# ANALYSIS OF OPPORTUNITIES FOR IMPLEMENTING THE AMICUS CURIAE CONCEPT AS A FORM OF PUBLIC PARTICIPATION IN THE JUDICIAL SYSTEM IN INDONESIA

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**Abstract**

This research uses the normative juridical method, and it aims to determine the *amicus curiae* mechanism in the Indonesian legal system. The research results show that the implementation of *amicus curiae* in the judicial system in Indonesia still needs a common perspective among judges, where there are still judges who accept or reject this concept or do not even consider it at all. The concept of *amicus curiae* in the Indonesian legal system has yet to be a significant consideration because no explicit regulations accommodate it. Still, it is often stated that the position of *amicus curiae* is embodied through Article 5 of Act Number 48 of 2009 on Judicial Power, which mandates judges to explore, follow, and understand legal values and a sense of justice that lives in society. In line with these provisions, the judge has the authority to provide space and open up the broadest possible information and opinions from various groups who pay special attention to a case being examined. Judges using *amicus curiae* in their considerations, both from a philosophical, sociological, and juridical perspective, aim to prioritize legal certainty and provide justice with the participation of society. The research then provides a suggestion that the Supreme Court of the Republic of Indonesia can issue a Policy Circular or through a Decree of the Chief Justice of the Supreme Court regarding guidelines that

judges can use to implement *amicus curiae* and how to assess the quality of information in *amicus curiae*.

**Keywords:** *Amicus Curiae*, Society Participation, Judge's Decision, Justice.

## Introduction

Law and society are two things that cannot be separated and are closely related. It is very important for society to have laws so that they can live in peace and harmony. It is in line with the adage *ubi societas ibi ius*[1], which was first recorded as being introduced by Marcus Tullius Cicero (106-43 BC), an Ancient Roman philosopher, jurist, and political expert. His views on the flow of interactions in society and the formation of legal structures led him to conclude that every society absolutely adheres to the law, intentionally or not.[2] Thus, law is a civilized role for citizens to live in, so a society can't exist without the rule of law.

Legal civilization in a country needs to be built through strengthening the legal system adopted by that country. To enhance the legal system, the legal system, according to Lawrence Meir Friedman, consists of 3 (three) components, namely structure (legal structure), substance (legal substance), and culture (legal culture)[3]; it is necessary to strengthen these three components. With the strength of a country's legal system, legal civilization will become more advanced, and of course, this will lead to the ability to create justice and shared prosperity.

According to Article 1 of the 1945 Constitution of the Republic of Indonesia, the State of Indonesia is a state of law, and the people's

[1] *Ubi societas ibi ius* is a principle that states that where there is society, there is law. This principle is one of the basics of positive law, which states that law cannot be separated from the society that makes it.

[2] Farid Wajdi, "Tantangan Dan Perbaikan Penegakan Hukum ," in *Bunga Rampai Memperkuat Peradaban Hukum Dan Ketatanegaraan Indonesia*, ed. Imran and Festy Rahma Hidayati, 1st ed., vol. 1 (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2019).

[3] Lawrence M Friedman, *A Social Science Perspective* (Russell Sage Foundation, 1975), http://www.jstor.org/stable/10.7758/9781610442282.

sovereignty is in their hands.[4] Sovereignty is the highest power in a country and is fundamental. As part of the people, every citizen certainly brings their personal interests, which, of course, give rise to conflicts of interest and are challenging to obtain. This condition must then be linked to other elements, which are included in matters related to making law the highest public institution, placing the state as the subject of legal construction.

Friedrich Julius Stahl, a German legal scholar, characterized the state of law (*rechtsstaat*) as a recognition of human rights, separation of state powers based on the concept of *trias politica*[5], implementation of government duties based on the law (*wetmatigheid van het bestuur*), and the existence of administrative justice.[6] Another view of the state of law in the Anglo-American tradition is known as the rule of the law. This concept was pioneered by Albert Venn Dicey, a British legal expert, who characterized the rule of law as the supremacy of law, citizens' equal status in law and government (equality before the law), and guaranteeing human rights by law and court decisions.[7] These two concepts show that the administration of a legal state is determined by law enforcement, which aims to ensure the best interests of its citizens.

In general, in Indonesia, the separation of powers, as in the doctrine of separation of state powers (*scheiding der machten*) according to Montesquieu, which is in line with John Locke, is distributed into three (three) branches: executive, legislative, and judicial.[8] Speaking about strengthening the legal system, we specifically discuss judicial power, which in Indonesia is also known as 'Judicial Power,' and this power is exercised by the Supreme Court and subordinate judicial bodies along

[4] See *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Article 1.

[5] *Trias politica* comes from Greek which means political triad. This concept was first proposed by John Locke, an English philosopher whom Montesquieu later developed. Trias politica is the idea that a sovereign government must separate two or more solid and independent entities to prevent absolute state power.

[6] Ramli Ramli, Muhammad Afzal, and Gede Tusan Ardika, "Studi Kritis Terhadap Konsep Negara Hukum," Media Keadilan: Jurnal Ilmu Hukum 10, no. 2 (October 31, 2019): 132–139.

[7] Albert Venn Dicey, *Introduction To The Study Of The Law Of The Constitution* , 1st ed., vol. 1 (Bandung: PT. Citra Aditya Bakti, 2007).

[8] Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, vol. 2020 (Depok: Rajawali Pers, n.d.).

with the Constitutional Court. The component that functions to carry out justice is the Court, and to carry out that justice, the Court cannot be separated from the apparatus or executor of its duties, namely the judge. The Court is tasked with examining, adjudicating, and deciding a case through the judge, individually or in a panel.

The implementation of the judge's duties to provide decisions based on truth, fairness, and honesty is carried out without any pressure or influence from outside the judge, which has the potential to cause the judges to no longer be accessible to examine the cases they will decide. This freedom must be interpreted as free authority where no other institution can interfere or influence the judge's decision-making as stated in the Act of the Republic of Indonesia Number 48 of 2009 on Judicial Power, which is by the mandate of Article 24 paragraph (1) of the 1945 Constitution.[9]

The freedom of judges to make decisions to achieve justice, especially in society, is certainly a discussion that will be difficult to reach a consensus on because the sense or value of justice that each citizen has as a society is undoubtedly different. This discussion is still an exciting matter because, through his decision, the judge has the power to determine the punishment and determine what a fair law is to resolve the case he is examining. Thus, fulfilling the judge's duties is repressive or coercive in determining law and justice in concrete cases, and ultimately, the judge's decision creates law.

In the practice of criminal law, where the judge must state precisely the offenses that a defendant has violated, it is not uncommon for judges to be faced with the situation of being required to judge a case where the truth of the incident is clear or unclear. For a judge to obtain the truth about an event in the case he is examining, he needs a systematic process of activity with measures of thinking that are rational and feasible within juridical limits but not absolute limits because absolute truth will undoubtedly be challenging to obtain. The mechanism for obtaining the truth is through evidence, in which efforts are made to obtain information based on evidence related to the proof

[9] See *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Article 24 paragraph (1).

to gain clarity from the judge regarding whether or not the criminal act charged against the defendant is true.

