

CASE NUMBER: 1186/Pdt.G/2024/PN.JKT.SEL

Between

TRANSFORMATION ASSOCIATION FOR JUSTICE IN INDONESIA

PLAINTIFF 1

AHMAD, SH

PLAINTIFF 2

HERNI RAMDLANINGRUM, M.PP

PLAINTIFF 3

HARVINA NURUL FATIMAH

PLAINTIFF 4

Against

PT. BANK MANDIRI (PERSERO) TBK

DEFENDANT

PT. ASTRA AGRO LESTARI TBK

CO-DEFENDANT 1

PT. AGRO NUSA ABADI

CO-DEFENDANT II

SUMMARY OF AMICUS CURIAE BY

CLAUDIA NYON SYN YUE & KUBERAN HANSRAJH KUMARESAN ON BEHALF OF

RIMBAWATCH

IN SUPPORT OF THE PLAINTIFF IN THE SOUTH JAKARTA DISTRICT COURT

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Amicus Interests

- 1. RimbaWatch is an environmental *think tank* that conducts research and advocacy on climate-related issues in Southeast Asia. RimbaWatch specializes in three research pillars: environmental degradation, fossil fuel phasing, and corporate accountability.**
- 2. RimbaWatch also has research and campaign partnerships with various organizations including Greenpeace Malaysia, Friends of the Earth and Human Rights Watch, and is a member of coalitions including the Climate Action Network Southeast Asia.**

Executive Summary

- 3. The doctrine of legal standing has undergone a fundamental transformation in recent decades, shifting from requiring proof of personal injury to recognizing legal standing based on a genuine interest in matters of public interest.**

This submission examines this evolution primarily through developments in Malaysian jurisprudence, while also drawing on comparative perspectives from other jurisdictions.

- 4. Historically, the legal standing in the late 1980s was limited to violations of personal rights. However, since the early 2000s, courts around the world—including those in Malaysia, India, Australia, Canada, the United Kingdom, and Papua New Guinea—have progressively expanded the standing to permit public interest claims even where the plaintiff has not suffered personal harm. For brevity, this amicus brief will focus on Malaysia, as a representative jurisdiction exemplifying this shift in Commonwealth countries, and on a few cases in other Commonwealth jurisdictions.**
- 5. In this case, TuK Indonesia clearly demonstrates a real and substantial interest in the human rights and environmental issues at stake. Following developments in Malaysian and international law, TuK Indonesia thus meets the requirements for legal standing.**
- 6. This submission underscores the importance of maintaining a broad approach to standing to ensure effective protection of fundamental rights and enforcement of legal obligations. Trends across jurisdictions confirm that public interest standing serves as an important safeguard against legal violations where no individual party is likely to suffer direct harm.**

Introduction

- 7. Transformation for Justice Indonesia (TuK INDONESIA) is a Jakarta-based non-governmental organization focusing on environmental and human rights issues in Indonesia. As an NGO, TuK INDONESIA's activities include partnerships with human rights defenders, resource mobilization, capacity building, and human rights assessments.**
- 8. In most jurisdictions, standing is a procedural requirement for a party to a litigation to ensure that the party has an 'interest' in the case they are bringing. In the United States, standing is ascribed to the US Constitution, where only the judicial power is vested in the parties.**

includes 'cases' and 'disputes': only lawsuits alleging harm to the plaintiff can be heard in court.¹

9. While it is hardly an issue in civil lawsuits, which are between parties suing for violations of their personal rights whether in contract, tort, or property, legal standing in environmental lawsuits usually develops into a major issue. This is because in civil lawsuits, the interests at stake are usually clear, such as financial or personal losses, whereas in public law, the interests at stake are less clear, because the losses claimed are experienced by many individuals considering that the object of the dispute is a public good, namely the environment, and these losses are difficult to measure, such as the right to life.
10. Questions relating to the environment always bring up questions of standing: when the environment or natural resources are public goods enjoyed by the wider community, under what circumstances can someone say that they have a sufficient interest to warrant a lawsuit?

Malaysia: A Case Study Involving Confrontation

11. Malaysia's recent struggle with its position in public law has been an exemplary example of a jurisdiction that has emerged from a legal crisis by confronting its past of mixing public and private law.

