingly competitive financial services markets.
68. That the implementation of *green banking* not only contributes to environmental conservation efforts, but also supports the creation of long-term value for various stakeholders, including shareholders, customers, and society in general.
69. That various countries in the world have implemented *green banking* policies as part of a commitment to environmental sustainability. Germany, for example, is known as a pioneer in green policies through KfW Bankengruppe, a government-owned development bank that consistently supports renewable energy and energy efficiency projects. In South Asia, the Bangladesh Bank as a central bank has issued *green banking* guidelines which includes environmental risk management, development of environmentally friendly products, and environmental impact reporting, and requires all national banks to adopt these principles. Meanwhile, the *Reserve Bank of India* (RBI) has also encouraged national banking, including large banks like the *State Bank of India* and ICICI Bank, to develop products such as green credit and investments in clean energy projects. In China, the *People's Bank of China* issued guidelines requiring the banking sector to support the green economy through green credit, investment and financial services, including reporting requirements on environmental impacts. In the UK, the Bank of England acknowledged the urgency of *green banking* and encouraged the adoption of green policies, which has been responded to by major banks such as Barclays and HSBC through the development of products that support the transition to a low-carbon economy. Meanwhile, the Netherlands has institutions such as Triodos Bank and ASN Bank that are known to focus on financing projects that have a positive impact on the environment and society.
70. That from various examples of implementing *green banking* in a number of countries, it can be concluded that this approach is not limited to countries with a certain level of economic development, but has been widely adopted in both developed and developing countries.

71. That the adoption of the *green banking* policy globally is a key element in building a sustainable financial system, which not only supports economic stability but also contributes directly to environmental protection.
72. That Indonesia has a number of laws and regulations which form a legal framework for the implementation of *green banking* in legal practices. This legal framework shows that the principle of environmental protection is starting to be integrated into the national financial system, although its implementation is still limited to fulfilling normative aspects and has not touched on the necessary structural transformation. The legal provisions include:
1. Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998, is the main legal basis for the implementation of banking business in Indonesia, including regulations regarding the principle of prudence (*prudential principle*). In the general explanation of this law, it is emphasized that the precautionary principle must take into account the Environmental Impact Analysis (AMDAL), especially for large-scale business activities or those that have high risks to the environment.
 2. Law Number 32 of 2009 concerning Environmental Protection and Management requires the state to develop environmental economic instruments, including environmentally friendly financial institutions and capital market systems. This provision includes the obligation to implement environmental protection and management in the financing policies of banks and non-bank financial institutions, as well as requirements for public companies wishing to enter the capital market to carry out environmental audits. This provision is reinforced by Article 67 which states that everyone, including business entities such as banks, is obliged to maintain the sustainability of environmental functions and prevent environmental pollution and/or damage.
 3. Bank Indonesia Regulation Number 14/15/PBI/2012 concerning Asset Quality Assessment of Commercial Banks stipulates that in assessing credit quality, banks must consider the debtor's business prospects, including the extent to which the debtor demonstrates a commitment to environmental preservation. This shows that environmental aspects are one of the factors in assessing financing risk.
 4. Financial Services Authority Regulation Number 18/POJK.03/2016 concerning the Implementation of Risk Management for Commercial Banks regulates eight main types of risks, which although do not explicitly include environmental, social, and governance (ESG) risks, ESG elements can be categorized into legal risks and reputational risks. These risks arise when banks engage in financing that has a negative impact on the environment and society, which can then affect the bank's image and business sustainability.
 5. POJK Number 51/POJK.03/2017 concerning the Implementation of Sustainable Finance for Financial Services Institutions, Issuers, and Public Companies, requires financial services business actors to prepare and implement sustainable finance action plans,

including sustainability reports and allocation of funds for Social and Environmental Responsibility (TJSL). Although not accompanied by strict sanctions, this regulation aims to build awareness and encouragement for financial services institutions to implement sustainable finance principles.