Indonesia is a country that, in the last decade, has been hit by a major crisis, especially a crisis in the legal sector. This crisis was marked by criminal acts committed by law enforcement officers who were law enforcers in the police, prosecutor's office, and even the judiciary. The latest case, which is undoubtedly familiar and has attracted public attention, is the murder case committed by Ferdy Sambo, former Head of the Professional and Security Division of the Indonesian National Police, of his subordinate, Police Brigadier Nofriansyah Yosua Hutabarat, on 8 July 2022. This case also involved Ferdy Sambo's wife, Putri Candrawathi, and Ferdy Sambo's driver, Kuat Ma'ruf, as well as his subordinates, Ricky Rizal Wibowo and Richard Eliezer Pudihang Lumiu.[10]

In the trial of the case of defendant Richard Eliezer Pudihang Lumiu, there were appealing considerations of the Panel of Judges in their decision, which was read out at the South Jakarta District Court on 15 Feb 2023, where the Panel of Judges admitted that they had received *amicus curiae* submission letters from various parties such as institutions, advocacy, academics, and legal experts. The Panel of Judges is of the view that they will not disregard the *amicus curiae* petition because it is seen as a form of love for the nation and state, especially in law enforcement, so that the petitioners represent the broader community in conveying the justice that is felt, desired and upheld.[11]

*Amicus Curiae* (friends of the Court) is a legal concept generally developed and practiced in the Common Law legal system. This concept allows third parties who have an interest in a case being examined in Court to provide their legal opinions in Court. Unlike the

[10] Eva Safitri, "Perjalanan Kasus Pembunuhan Brigadir J hingga Ferdy Sambo dkk Disidangkan", *detikNews* (17 Oct 2022), https://news.detik.com/berita/d-6351835/perjalanan-kasus-pembunuhan-brigadir-j-hingga-ferdy-sambo-dkk-disidangkan, accessed 27 Dec 2023.

[11] Ferinda K Fachri, "Berstatus Justice Collaborator, Majelis Vonis Richard Eliezer 1,5 Tahun Bui", *Hukumonline.com* (15 Feb 2023) https://www.hukumonline.com/berita/a/berstatus-justice-collaborator--majelis-vonis-richard-eliezer-1-5-tahun-bui-lt63ec98cb67324?page=all, accessed 27 Dec 2023.

opposition, the *Amicus Curiae* is limited to providing legal opinions.[12] *Amicus Curiae* is defined in Black's Law Dictionary as: "a person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter."[13]

In the history of the Indonesian judiciary, it turns out that many *amicus curiae* have emerged. Just to name a case that came to public attention in 2009, 5 (five) Non-Governmental Organizations (NGOs) filed an *amicus curiae* case regarding Prita Mulyasari, who was suspected of committing a criminal act of defamation of the Omni International Hospital Alam Sutera Tangerang,[14] likewise in the case of religious blasphemy committed by the former Governor of the Special Capital Region of Jakarta Basuki Tjahaja Purnama (aka Ahok) in 2017, which was filed by several NGOs.[15] Apart from these case examples, there are many other cases in Indonesia in which many parties have filed *amicus curiae* practices.

Indonesia, which adheres to a civil law legal system, basically does not recognize the existence of *amicus curiae*. Implementing the *amicus curiae* concept has yet to be explicitly regulated in Indonesian law. The legal basis for the considerations used by the judge, especially in considering the decision of the Panel of Judges who examined the case of the defendant Richard Eliezer Pudihang Lumiu, is entirely based on the provisions of Article 5 paragraph (1) of Act Number 48 of 2009 on Judicial Power which basically states that the Judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society.

Problems surrounding implementing the *amicus curiae* concept in the judiciary and bringing justice to the judiciary for the community by involving the voices of the community to fulfill the *community's* sense of justice and achieve harmony in legal civilization still need to be

[12] Linda Ayu Pralampita, "Kedudukan Amicus Curiae Dalam Sistem Peradilan Di Indonesia," *Jurnal Lex Renaissance* 5, no. 3 (July 1, 2020): 558–572.

[13] Bryan A. Garner and Henry Campbell Black, *Black's Law Dictionary*, 8th ed. (Saint Paul Minnesota: Thomson/West, 2004).

[14] Fadil Aulia and Muchlas Rastra Samara Muksin, "The Position of Amicus Curiae under the Indonesian Law of Evidence," *Jurnal Media Hukum* 27, no. 2 (2020).

[15] Ibid.

discussed. This issue can be discussed among the judges themselves, with academics such as lecturers or even students involved in legal science. Based on the above, a discussion is needed on how the *amicus curiae* concept can be utilized to enhance the integrity of justice and promote public civility. We used normative juridical research methods in writing this paper, which was carried out using a literature study which was guided by legal materials in the form of books, journals, or legal literature, as well as regulations related to the concept of *amicus curiae*. Analysis of the *amicus curiae* concept certainly looks at the needs and legal culture of Indonesian society and concretely examines the implications that may arise from implementing the *amicus curiae* concept.

## Implementation of Amicus Curiae in the Indonesian Judiciary

In Indonesian laws and regulations, there are no explicit rules that write down *amicus curiae* clauses. This concept originally came from the practice of the common law legal system, which was adopted into Indonesian judicial practice. To understand this concept, we must consider its implementation in countries that adhere to this legal system. The origins of *amicus curiae* are unclear. Still, the opinion of S. Chandra Mohan, a law professor from Singapore Management University, is that this concept originates from Ancient Roman Law, which was previously known as *consilium*, which refers to an independent advisory group to direct and at the same time supervises all matters relating to aspects of life in Rome.[16] Furthermore, there is an antithesis from Luigi Crema, an Italian international law expert, who states that the two things are different, that in Rome, the opinion or advice is requested by the Court and is confidential, whereas the *amicus curiae* as it is known today is submitted through a report or orally to a court hearing and is open.[17] The first recorded case to implement the concept of *amicus curiae* occurred in 1823, when the United States Supreme Court asked for the opinion of Henry Clay, a member of the United States House of

[16] Reza Bagoes Widiyantoro, "Peranan Amicus Curiae pada Proses Pembuktian dalam Sistem Peradilan Pidana di Indonesia (Studi Pengadilan Negeri Kendal)", Thesis, Indonesia: Universitas Islam Sultan Agung (Unissula), 2022, p. 40, http://repository.unissula.ac.id/25765/1/30301800324_fullpdf, accessed 28 Dec 2023.

[17] Iryna Izarova, Bartosz Szolc-Nartowski, and Anastasiia Kovtun, "Amicus Curiae: Origin, Worldwide Experience and Suggestions for East European Countries," *Hungarian Journal of Legal Studies* 60, no. 1 (March 2019): 18–39.