The Past

12. In the decision of the case *Lim Kit AfternoonopposeGovernment of Malaysia*,² The Supreme Court of Malaysia (as it was then known) by a 3:2 vote refused to recognize the legal standing of a Member of Parliament and the Leader of the Opposition, who had filed an application to declare the letter of intent issued by the government to the developer regarding the highway invalid and to request a permanent injunction to prevent the developer from entering into an agreement with the government.

¹Marisa A. Martin "'Standing': Who Can Sue to Protect the Environment?" (2008) Social Education 72(3) 113 <https://www.socialstudies.org/system/files/publications/articles/se_720308113.pdf> (accessed May 28, 2025)

²*Government of Malaysia v Lim Kit Siang*[1988] 2 MLJ 12

13. In short, the majority of the Supreme Court rejected his standing, whether as a politician, a road user, or a taxpayer, because they considered the litigant to be 'a stranger to [the developer]'³

non-shareholders, people who are threatened by the developer with having their rights revoked or actually revoked, or people who are prevented from using the highway.⁴In their view, even though 'the matter does not concern personal rights, [the litigant] must have suffered or will suffer harm that is peculiar to him'.⁵Because he did not show how 'he [was] particularly affected more than others... [or] suffered a loss that was peculiar to himself',⁶he was declared to have no standing.

14. The majority of the court treated the litigant's work as a politician with caution, asking whether the judicial review he had sought was motivated by 'public spirit or the hope of gaining political advantage and popularity?' before concluding that the litigant's remedy lay not with the courts but with Parliament.⁷The majority of judges viewed the judicial review as a forum to 'allow [the litigant] to air his grievances'.⁸

15. Much has also been said about the fact that an ordinary citizen claims private rights; public rights can only be claimed exclusively by the Attorney General because only the Attorney General can represent Malaysia. The position of Attorney General in Malaysia is appointed at the discretion of the Prime Minister.

16. The majority follows the verdict *Boyce*,⁹a decision of the Supreme Court of England, which sets out a two-point test for determining whether a party to a litigation has standing: (a) their private rights have been violated by the decision in question; or (b) they have suffered special harm as a result of the violation of their public rights.

17. However, a minority of the Supreme Court recognized the standing of the parties to the litigation. In their dissenting opinion, they viewed standing as a concept that is 'not regulated by statute, but

³Ibid p. 19

⁴Ibid p. 25

⁵Ibid p. 31

⁶Ibid p. 20

⁷Ibid p. 25

⁸Ibid p. 40

⁹*Boyce v Paddington Borough Council*[1903] 1 Ch 109

are rules of practice and procedure established by judges in the public interest'.¹⁰For them, the dilemma of standing is caused by the 'blurring of the distinction between public law cases and private law cases'.¹¹

18. What is important, according to the minority, is not to forget 'the consideration ... of not closing the door to the airing of genuine public grievances' because to deny standing to a litigant is to 'fold one's hands and do nothing ... in failing at least to consider... on the basis of its substance a legitimate public grievance...'.¹²

The position of the parties to the case is thus clearly visible.

19. *Lim Kit Afternoon* strengthening the law on standing and making it more difficult for non-governmental organizations (NGOs) to file claims on behalf of communities, as experts have noted.¹³Even if they do not suffer personal harm, NGOs often have a real and genuine interest in protecting the causes they champion, whether it is the environment, children's rights, or animal welfare.

20. This leads to a number of unacceptable results. For example, in the case of *Puspa Rani Thanabalasingam. Cameron Highlands District Council*,¹⁴The president of an animal welfare organization was denied the right to file a lawsuit against a local authority's campaign offering rewards to the public for capturing stray dogs; the lawsuit was based on the grounds that it would harm the dogs. The court ultimately ruled against the plaintiff's legal standing based on the fact that he had not suffered any harm.

21. The rationale for filing a lawsuit in Malaysia raises the question: if not the plaintiff, who can file a lawsuit for losses suffered by those who cannot speak for themselves?

¹⁰*Lim Kit Afternoon*(n 2) at the age of 33 years

¹¹*Ibid* p. 43

¹²*Ibid* p. 45

¹³Andrew Harding, 'Public Interest Groups, Public Interest Law, and Development in Malaysia' (1992) 11 (10) *Third World Legal Studies* 231; Jacqueline Peel and Jolene Lin, 'Climate Change Adaptation Litigation: Views from Southeast Asia' in Jolene Lin and Douglas A Kysar, *Climate Change Litigation in the Asia Pacific* (Cambridge University Press, 2020) 317

¹⁴*Puspa Rani a/p Thanabalasingam v Cameron Highlands Regional Council*[2021] MLJU 1557

Trellis

22. It is the answers to the questions posed above that guide the Federal Court in *Trellises*.¹⁵

23. This case involved residents of a local area who challenged the local government's decision to grant planning permission for housing development on a public park. The defendant questioned the legal standing of these residents on the grounds that some of them were not direct neighbors of the public park, even though they were all residents of the area at large.