6. The Technical Guidelines for the implementation of POJK 51 of 2017 provide a practical description of strategic steps in implementing sustainable finance, including program priorities, action plans, success indicators, and reporting. This guideline is intended to provide implementation guidance for financial services institutions in developing and implementing policies and products that support sustainability.
73. That based on a number of regulations mentioned previously, the implementation of *green banking* has begun to receive significant attention from various parties in Indonesia, including financial sector regulators, banking industry players, and other stakeholders. In this regard, Bank Indonesia as the monetary authority and central bank, has taken a number of strategic steps to encourage the integration of sustainability principles in the national banking sector. These steps include:

1. Green Banking Guidelines

Bank Indonesia has issued *Guidelines Sustainable Finance* or Sustainable Finance Guidelines, which aim to direct banks in Indonesia to adopt sustainability principles in business strategy planning and operational implementation. These guidelines cover environmental and social risk management, development of environmentally friendly financial products and services, and the obligation to prepare reports that reflect the bank's sustainability commitments and achievements.

2. Sustainability reporting

Bank Indonesia also requires every bank to prepare and submit sustainability reports periodically. This report must contain information on the environmental and social impacts of the bank's financing and operational activities, as well as efforts made to mitigate or reduce these negative impacts. This obligation aims to increase transparency, accountability, and integration of sustainability principles in banking decision-making.

3. Policy Support

Bank Indonesia has demonstrated its commitment to supporting *green banking* through policies and incentives that encourage sustainable financial transformation. This support includes the formulation of regulations that are more pro-environmental protection, as well as assistance in the adoption and development of environmentally friendly technologies in the banking industry.

74. That the three steps show that Bank Indonesia not only functions as a regulator of monetary stability, but also plays a key role in the transformation of the financial sector towards a more inclusive and sustainable system. These steps reflect the importance of regulator involvement in creating a socially and environmentally responsible financial ecosystem.

75. That the bank's compliance with the provisions regarding *green banking* or green banking will not run optimally without a strong oversight mechanism and effective law enforcement. Adequate supervision is an important instrument to encourage banks to not only comply with regulations administratively, but also to implement the substance of sustainability principles in all aspects of their operations.
76. That the existence of strict law enforcement will guarantee the implementation of bank responsibilities in supporting environmental protection and preventing financing practices that are detrimental to the sustainability of the ecosystem. Thus, the principle of prudence in banking business activities must be translated into real terms in the form of a commitment to sustainability values, which can only be realized through supervision and sanctions that have coercive power.

III-4. IMPLEMENTATION OF SUSTAINABLE FINANCE PRINCIPLES IN BANKING FOR ISSUES OF ENVIRONMENTAL PROTECTION FOR FOREST AREAS

77. That there is a close relationship between companies that were sealed due to environmental violations, especially forest and land fires (*karhutla*) in the period 2015 to 2019, with financial institutions, both domestic and international. This relationship reflects the involvement of financial institutions through the provision of loans, debt facilities, or guarantees to companies affiliated with environmentally damaging activities.
78. That data regarding the relationship between financial institutions and companies at risk of environmental damage has also been published by *Forests and Finance*, which is a coalition of international non-governmental organizations. Through its official website, *Forests and Finance* provide a variety of *datasets* which contains information about lending institutions and companies that have the potential to cause deforestation, whether through the plantation, livestock or mining sectors.
79. That there is a close relationship between palm oil plantation companies and financial institutions, both in terms of funding and support for business expansion. This relationship shows that financial institutions not only contribute to the occurrence of forest and land fires (*karhutla*), but also have an important role in preventing the occurrence of ecological disasters through the direction of financing policies.
80. That in order to carry out the prevention role more responsibly, financial institutions are required to apply sustainable finance principles in all aspects of their operations. One important instrument in supporting the implementation of sustainable finance in Indonesia is the Green Taxonomy, which was issued by the Financial Services Authority (OJK) in early 2022.