Representatives (in Indonesia, which is equivalent to the *Dewan Perwakilan Rakyat*) representing the state of Kentucky, as *amicus curiae* in the land dispute case Green v. Biddle.[18] We encounter a similar situation in the *amicus curiae* document submitted by the NGO Institute for Criminal Justice Reform to the District Court of Palopo in the criminal case on behalf of the defendant Muhammad Asrul in 2021 and the *amicus curiae* document submitted by the Alliance Defending Freedom advocacy group in the Foundation for Individual Rights in Education case v. Victim Rights Law Center in 2021.[19]

Amicus *curiae* is an input or information from parties, both individuals and organizations, who pay special attention or have a particular interest in a case but are not parties to the case.[20] This concept differs from intervention institutions because friends of the Court (called *amici*) do not act as parties in a case but only pay special attention to it.[21] If the person submitting the *amicus curiae* is more than one person or an organization, it is called an *amici curiae*, and the term for the applicant is *amici(s)*.[22] The implementation of *amicus curiae* in the judicial system in the United States refers to 3 (three) things, namely:[23]

1. Submit a request to intervene in a case that is being heard to influence the Court's decision;

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[18] Ryan J. Rebe, "Examining the Link between Dollars and Decisions: A Multi-State Study of Campaign Contributions and Judicial Decision Making", PhD. Dissertation (Texas Tech University, 2013), p. 60, https://ttu-ir.tdl.org/bitstreams/f5956054-ed56-4499-9080-4883469b3525/download, accessed 28 Dec 2023.

[19] See Institute for Criminal Justice Reform (ICJR), "Amicus Curiae (Sahabat Pengadilan) untuk Pengadilan Negeri Palopo dalam Kasus Pidana dengan Nomor 46/Pid.Sus/2021/PN Plp atas nama terdakwa Muhammad Asrul", 2021, p. 3, https://icjr.or.id/wp-content/uploads/2021/07/Amicus-Curiae-untuk-M.-Asrul-ICJR.pdf, accessed 28 Dec 2023, and Alliance Defending Freedom, "Brief of Alliance Defending Freedom as Amicus Curiae in Support of Petitioners Foundation for Individual Rights in Education", 2021, p. 6, https://www.thefire.org/research-learn/fire-v-victim-rights-law-center-brief-alliance-defending-freedom-amicus-curiae, accessed 28 Dec 2023.

[20] Ni Putu Widyaningsih, "Amicus Curiae Dalam Proses Peradilan Pidana Anak Sebagai Pengguna Narkotika," Jurnal Kertha Semaya 8 (2020): 1092–1100.

[21] Ibid.

[22] Siti Aminah, Menjadi Sahabat Keadilan Panduan Menyusun Amicus Brief (Jakarta: The Indonesian Legal Resource Center (ILRC), 2014).

[23] Ibid.

2. Inform the Court about issues that the judge still has doubts about or are misunderstood by the judge;
3. It was submitted by a person or party unrelated to the family for the benefit of a baby or a person who is not legally competent.

Siti Aminah further concluded that the opinions submitted could be said to be *amicus curiae* based on the following things:[24]

a. A person, group of people, or organization that has no relationship or interest with the parties in a case,
b. Have an interestedness and interest in the outcome of the court decision,
c. By providing opinions/information based on their competence regarding legal issues (or legal facts) or other matters related to the case to the Court,
d. To assist the Court in examining and deciding cases (become a friend),
e. Voluntarily and on their initiative or because the Court requests it,
f. In the form of providing a legal opinion, or providing information at a trial, or through scientific work,
g. Intended for cases relating to the public interest,
h. The judge has no obligation to consider it when deciding the case.

Apart from that, the concept of amicus curiae applies to 3 (three) types of interests, namely:[25]

a. For their interests or the interests of the group they represent, which may be affected by the decision of the case, regardless of the interests of the parties, so that the Court does not make a decision based solely on the reasons stated by the parties;
b. For the benefit of one of the parties in the case and to help strengthen their argument so that the Court has the confidence to "win" that party or grant their request;

[24] Ibid.
[25] Ibid.

c. For the public interest, in this case, the friend of the Court provides information on behalf of the interests of the broader society that will receive the impact of the decision.

In developing judicial practice in Indonesia, many related parties have filed *amicus curiae* in various cases. Implementing the *amicus curiae* concept is fenceless for all kinds of judicial bodies and can also be submitted to all judicial bodies at every trial level. Let's look at the phenomenal case of filing a civil lawsuit review in 2008 by Time magazine, an international news magazine, against the late former Indonesian president, Suharto, whose children represented. It is noted that *amicus curiae* steps have been used by several media in Indonesia and international NGOs, submitted through the District Court of Central Jakarta with opinions that principally support ensuring press freedom in Indonesia.[26] The Panel of Judges who examined this Supreme Court judicial review case, which registered as Supreme Court Decision Number 273 PK/PDT/2008 between Time Inc Asia et al. against H. M. Soeharto, apparently did not use an *amicus curiae* term. In contrast, the Petitioner for Judicial Review, in their memory of the judicial review, proposed several experts involved in press law and journalism.[27]

Likewise, in criminal cases, there is also no unanimity of opinion from every judge. In this regard, we mention Court Decision Number 371/Pid.B/2020/PN.Jkt.Utr. on behalf of the defendant Ronny Bugis, who was the perpetrator of throwing acid on Novel Baswedan, the Panel of Judges also explicitly considered the *amicus curiae*, submitted by non-profit organization KontraS, where it was considered that *amicus curiae* were not known in the Indonesian criminal justice system. Still, the Panel of Judges understood the purpose of the *amicus curiae* submission.[28] These considerations are the opposite of those of the Panel of Judges who examined the case on behalf of the defendant Richard Eliezer Pudihang Lumiu in Court Decision Number 798/Pid.B/2022/PN Jkt.Sel, where the Panel of Judges explicitly stated that they had received *amicus curiae* from several organizations based on

[26] Ali/IHW, "Amicus Curiae Dipakai Membantu Permohonan PK", *Hukumonline.com* (12 Aug 2008) https://www.hukumonline.com/berita/a/iamicus-curiaei-dipakai-membantu-permohonan-pk--hol19896/, accessed 28 Dec 2023.

[27] See *Court Decision Number 273 PK/PDT/2008*.

[28] See *Court Decision Number 371/Pid.B/2020/PN.Jkt.Utr.*, p. 230.

Article 5 paragraph (1) Act Number 48 of 2009 on Judicial Power, and it is said that the Panel of Judges will not close their eyes nor feel under pressure regarding the *amicus curiae* petition. Still, it is considered a form of love for the nation and state, especially in law enforcement, which represents the hopes of the wider society.[29]

In Court Decision Number 45/PID.B/2012/PN.MR, on behalf of defendant Alexander An Pgl Aan, the Panel of Judges who examined the case explicitly accepted the *amicus curiae* submitted by the Human Rights Commission based in Hong Kong as documentary evidence contained in the defense note from the defendant's lawyer.[30] In addition, the Panel of Judges in Court Decision Number 780/Pid.B/2014/PN Dps also included an *amicus curiae* opinion from the National Human Rights Commission of the Republic of Indonesia as documentary evidence.[31] In our analysis of the two decisions, we found that they only stated that the panel of judges in both cases accepted the *amicus curiae* submission and determined it as documentary evidence.