24. In deciding that the parties to the case *Trellises* has the legal standing to file a lawsuit for judicial review against the local government, Pathmanathan FCJ explains that legal standing cannot only be reserved exclusively for immediate neighbors, but must be given to a wider range of people, especially if the subject of the case concerns a public park enjoyed by the public at large.

25. The Federal Court found similarity with Lord Hope's reasoning in *Walton*,^{16a} decision by the UK Supreme Court regarding an individual who challenged a motorway route. Although the UK Supreme Court rejected the individual's claim that the motorway route was unlawful because it did not comply with EU law directives, the court still held that the individual had sufficient standing, even though a lower court had ruled otherwise.

26. Pathmanathan FCJ elaborates as below:

[460] On final appeal to the Supreme Court, Walton's appeal was dismissed but the Supreme Court held that Walton had standing as an 'aggrieved person' under the relevant Scottish law under consideration. On the question of standing to sue, the judgment of Lord Hope is particularly relevant:

¹⁵*Datuk Bandar Kuala Lumpur v. Trellis & Ors Management Corporation and Other Appeals*[2023] 3 MLJ 829

¹⁶*Walton v Scottish Ministers*[2012] UKSC 44

[152] I am of the view that this (referring to the Scottish Court of Appeal's view) is taking too narrow a view of the circumstances in which a person may object to a scheme or order on grounds relating to environmental protection. A person may be personally affected in his personal interests by the environmental problems that an application for planning permission may raise. Noise and disturbance to the visual amenity of his property are some obvious examples. But some environmental issues that a person can raise are not nature thus. For example, there is the risk that the route used by ospreys moving to and from a favorite fishing bay will be blocked by plans to install a cluster of wind turbines across the bay. Does the fact that this proposal cannot reasonably be said to affect anyone's property rights or interests mean that it is not open to anyone to oppose the proposed development on this basis? This seems to contradict the purpose of environmental law, which operates on the basis that the quality of the natural environment is a legitimate concern for everyone. An osprey cannot take such action on its own behalf, as other wildlife cannot. If its interests are to be protected, someone must be allowed to speak on its behalf. (Emphasis added)

[461] In short, the right to sue, especially in environmental law, requires a broad approach. This is epitomized by Walton: Who will speak for the osprey?

[462] Planning law is intrinsically linked to environment. The granting or refusal of planning permission is a matter that affects many things including wildlife, trees and birds... In relation to the current appeal relating to the granting of planning permission in respect of parkland which has been converted for private mixed commercial development, the consequence is 'Who will speak for the hornbills?

27. In refusing *Lim Kit Afternoon* to be a binding precedent regarding the position in Malaysia, *Trellises* instructs that focusing on the parties to the case who show self-interest will easily deny justice, especially when the person who is suffering cannot 'voice' his concerns, be it a public park in *Trellises* or osprey in *Walton*.
28. Since the planning laws in Malaysia envisage public participation in the development of their plans, and the legislature deems it necessary to involve the public in the preparation of such plans, the Federal Court found that this gives the public at large a genuine interest and to some extent, the necessary standing.
29. In general, *Trellises* clarified that there are some issues requiring legal attention that cannot be brought by individuals, which generally relate to the environment. No one will be able to sue for environmental violations if the law continues to follow the private law view of legal standing.
30. Comment on the fact that the parties to the case *Lim Kit Afternoon* was a politician and leader of the Opposition Party, the Federal Court concluded that 'the important issue now and in the future ... [is for the court] to understand correctly the nature of the claim by having regard to the substance of the claim, not the manner in which the claim is presented from a procedural perspective'.
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31. In short, the plaintiff's profession as a politician should not determine and dominate the majority decision in the case. *Lim Kit Afternoon*; instead, the majority should focus on the main issue, namely the use of public tax funds.