81. That the Green Taxonomy is a framework for classifying business activities based on environmental sustainability criteria, which aims to provide guidelines for financial institutions in assessing and selecting business sectors that are in line with the sustainable development agenda. Substantially, this approach is similar to the policy implemented by the Ministry of Environment and Forestry (KLHK) through the Corporate Performance Rating Assessment instrument in Environmental Management (PROPER).
82. That in early 2022, the Financial Services Authority (OJK) has formulated an important policy instrument called the Green Taxonomy. This instrument was prepared as part of an effort to direct financing activities to business sectors that are in line with environmental protection and support mitigation and adaptation to climate change.
83. That as stated in the documents of the *Indonesian Green Taxonomy Edition 1.0–2022*, Page 14, OJK explains that the preparation of the green taxonomy is based on the Indonesian Standard Classification of Business Fields (KBLUI). However, business activities that are not included in the KBLUI can still be classified and assessed based on the principles of the Green Taxonomy, as long as the activities support environmental sustainability goals.
84. That the Green Taxonomy is designed to form a classification system for business activities into three main categories, namely: **red** for business activities that have a significant impact on environmental damage (not environmentally friendly), **yellow** for business activities that have no significant impact on environmental damage, **green** for business activities that do not cause environmental damage and have implemented environmental protection measures (*environmental safeguards*) minimum.
85. That the process of determining the classification is carried out collaboratively by involving 43 Directorates General from eight related ministries. This is intended so that the determination of the **threshold** is carried out comprehensively and credibly.
86. That *Environmental Safeguards* must be complied with by banks in carrying out their business, especially in providing credit and financing development projects;

87. That in an effort to increase awareness of the risks of natural resource and environmental conflicts resulting from bank credit or investment in Indonesia, Sustainable Finance (*Sustainable Finance*) must integrate environmental, social and governance (ESG) aspects as per the Considerations Considering letter a. Financial Services Authority Regulation No. 51/Pojk.03/2017 of 2017⁷ (hereinafter read as POJK 51/2017), namely as follows:

"That in order to realize sustainable development that is able to maintain economic stability and is inclusive, a national economic system is needed that prioritizes harmony between economic, social and environmental aspects"

88. That the concept of *green banking* is interpreted as an approach in banking practices that prioritizes the principle of sustainability in all operational activities. Although the banking sector is not a major contributor to environmental pollution—because its use of energy, water, and natural resources is relatively low compared to extractive industry sectors such as mining or manufacturing—banks still have responsibility for the environmental impacts caused by the business activities they finance.
89. That the bank's responsibility for the environmental impact of business activities is emphasized in Article 8 paragraph (1) of Law Number 10 of 1998, which states:

"(1) In providing credit or financing based on law, Commercial Banks are required to have confidence based on in-depth analysis of the good faith, ability and capability of the debtor customer to pay off their debt or return the financing in question in accordance with what was agreed."

90. That based on these provisions, the assurance obtained from in-depth analysis must also include aspects of environmental impact, especially for large-scale and/or high-risk companies. This means that in distributing sharia credit or financing, banks are obliged to pay attention to the results i.e., using an Environmental Impact Analysis (AMDAL) as a form of caution so that the funded projects do not cause environmental damage.
91. In reality, many business actors, especially in the plantation and forestry sectors, are actually significant contributors to environmental pollution and destruction. Forest Watch Indonesia (FWI) data shows that the rate of forest destruction in Indonesia in 2017-2021 in the Kalimantan Region showed an average deforestation value of 1.11 million hectares per year, followed by Papua 556 thousand hectares per year, Sumatra 428 thousand hectares per year, Sulawesi 290 thousand hectares per year, Maluku 89 thousand hectares per year, Bali Nusa 38 thousand hectares per year, and Java 22

⁷ Indonesia, Financial Services Authority Regulation on the Implementation of Sustainable Finance for Financial Services Institutions, Issuers, and Public Companies, POJK No. 51/Pojk.03/2017 of 2017, LN No. 169 of 2017, TLN No. 6103

thousand hectares per year. This figure shows that there is very large and ongoing deforestation.