The legal basis used in implementing *amicus curiae* is Article 5 paragraph (1) of Act Number 48 of 2009 on Judicial Power, which states that judges are obliged to explore, follow, and understand legal values and the sense of justice that exists in society.[32] Apart from that, in the Indonesian criminal justice system, you can also refer to the provisions of Article 180 paragraph (1) of Act Number 8 of 1981 on Criminal Procedure Law (Criminal Procedure Code/*Kitab Undang-Undang Hukum Acara Pidana*), which basically states that judges can ask for an expert witness to clarify problems that arise in a court hearing.[33] The implementation of *amicus curiae* can actually be justified and can be taken into consideration by the judge based on the theory of decision-making because the ultimate goal of the implementation of *amicus curiae* in criminal cases is to obtain the judge's confidence as in following the provisions of Article 183 of the Criminal Procedure Code where the

[29] See *Court Decision Number 798/Pid.B/2022/PN Jkt.Sel*, p. 403.
[30] See *Court Decision Number 45/PID.B/2012/PN.MR*, p. 29 & 38.
[31] See *Court Decision Number 780/Pid.B/2014/PN Dps*, p. 52.
[32] See *Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*, *LN. 2009/ No. 157*, Article 5 paragraph (1).
[33] See *Kitab Undang-Undang Hukum Acara Pidana*, *Undang-Undang Republik Indonesia Nomor 8 Tahun 1981*, *LN. 1981/ No.76*, Article 180.

judge's confidence is obtained on at least based on 2 (two) pieces of evidence specified in Article 184 of the Criminal Procedure Code (as in the principle of *negative wettelijke bewijstheorie*).[34]

The judge's consideration in implementing *amicus curiae* can also be done by including it as documentary evidence. Let's look at the provisions of Article 187 of the Criminal Procedure Code. The *amicus curiae* submission document (called an amicus brief) can be used as evidence for a letter that is included in the category of other letters, which can only be valid if it is related to the contents of other evidence. This letter is not viewed from a formal perspective as being able to stand alone but can be linked to clue evidence as stated in Article 188 of the Criminal Procedure Code[35], so it needs to be paired with other evidence, such as witness statements or defendant statements; however, whether the *amicus curiae* can be accepted depends on the judge who examines it.[36]

In the Constitutional Court, things are different. Apparently, there are provisions that allow the concept of *amicus curiae* to be implemented based on Constitutional Court Regulation Number 2 of 2021 on Procedures in Judicial Review Cases, which replaces Constitutional Court Regulation Number 9 of 2020. In this Regulation on Article 6 paragraph (1), one of the parties in a judicial review case is the Related Party, where the Related Party in question is:[37]

a) individuals or groups of people who have the same interests;
b) the unity of the customary law community as long as it is still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law;
c) a public legal entity, private legal entity, or
d) State institutions.

[34] Ayu Pralampita, "Kedudukan Amicus Curiae Dalam Sistem Peradilan Di Indonesia."

[35] See *Kitab Undang-Undang Hukum Acara Pidana* …, Article 188.

[36] Aulia and Muksin, "The Position of Amicus Curiae under the Indonesian Law of Evidence."

[37] See *Peraturan Mahkamah Konstitusi (PMK) Nomor 2 Tahun 2021 tentang Tata Beracara dalam Perkara Pengujian Undang-Undang*, Article 6 paragraph (1).

Related Parties are parties with direct interests and/or parties with indirect interests in the subject matter of the application.[38] A Related Party with a direct interest is a party whose rights and/or authority are directly affected by the subject matter of the application. In contrast, a Related Party with an indirect interest is a party whose rights and/or authority are not directly affected by the subject matter of the application but because they were concerned for the application in question, and the statement is *ad informandum* (additional information).[39]

Let's examine the procedural law for judicial review cases at the Constitutional Court above. It turns out that this provision regulates the possibility of the entry of parties who do not have a direct interest in the subject matter but become parties because they are concerned about the issues being discussed but whose statements are considered *ad informandum*. Statements from related parties with indirect interests whose statements are *ad informandum* do not need to be heard at trial. Still, they could be taken into consideration by judges at the Constitutional Court.[40] Furthermore, the *ad informandum* information, which is the information of the parties, is considered evidence in the case examination because the Relevant Party with an indirect interest is also a party in this judicial review case.[41] In addition, judges in judicial review cases can ask the parties to nominate experts or witnesses.[42] The procedural provisions regarding statements from related parties with indirect interests are similar to the concept of *amicus curiae* in terms of purpose, where the information is used as additional information or input to the judge, but they are different in terms of the position where the related parties are considered parties in the case, and their statements are used as evidence.

A similar concept is also applied, as can be seen in the provisions of Act Number 5 of 1986 on State Administrative Courts, where it is possible for a person or civil legal entity outside the party in the case to

[38] See *PMK Nomor 2 Tahun 2021* …, Article 6 paragraph (2) and Article 26 paragraph (1).

[39] See *PMK Nomor 2 Tahun 2021* …, Article 26 paragraph (2) and Article 26 paragraph (3).

[40] See *PMK Nomor 2 Tahun 2021* …, Article 57 paragraph (3).

[41] See *PMK Nomor 2 Tahun 2021* …, Article 59.

[42] See *PMK Nomor 2 Tahun 2021* …, Article 61 paragraph (1) and Article 62 paragraph (1).

participate or be included in the ongoing state administration disputes case examination process, either on their initiative or on the judge's initiative.[43] The entry of such third parties in the following cases:[44]

1. The third party, of his own accord, wishes to maintain or defend his rights and interests so that he is not harmed by the Court's decision in an ongoing dispute; for this reason, he must submit a petition stating the reasons and things he is demanding;
2. There are times when a third party is included in the ongoing case process at the request of one of the parties (plaintiff or defendant);
3. Third parties can be entered into the ongoing case process at the initiative of the judge examining the case.

Other provisions of the same Act also provide similar things, such as the judge can examine letters held by the relevant officials or ask for explanations and information about something related to the dispute and can order a witness to be heard at trial.[45] Thus, in examining state administrative disputes, judges have an active role in exploring information and truth by attracting parties that are considered related and can be active in examining evidence that is not submitted but is considered necessary by the judge. Third parties who are considered linkages become parties in the case, and the information obtained becomes evidence in the case.

The contribution of the *amicus curiae* concept can also be seen in the state administrative court case number 270/G/2018/PTUN-JKT, where the Panel of Judges examining the case stated that they had accepted 2 (two) opinions of friends of the Court (*amici curiae*), the first submitted by various educational organizations and 18 legal academics and the second from several educational organizations.[46] Then, in its consideration, the Panel of Judges linked the 2 (two) *amici curiae* with the provisions of Article 5 paragraph (1) and Article 50 paragraph (1) of Act

[43] See *Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara*, *LN. 1986/ No. 77*, Article 83.

[44] See *Penjelasan Undang-Undang Republik Indonesia Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara*, *TLN No. 3344*, Article 83.

[45] See *Undang-Undang Nomor 5 Tahun 1986* …, Article 85 and Article 86.

[46] Court Decision Number 270/G/2018/PTUN-JKT, 8 Apr 2019, p. 114.