Moving Forward: The Law on Status in Malaysia and Public Interest Groups/NGOs

32. Recognizing that a limited approach to standing hinders the review of whether there is illegality or a breach of law, the Malaysian courts have relaxed their view of standing and

¹⁷*Mayor of Kuala Lumpur*(n 15), [442]

allowing a number of cases to be filed by public interest groups and NGOs.

Sharifah Sofia Syed Hussein

33. In case *Sharifah Sofia Syed Hussein*,¹⁸ the litigants are representatives of various animal welfare NGOs in Malaysia who filed a motion for pre-action discovery to determine whether the Animal Welfare Board complied with its statutory duties. Although there has been no ruling on *Teralis*, The High Court here adopted a different approach *similar to Trellis*.

34. In granting the application for disclosure, the High Court held that the plaintiffs had sufficient standing because if it were not for the plaintiffs, no other party would have had standing: 'it is certainly impossible to expect the animals of Planet Earth to rise up in revolt and come to court to bring suit under the Animal Welfare Act'.¹⁹ Therefore, as an animal welfare group 'founded to protect animal rights', the plaintiffs have sufficient legal standing.²⁰

35. Indeed, the court stated that granting standing to animal welfare groups only enabled the court to properly adjudicate whether the Animal Welfare Board was carrying out its statutory duties.

Sabah Legal Society

36. Federal Court in *Attorney General of Malaysia v Sabah Law Society case*,²¹ granted legal standing to the Sabah Law Society, a body representing all advocates (lawyers) in the state of Sabah, Malaysia, in their lawsuit accusing the Malaysian federal government of a debt owed to Sabah under the Federal Constitution of Malaysia. In granting legal standing to the Sabah Law Society, the Federal Court made two points that are relevant for our purposes.

¹⁸*Sharifah Sofia bt Syed Hussein (representing Human Rights for Wildlife Malaysia Global) & Ors v Director of the Animal Welfare Institute* [2022] 12 MLJ 37

¹⁹*Ibid*, [47]

²⁰*Ibid*, [47]

²¹*Attorney General of Malaysia v Sabah Law Society* [2024] 6 MLJ 121

37. First, they explained that the court '*must take a broad and liberal approach to locus standi in relation to public interest litigation*'.²²In doing so, the Federal Court referred to its previous decision in the Trellises case, in which it explained that legal principles require that judicial authority be extended, especially in cases involving the public interest:

[440] It is equally clear that in most jurisdictions, this threshold issue has been and continues to be developed in a manner consistent with a broad, liberal and flexible approach, and not the opposite. This, in turn, is consistent with the rule of law which requires that in order to maintain a just order between citizens and governments at various levels, the law must be relevant and effective in maintaining checks and balances in the interests of the people.

38. Second, they explain that '*locus in constitutional cases must be interpreted extensively*'.

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Commonwealth: Interest Groups and Public Interest Groups/NGOs

United Kingdom

39. As previously mentioned above, the case *Walton* highlights that not all environmental cases will involve harm to private rights, but that does not mean that such cases are exempt from judicial review.

40. Given that the litigant was an individual who had by his own efforts managed to stop the entire construction of the highway, the House of Lords explained that allowing the litigant to remain was not 'an invitation to the busybody ... merely because he objects to the building scheme'.²⁴

41. On the contrary, those who can prove that there is a genuine interest and that they have sufficient knowledge to qualify them to act in the public interest are sufficient. This is

²²*Ibid*, [12] (k)

²³*Ibid*, [12] (m)

²⁴*Walton*(n 16), [153]

can be extended to individuals as well as bodies recognized by the Supreme Court as having sufficient knowledge to assess whether there has been a violation of the law or not:

[153] Of course, this should not be interpreted as an invitation to a meddler to question the validity of a scheme or order under the law simply because he objects to the development scheme in question. Individuals who wish to do this on environmental grounds must demonstrate that they have a genuine interest in the aspect of the environment they wish to protect, and that they have sufficient knowledge of the subject to qualify them to act in the public interest. in what is essentially a representative capacity. After all, there is no shortage of agencies that have sufficient information to raise issues such as this, such as the Scottish Wildlife Trust and Scottish Natural Heritage in their capacity as legal advisors to the Scottish Minister for nature conservation. Usually these are the kinds of bodies that people go to if there is a strong reason to file a complaint. object. However, it's well-known that they don't have the resources to oppose every development that might have negative consequences for the environment. Therefore, there must be room for individuals who care enough...