92. That one form of real contribution from business actors to environmental damage is the haze disaster due to forest and land fires (*karhutla*). In 2015, forest fires in Indonesia caused an increase in the Air Pollution Standard Index (ISPU) to a figure above 400. According to the Decree of the Minister of Health No. 289 of 2013 concerning the Procedure for Controlling the Impact of Air Pollution Due to Forest Fires on Health, ISPU above 400 is categorized as very dangerous (*extra hazard*) for all levels of society and requires special evaluation of vulnerable groups such as pregnant women, toddlers, the elderly, and people with respiratory disorders.
93. That based on records from the Ministry of Environment and Forestry, during the 2015 haze incident, there were at least 413 entities indicated as having carried out forest burning, which resulted in damage to land and forests covering an area of 1.7 million hectares. This situation shows that the activities of business actors supported by financing from financial institutions have made a real contribution to ecological disasters and endangered public health.
94. Currently, a number of countries have begun to consider more progressive and firm legal reforms to strengthen the responsibility of financial institutions, especially banks, in financing business activities that have a damaging impact on the environment.
95. That the reform includes discourse on the implementation of criminal sanctions and civil liability for banks that are proven to have provided financing or guarantees for projects that are illegal or cause significant environmental damage.
96. That such legal steps are seen as an important part of encouraging more effective environmental protection, while strengthening the commitment to the implementation of sustainable finance principles by the banking sector.
97. Considering that the Financial Services Authority (OJK) as the compiler of the Green Taxonomy does not have the technical authority and special capacity to assess the technical environmental aspects of each business activity, collaborative work between Ministries and Institutions is required.
98. However, considering that the Financial Services Authority (OJK) as the compiler of the Green Taxonomy has limited law enforcement authority, the judicial institution becomes one of the mechanisms for enforcing the law.

IV. AMICI CONCLUSIONS AND RECOMMENDATIONS

Based on the description above, we conclude that the trial *a quo* is an important momentum in the State's efforts to ensure that Financing Institutions and/or Banks are committed to stopping funding for plantation business actors who have caused damage to the environment, human rights violations, and increased carbon emissions that exacerbate the negative impacts of climate change.

In the context of environmental protection, there are legal principles known as ***in dubio pro natura***, namely the principle which states that in cases of doubt or uncertainty in the assessment or proof of cases relating to the environment, a decision must be taken **in favor of environmental protection**. This principle has been widely accepted in international environmental law practice and is in line with the *precautionary principle*, which places environmental sustainability as its top priority.

The judiciary has an important and strategic role in ensuring that the principles of sustainability, prudence, and ecological justice are upheld, including by assessing the responsibility of actors, both corporations and financial institutions, for financing projects that cause environmental damage. If the judiciary fails to explore and uphold the legal values and sense of ecological justice that live in society, then this will not only harm the constitutional mandate of the judiciary, but also strengthen impunity for environmental destruction that threatens the sustainability of current and future generations.

Based on this, WALHI Riau recommends to the Panel of Judges in case Number: 1186/PDT.G/2024/PN.JKT.SEL to:

1. Seriously consider what is contained in this document to ensure that the South Jakarta District Court leaves a mark of its support for human rights and the environment;
2. Grant all the Plaintiffs' requests which will significantly create a new precedent in environmental protection. This will contribute to ensuring that future generations have better rights to the environment than they do today.

AMICUS CURIAE

(SAHABAT PENGADILAN)

TERHADAP PERKARA NOMOR
1186/PDT.G/2024/PN.JKT.SEL

Wahana Lingkungan Hidup
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