Number 48 of 2009 on Judicial Power and categorized them as part of legal values and a sense of justice who live in society. The meaning of "law" and "sense of justice" is certainly broader than just "regulations." This recognition from the Panel of Judges also requires a willingness to adopt the contents therein as a consequence of society's values, which, if it is the opposite, means it deviates from that society's values itself.[47] Even though the Panel of Judges who examined it in its decision had considered the 2 (two) *amicus curiae* that had been submitted, it was emphasized that the Court remained empowered and independent to assess and consider whether or not the opinion of the *amicus curiae* was followed.

A similar *amicus curiae* practice is also known in cases with indications of human rights violations, such as when the National Human Rights Commission (*Komnas HAM*) provides information to judges. The further following statement was regulated in Article 89 paragraph (3) letter h Act Number 39 of 1999 on Human Rights with the following provisions: "Providing opinions based on the approval of the Chief Court of certain cases which are currently in the trial process, if in the case there are violations of human rights in public matters and examination proceedings by the court, *Komnas HAM*'s opinion must then be notified by the judge to the parties."[48] The phrase "in public matters" in this provision refers to land, employment, and environmental issues. Such provisions provide particular legitimacy to *Komnas HAM* in giving information or input in cases that follow this provision. It could be a provision that aligns with the concept of *amicus curiae* but in a limited context because it is only given to *Komnas HAM* and in certain cases.

Based on several examples of decisions and regulations in general courts, state administrative courts, and even courts in the Constitutional Court, no provisions are explicitly the same as the concept of *amicus curiae*. The implementation of the *amicus curiae* is carried out through informal confessions because Indonesian laws and regulations do not

[47] Muhammad Ilham Hasannudin and Amy Yayuk Sri Rahayu, "Peranan Amicus Curiae Pada Putusan Gugatan Terhadap Proses Seleksi Calon Hakim Agung," Jurnal Yudisial 15, no. 1 (August 23, 2022): 1.

[48] *Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia*, Article 89 paragraph (3).

mandate it.[49] In essence, the *amici(s)* can only submit an *amicus* brief with information that may not be revealed in an examination of the case at trial and is independent, but whether the judge will use this in his consideration or not is entirely within the authority of the judge examining the case.

If we look at the several examples of decisions above, the implementation of *amicus curiae* depends on whether the judge has the authority to consider it. Based on its implementation by the judge, according to the author, *amicus curiae* in Indonesia can be put into 5 (five) categories, namely:

1. the judge accepts the *amicus curiae* and considers it as documentary evidence;
2. the judge agrees with the *amicus curiae* and considers it apart from the evidence;
3. the judge did not accept the *amicus curiae* and consider it;
4. the judge did not consider *amicus curiae* in his decision but gave the judge's confidence or
5. the judge did not accept the *amicus curiae* or consider it at all.

*Amicus curiae* is at the stage of input or suggestions to judges, emphasizing aspects of social justice. It allows judges who previously made decisions based on legal certainty (legal justice) to sharpen their sense of justice because the *amicus curiae* submitted is from the public.[50] The concept of *amicus curiae* must be considered a form of public participation in justice in Indonesia. When judges rule this concept out, it does not become a problem in our judiciary because there is no requirement for its implementation in Indonesian laws and regulations.[51] It is, of course, the impact of the absence of regulation in Indonesian laws and regulations.

[49] Reza Bagoes Widiyantoro, "Peranan Amicus Curiae pada Proses Pembuktian", p.74, http://repository.unissula.ac.id/25765/1/30301800324_fullpdf.pdf, accessed 28 Dec 2023.

[50] Rizal Hussein Abdul Malik, Antonius Sidik Maryono, and Pramono Suko Legowo, "Penerapan Amicus Curiae Dalam Pemeriksaan Perkara Di Pengadilan Negeri Tanggerang," Soedirman Law Review 4, no. 2 (2022): 153–163.

[51] Ibid.

The implementation of *amicus curiae* must, of course, be in line with the provisions of Indonesian laws and regulations. The judge's duties, which lead to decisions, must be able to create laws that realize justice and shared prosperity. The judge's considerations, of course, have gone through philosophical, sociological, and juridical dimensions based on the facts revealed and the *ratio decidendi*[52] clearly explained, and finally, the decision handed down has been deemed the most fair and correct for the parties (*res judicata pro veritate habetur*).

*Amicus curiae* can be an instrument that judges need as a form of obtaining information and facts that may not be revealed at the trial of a case, bearing in mind Article 5 paragraph (1) of Act Number 48 of 2009 on Judicial Power. If this provision is interpreted further, it can mean that a judge must disclose information as widely as possible from various groups. The concept of *amicus curiae* is also crucial for understanding moral and cultural values in Indonesia, which is a plural society. Apart from that, *amicus curiae* can open up space for community participation in efforts to strengthen the integrity of the Indonesian judiciary and advance the realization of Indonesia as a legal state capable of realizing public civility.

## Comparative Analysis of Amicus Curiae: How to Implement it in Indonesia

The law is the highest rule that must be followed in carrying out social interactions. Law develops along with a nation's civilization, which is influenced by social and philosophical conditions in the country and state. Law, especially in Indonesia, of course, always requires reform based on the moral and cultural values of the Indonesian nation. These reforms can later enrich Indonesia's legal and constitutional civilization to realize public civility in all aspects of national life.

[52] *Ratio decidendi* is literally defined as "reasons for making a decision." The *ratio decidendi* format in a judge's decision must be stated in a legal proposition, which is the premises containing the judge's rational considerations when handing down his decision. This premise is different from the premise in *obiter dicta*, which is a statement of the judge's views or considerations regarding a case regarding rules, principles, and implementation of the law, or can also be an answer to questions related to a particular case, but not directly related to the substance (main issue) of the matter.

Indonesia became acquainted with the Western legal system through colonization by the Dutch, who had a civil law tradition; therefore, mutatis mutandis brought Indonesia into the civil law legal system tradition. We do not know of a judicial system based on the principle of precedent, such as Indonesia's neighboring countries, which England once colonized, such as Malaysia, Singapore, Brunei Darussalam, Hong Kong, and the Philippines, which are heavily influenced by the United States legal system or what is often called common law.

Judicial power is exercised by the Supreme Court and subordinate judicial bodies, namely the general, religious, military, and state administrative courts respectively. General Justice is tasked with adjudicating cases of a criminal or civil nature that apply to the public. Religious courts are specifically for cases between Muslim people in marriage, inheritance, wills, grants, endowments, *zakat*, *infaq*, *sadaqah*, and Sharia economics. Military justice is specifically for adjudicating criminal cases involving military members who are still active. Then, the state administrative court adjudicates state administration disputes involving a government policy for the purpose of guaranteeing society's position as citizens under the law. Apart from that, judicial power is also exercised by the Constitutional Court, which has the authority to conduct judicial review and resolve disputes over the authority of state institutions, disputes in general elections, and the dissolution of political parties.

Law is a primary norm that determines sanctions, which are created by human consciousness or can be called positive rights. Judges have the freedom to apply the law they use in a case they examine, but judges' decisions must reflect society's sense of justice, not their own sense of justice. Judges can use the broadest possible information and opportunities from *amicus curiae* to help them act fairly and wisely in deciding a case.[53] Judges can undoubtedly use amicus curiae as material for examining cases and considering the decisions they will make to resolve them.