Australia

42. In case *Australian Conservation Found v. Minister for Res* [1989] FCA 520, the Federal Court of Australia held that the Australian Conservation Foundation ('ACF') had standing purely by reference to factors relating to ACF as an organisation and not to the damage they had suffered. The Federal Court referred to, inter alia, the fact that ACF is '*Australia's premier national conservation organisation*' And '*has played a leading role in the protection of the National Estate, throughout Australia*'.

Canada

43. In granting standing to the environmental organization MiningWatch, the Federal Court of Canada explained,²⁵ Among other things, they argued that MiningWatch is an environmental organization focused on the mining industry and expressing communal concerns. Therefore, they were given standing to voice these communal environmental concerns. This was upheld by the Supreme Court of Canada.²⁶

Mauritius

44. As explained by the Privy Council in *Eco-South*,²⁷ in the context of sufficient interest in the environmental context, legal standing includes those who have an interest in the environment - not just economic or personal interests.

'89. The Board agreed that the test of property rights or economic interests was not appropriate in the environmental context when considering the position under section 54(2)(b). The Board rejected the submission that the prejudice in section 54(2)(b) of the EPA 2002 was limited to economic prejudice and prejudice to private interests.

90. The question that arises then is what prejudice should be demonstrated in an environmental context. The answer is that harm, in the sense of damage, can include environmental interests as well as harm to economic or personal interests. The answer is taken from subparagraph (ix) of Keegan LCJ's summary. Persons who have a legitimate interest in an aspect of the environment that they wish to protect and have sufficient knowledge of the subject will be able to demonstrate that the decision to approve the issuance of an AMDAL permit would be likely to cause unreasonable harm to their interests in that aspect of the environment.

²⁵Jeffrey T Hammons, 'Public Interest Status and Environmental Judicial Review: A Comparative Approach' (2016) 41(2) Columbia Journal of Environmental Law 515-552, which specifically refers to *MiningWatch v. Canada (Minister of Fisheries and Oceans)* 2007 FC 955, paragraphs 179-81, 185-86

²⁶*Mining Watch Can. v. Can. (Minister of Fisheries & Maritime Affairs)*, 2010 SCC 2

²⁷*Eco-Sud and two others v Minister of Environment, Solid Waste and Climate Change and one other person (Mauritius)* [2024] UKPC 19

Implementation of Law: Position of TuK

45. This lawsuit is clearly a public interest lawsuit because its main objective is to test the validity of Bank Mandiri's funding for alleged human rights and environmental violations; this is the subject of the lawsuit and is carried out without the aim of obtaining personal gain from TuK INDONESIA.
46. As in the case of *Lim Kit Afternoon* and then corrected by *Trellis*, Excessive focus on the position and background of the litigants so as to completely cover up the subject matter of the case is tantamount to denying judicial examination of the subject matter of the case.
47. Likewise in the case of *Walton*, some organizations are able to have a genuine interest in the environment and have enough information to speak on behalf of the public.
48. In fact, this case is a paradigmatic example of a public interest lawsuit; the legal standing must be interpreted broadly and freely to provide legal standing for TuK INDONESIA, so that the case material gets a proper opportunity to be reviewed and considered judicially, to see whether there is a violation of the law or invalidity.
49. In addition, repeating what the Federal Court said in *Sabah Law Society*, '*locus in constitutional cases must be interpreted broadly*'.²⁸
50. In this case, the Indonesian Constitution is involved.²⁹ This is because the Constitution Indonesia guarantees a number of important rights for its people, namely '*the right to life... which cannot be limited under any circumstances*'³⁰, the right to live in physical and spiritual prosperity,³¹ the right to enjoy a good and healthy living environment,³² the right to obtain protection for property,³³ and the right to own private property,³⁴ and others.

²⁸*Sabah Legal Society*(n 21), [12] (d)

²⁹The 1945 Constitution of the Republic of Indonesia

³⁰*ibid*, Article 28I(1)

³¹*ibid*, Article 28H(1)

³²*ibid*, Article 28 H (1)

³³*ibid*, Article 28G (1)

³⁴*ibid*, Article 28H(4)

51. The accusations filed by TuK INDONESIA, namely that Bank Mandiri has financed land damage and used land that does not belong to it illegally, thus harming the local community, have implications for all the rights mentioned above.

52. Therefore, the legal position must be interpreted broadly so as to enable TuK INDONESIA to challenge the legality of Bank Mandiri's actions.

Respectfully conveyed,

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