[53] Ayu Pralampita, "Kedudukan Amicus Curiae Dalam Sistem Peradilan Di Indonesia."

Amicus *curiae*, which literally translates as "friend of the court," from its meaning has a positive connotation. *Amicus Curiae* is a non-disputing party that can participate to a certain extent in the trial process and assist the judge with his expertise and knowledge autonomously and independently. Filing *amicus curiae* provides additional information or perspective for a judge to decide cases related to the public interest. The friends of the Court in question can come from various circles, such as NGOs, specific interest groups, academics, legal experts, and legal practitioners, who participate and are happy to provide attention or views on a particular case. This participation is, of course, in line with the principles of democracy in Indonesia, which are based on popular sovereignty. These friends of the Court can represent the views of a minor (perhaps even a large) portion of society, making it easier for judges to achieve the justice society expects.

The Court is a government institution with the authority to adjudicate legal disputes between parties and adjudicate cases that are resolved formally and initiated by individuals. The courts treat everyone equally, and no one can be discriminated against, regardless of race, gender, religion, or anything else. This connection between law and the Court brings us to the understanding that initially, human actions are regulated by legal norms and regulations sanctioned in a pra-adjudication position. This view also means the existence of a legitimate relationship with state authorities, which legitimizes their actions in limiting citizens' human rights and freedom if they contradict conduct with existing laws or norms.

The Supreme Court of the Republic of Indonesia and its subordinate judicial bodies will receive extreme scrutiny from various groups dissatisfied with judges' decisions and court officials' behavior. In this context, it is necessary to have a judge as a proper law enforcement officer who has integrity, honesty, and strong determination to carry out legal reform to create an excellent judiciary and realize the justice administration institution as an authoritative, professional, and accountable judicial institution, in line with the vision of the Supreme Court, to create a tremendous Indonesian judicial body. The application of *amicus curiae*, even to the institutionalization stage, maybe something worthy of attention from legal and political stakeholders in Indonesia because this concept can be used as part of

efforts to find more substantive justice in the Court and, of course, can also become a space for joint control for judges action, especially regarding how the judge takes into consideration the decision he or she makes.

Formal recognition by countries with a civil law tradition of *amicus curiae* takes different forms and comes from other sources, even within the same country. In some cases, such as in Mexico or France's *Conseil d'Etat*[54], legislative action formally changes procedural codes while in other jurisdictions, such as Argentina or France, courts have automatically accepted *amicus* briefs.[55] The various adoption processes reflect that *amicus curiae* is not rigid. Many countries still recognize the concept of *amicus curiae* without a formal procedure. Still, the formal recognition itself is a strong point of similarity between the experiences of these countries and the *amicus* brief.[56]

The *amicus curiae* concept has been a part and parcel of the theory and practice of English law.[57] Most International tribunals, such as the European Court of Human Rights (ECtHR), also known as the Strasbourg Court, have also accepted the amicus curiae concept. Although the overwhelming majority of international tribunals now allow *the amicus curiae* concept, little is known about this institution's domestic, historical origins.[58] The ECtHR Grand Chamber adopted the concept in 1982, and an empirical study shows that *amicus curiae* is significantly relied upon as a vehicle for NGOs to voice their opinions

[54] In France, the *Conseil d'État* (Council of State) is a governmental body that acts both as legal adviser to the executive branch and as the Supreme Court for administrative justice, which is one of the two branches of the French judiciary system. A General Session of the Council of State is presided over by the Prime Minister or, in their absence, the Minister of Justice. However, since the actual presidency of the Council is held by the Vice-President, the vice-president of the Council of State usually presides at all but most ceremonial assemblies. It is also done for obvious reasons, such as the separation of powers.

[55] Steven Kochevar, "Amici Curiae in Civil Law Jurisdictions," *Yale Law Journal* 122 (April 1, 2013): 1653–1669.

[56] Ibid.

[57] Samuel Krislov, "The Amicus Curiae Brief: From Friendship to Advocacy," *The Yale Law Journal* 72, no. 4 (March 1963): 694.

[58] Anna Dolidze, "Making International Property Law: The Role of Amici Curiae in International Judicial Decision-Making" (March 24, 2013).

before the Court.[59] European Convention on Human Rights, as the institutes of ECtHR, at the new provision of Article 44 clause 3 of the title Third Party Intervention, establishes the possibility of intervention by third persons, at which the provision in essences states: "Once notice of an application has been given to the respondent Contracting Party, the President of the Chamber may, in the interests of the proper administration of justice, invite, or grant leave to, any Contracting Party which is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments or, in exceptional cases, to take part in a hearing."[60] In practice, the third party(-ies) base their intervention on the scarce information available in the Statement of Facts.[61] The type of valuable information to the Court depends on which of the following approaches the third party takes concerning the intervention:[62]

1. Information on the interpretation of international norms by other jurisdictions;
2. Information through Comparative Law;
3. Information on the law and practice at the national level;
4. Information on relevant data, statistics, and situation on the ground;
5. Information on the ECtHR's jurisprudence.

One of the urgency of regulating the concept of *amicus curiae* can be seen from several examples of cases, which have been explained in the previous section. Many judges have different views regarding the acceptance of the *amicus curiae* concept; on the one hand, some judges firmly accept and consider it, and on the other hand, there are still judges who clearly reject the application of this concept, which is not

[59] Anna Dolidze, "Bridging Comparative and International Law: *Amicus Curiae* Participation as a Vertical Legal Transplant," *European Journal of International Law* 26, no. 4 (November 14, 2015): 851–880.

[60] Rules of Court European Court of Human Rights, Article 44 clause (2).

[61] European Network of National Human Rights Institutions, "Third Party Interventions before the European Court of Human Rights: Guide for National Human Rights Institutions", 2020, p. 22, https://ennhri.org/wp-content/uploads/2020/10/Third-Party-Interventions-Before-the-European-Court-of-Human-Rights-Guide-for-NHRIs.pdf, accessed 29 Mar 2024.

[62] European Network of National Human Rights Institutions, *Third Party Interventions* …, p. 23-24, accessed 29 Mar 2024.

known in the Indonesian legal system. When we talk about law, we have to return to its philosophical point of view, where it is correct to say that law itself was created by and for society. Therefore, studying law is never easy because the faster development of society certainly influences legal development, which is slower.

*Amicus curiae* is a handy instrument for judges to explore the values of truth and justice, helping them understand the issues and truth of the case they are examining.[63] The existence of *amicus curiae* can be a breakthrough for judges in their efforts to obtain additional information to provide confidence in making a decision. *Amicus curiae* can assist judges in carrying out their obligations to 'understand' the values of justice that exist in society.[64] The concept of *amicus curiae* functions to help judges be fair and wise in deciding a case. Judges must receive information from various groups of society, both parties to the case and parties outside the case.[65]

In principle, judges' role as judicial authorities is to carry out judicial functions, namely upholding law and justice. In this regard, we take a wise expression from Bernandus Maria Taverne (1874-1944), a Dutch Supreme Judge of criminal law, who stated, "Give me good judges, so that even with bad laws I can bring justice."[66] Bad law, in this sense, can still be regenerated, while a judge's character and behavior are assessed, especially morals, which are the most essential things in law enforcement. It suggests that a judge must be firm, steady, and mature in applying the law and considering his decisions.

Judges in law enforcement must pay attention to aspects of their human resources as law enforcement officers because even though the laws and regulations are complete and the facilities and infrastructure are available, they will still be a crucial obstacle when the judge is inconsistent, lacks integrity and morality, is unprofessional, and dishonest in upholding law and justice. It can be prevented by

[63] Aminah, Menjadi Sahabat Keadilan Panduan Menyusun Amicus Brief.

[64] S. Sukinta, "Konsep Dan Praktik Pelaksanaan Amicus Curiae Dalam Sistem Peradilan Pidana Indonesia," *Administrative Law and Governance Journal* 4, no. 1 (March 6, 2021).

[65] Ibid.

[66] Wahju Prijo Djatmiko, *Budaya Hukum Dalam Masyarakat Pluralistik* (Thafa Media, 2021).

community participation in monitoring the performance of judges, considering that sovereignty is in the hands of society and that the judge's job is to realize justice in society fully. Therefore, *amicus curiae* can also be present as a space for community control over the performance of judges in examining and adjudicating a case because *amicus curiae* itself is a form of community participation that is not a direct party to be able to provide opinions to judges who may not know the information from the *amici(s)*. The *amici(s)* pay attention to the case and at least follow the course of the case examination. Then, they can monitor how the judge takes into consideration in handing down his decision based on the examination at trial.

Implementing the *amicus curiae* concept may present several challenges, such as doubts regarding the independence and quality of the proposed *amicus curiae*. One of the doubts is that *the amici(s)* can give the impression that the opinion submitted could interfere with the judge's freedom to examine a case and consider factors to make a decision on the case. The same thing is also known as the practice of trial by the press,[67] which must be prevented because it is a form of opinion that can be judgmental. Of course, this matter must be left entirely to the discretion of the judge who is examining the case in question. The judge must then assess the quality of the *amicus curiae* information and consider it in the decision that will be handed down.

The next question, which is also a challenge in applying the concept of *amicus curiae*, is, of course, related to whether the opinion of the *amici(s)* represents society in general or only represents the interests of the *amici(s)*. In other words, whether the *amici(s)* present are true "friends of the court" or just "friends of the parties." This question must address whether the *amici(s)* only need to pay special attention to a case and what legitimate interests can justify the *amicus curiae*'s participation. How that question is answered depends in part on the conception of the Court, especially the judges, of his or her role in adjudicating a case.

[67] Trial by the press is an activity in which the press acts as a judge in a case being examined in Court by looking for evidence, analyzing and reviewing it themselves, and then making a decision before the Court decides. Trial by the press is often associated with deviations from the principle of presumption of innocence.

About how to assess the admissibility of an *amicus curiae*, we can see the viewpoint of Richard Allen Posner, a former federal appeals judge at the United States Court of Appeals for the Seventh Circuit, who argued in his decision in the case of Ryan v. Commodity Futures Trading Comm'n in 1997, that *amicus curiae* should only be allowed on condition when the parties in a case are not represented competently or not represented at all, when the *amici(s)* have interests in several other cases that may be affected by the decision in the present case (though not affected enough to entitle the *amici(s)* to intervene and become a party in the present case), or when the *amici(s)* has unique information or perspective that can help the Court beyond the help that the lawyers for the parties can provide.[68] Of course, the quality of the *amicus curiae* must be assessed, and the author "underlines" Richard Posner's opinion, which states that the opinion of the *amicus curiae* must have unique information or perspective that the parties' lawyers cannot provide. Apart from that, judges also need to examine whether the *amici(s)* are "friends of the court" or "friends of the parties" so that the Court should not be used as a court of public opinion but rather should be a court of law.[69]

Judges must apply elements of justice to be able to decide correctly based on moral and legal principles and divine and justice principles so that law as a social element has coherence with justice. The realization of these two premises will undoubtedly provide a fundamental meaning for understanding law and justice in general.[70] One of the principles for forming good laws and regulations that must be positioned as the first principle is clarity of purpose. Purposes are guidelines that serve as guidance and limit the direction in which laws are designed to produce and shape legal culture in society or change in the country.[71] Thus, the limit that is the most appropriate indicator for measuring how relevant the substance of public participation is to the

[68] Helen A. Anderson, "Frenemies of the Court: The Many Faces of Amicus Curiae," *SSRN Electronic Journal* (2014).

[69] Ibid.

[70] Ilir Qabrati, "The Concept of Law and Justice," Prizren Social Science Journal 4, no. 3 (December 31, 2020): 69–73.

[71] Angga Prastyo, "Limitation Of Meaningful Participation Requirements In The Indonesian Law-Making Process," Jurnal Hukum dan Peradilan 11, no. 3 (December 1, 2022): 405.

formation of laws is the "purpose" of the law that is designed to be enforced.[72] In such conditions, legal knowledge alone is not enough; rather, a sensible and wise attitude is needed from the judge to understand true justice in the delivery of justice.[73]

The relationship between law and justice can also be observed in every legal objective, ethical teaching, standard priority teaching, and casuistry teaching.[74] This relationship is equipped with other legal objectives, such as certainty, usefulness, and predictability. In deciding a case, the judge must explore the facts based on juridical, philosophical, and sociological truth in every case he faces.[75] Juridical truth means the judge's considerations are based on juridical facts revealed in the trial and determined by law as matters that must be included in the decision or the legal basis used meets the applicable legal provisions. Philosophical truth means considerations or reasons that illustrate that the regulations formed consider the outlook on life, awareness, and legal ideals, including the spiritual atmosphere and philosophy of the Indonesian nation, which originates from Pancasila and the State Constitution. Meanwhile, sociological truth means the judge's consideration of his decision regarding the consequences that will impact society; in other words, a judge must make a fair and wise decision by considering the legal impact that occurs in society.

It cannot be denied that there are recognized advantages and benefits of *amicus curiae* practice, which leads to decisions that can approach the values of social justice. The regulation or institutionalization of the *amicus curiae* concept can provide clear access to public participation and equality of opinion between judges when applying this concept. By clearly defining and laying down the rules, many differences of opinion between judges that have occurred, as in the examples presented by the author, can undoubtedly be resolved.

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[72] Ibid.

[73] Amran Suadi, "The Theory Of Biological Justice In Legal Philosophy And Its Application In Judges' Decisions," Jurnal Hukum dan Peradilan 9, no. 3 (January 4, 2021): 449.

[74] Adriana Pakendek, "Cerminan Keadilan Bermartabat Dalam Putusan Pengadilan Berdasarkan Pancasila," Jurnal Yustitia 18, no. 1 (2017): 23–37.

[75] Dadah Cholidah, "Peran Hakim Dalam Memperkokoh Integritas Peradilan Sebagai Pemenuhan Kepercayaan PubIik," *SALAM: Jurnal Sosial dan Budaya Syar-i* 10, no. 2 (May 4, 2023): 627–646.

Clear regulations regarding *amicus curiae* participation must, of course, also be limited considering the quality of information provided by *amici(s)* to judges, and this very much depends on the sensible and wise attitude of a judge.

## Conclusion

*Amicus curiae* (in English: friend of the Court, in Indonesian: *sahabat pengadilan*) is input or information from party(-ies) outside the parties in a case which in the Indonesian judicial system does not yet have clear and specific rules so that its implementation is given all authority to the judge who examines a case whether it can be used or not. Implementing *amicus curiae* in the Indonesian judicial system still needs a common perspective from the judges themselves. The reasons for judges using *amicus curiae* are always based on the provisions of Article 5 paragraph (1) of Act Number 48 of 2009 on Judicial Power or classify it as documentary evidence. Still, some judges reject this concept because it is not recognized in the laws and regulations in Indonesia, or the idea was not considered at all in the decision, even though an *amicus curiae* had been submitted in the case. There is a concept of input or information from other parties, which is similar to several judicial systems, such as state administrative courts and judicial review courts at the Constitutional Court, as well as input in cases where human rights are violated.

The urgency of regulating or institutionalizing *amicus curiae* is appropriate, considering that in judicial practice among judges in Indonesia, there have been differences of opinion in its implementation. Apart from that, the *amicus curiae* arrangement can benefit the judge's efforts to find more substantive justice in the Court by involving society's participation. The *amicus curiae* arrangement can also be a joint control space for the judge's actions in taking considerations when deciding on a case that is currently on trial and being examined.

Recognition of *amicus curiae* as an institution needed by judges as a form of obtaining information and facts that may not be revealed at the trial of a case can be done informally by taking into account the provisions of Article 5 paragraph (1) of Act Number 48 of 2009 on Judicial Power. If this provision is interpreted further, it can mean that a judge should provide as much information as possible from various

groups to understand moral and cultural values in the plural society in Indonesia. The application of *amicus curiae*, even to the institutionalization stage, maybe something worthy as a part of efforts to find more substantive justice in the Court and, of course, can also become a space for joint control for judges' action, taking consideration in the decisions they make.

Based on all the discussions that have been put forward, the Authors provide a suggestion, namely that the Supreme Court can issue a Policy Circular (*Surat Edaran Mahkamah Agung*) or through a Decree of the Chief Justice of the Supreme Court (*Keputusan Ketua Mahkamah Agung*) regarding guidelines that judges can use to implement *amicus curiae* and how to assess the quality of information in *amicus curiae*. Apart from that, *amicus curiae* can open up space for society's participation in efforts to strengthen the integrity of the Indonesian judiciary and advance the realization of Indonesia as a legal state capable of realizing public civility.

## Bibliography

Ali/IHW, "Amicus Curiae Dipakai Membantu Permohonan PK", *Hukumonline.com* (12 Aug 2008), https://www.hukumonline.com/berita/a/iamicus-curiaei-dipakai-membantu-permohonan-pk--hol19896, accessed 28 Dec 2023.

Alliance Defending Freedom, "Brief of Alliance Defending Freedom as Amicus Curiae in Support of Petitioners Foundation for Individual Rights in Education", (2021), https://www.supremecourt.gov/DocketPDF/21/21-84/188024/20210820112743917_21-84AmicusBriefofAllianceDefending Freedom.pdf., accessed 28 Dec 2023.

Aminah, Siti, *Menjadi Sahabat Keadilan Panduan Menyusun Amicus Brief*, Jakarta: The Indonesian Legal Resource Center (ILRC), 2014.

Anderson, Helen A, "Frenemies of the Court: The Many Faces of Amicus Curiae", *UW Law Digital Commons*, vol. 49, no. 214

(2015), pp. 361-416. https://digitalcommons.law.uw.edu/faculty-articles/214

Asshiddiqie, Jimly, *Pengantar Ilmu Hukum Tata Negara*, Jakarta: RajaGrafindo, 2015.

Aulia, Fadil and Muchlas Rastra Samara Muksin, "The Position of Amicus Curiae under the Indonesia Law of Evidence", *Jurnal Media Hukum*, vol. 27, no. 2 (2020), pp. 217-227. https://doi.org/10.18196/jmh.20201152

Dadah Cholidah, "Peran Hakim dalam Memperkokoh Integritas Peradilan sebagai Pemenuhan Kepercayaan Publik", *Salam: Jurnal Sosial dan Budaya Syar-I*, vol. 10, no. 2 (2023), pp. 627-646. https://doi.org/10.15408/sjsbs.v10i2.32134

Dicey, A. V., *Introduction to the Study of the Law of the Constitution*, London: Macmillan and Co. Limited, 1952.

Djatmiko, Wahju Prijo, *Budaya Hukum dalam Masyarakat Pluralistik*, Yogyakarta: Thafa Media, 2022.

Dolidze, Anna, "Bridging Comparative and International Law: Amicus Curiae Participation as a Vertical Legal Transplant", *European Journal of International Law*, vol. 26, no. 4 (2016), pp. 851-880. https://doi.org/10.1093/ejil/chv059

Dolidze, Anna V., "Making International Property Law: The Role of Amici Curiae in International Judicial Decision-Making", *Syracuse Journal of International Law and Commerce*, vol. 40, no. 1 (2013), pp. 116-148. https://ssrn.com/abstract=2086433

European Network of National Human Rights Institutions, "Third Party Interventions before the European Court of Human Rights: Guide for National Human Rights Institutions", (2020), https://ennhri.org/wp-content/uploads/2020/10/Third-Party-Interventions-Before-the-European-Court-of-Human-Rights-Guide-for-NHRIs.pdf, accessed 29 Mar 2024.

Fachri, Ferinda K., "Berstatus Justice Collaborator, Majelis Vonis Richard Eliezer 1,5 Tahun Bui", *Hukumonline.com* (15 Feb 2023),

https://www.hukumonline.com/berita/a/berstatus-justice-collaborator--majelis-vonis-richard-eliezer-1-5-tahun-bui-lt63ec98cb67324?page=all, accessed 27 Dec 2023.

Friedman, Lawrence M., *The Legal System: A Social Science Perspective*, New York: Russel Sage Foundation, 1975.

Garner, Bryan A., ed., *Black's Law Dictionary Eight Edition*, USA: Thomson West Publishing Co., 2004.

Hasanuddin, Muhammad Ilham and Amy Yayuk Sri Rahayu, "Peranan Amicus Curiae pada Putusan Gugatan terhadap Proses Seleksi Calon Hakim Agung Kajian Putusan Nomor 270/G/2018/PTUN-JKT", *Jurnal Yudisial*, vol. 15, no. 1 (2022), pp. 1-26. https://doi.org/10.29123/jy.v15i1.533

Wajdi, Farid, "Tantangan dan Perbaikan Penegakan Hukum", in *Bunga Rampai Memperkuat Peradaban Hukum dan Ketatanegaraan Indonesia*, ed. by Imran and Festy Rahma Hidayanti, (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2019), pp. 151-174.

Institute for Criminal Justice Reform, "Amicus Curiae (Sahabat Pengadilan) untuk Pengadilan Negeri Palopo dalam Kasus Pidana dengan Nomor 46/Pid.Sus/2021/PN Plp atas nama terdakwa Muhammad Asrul", (2021), https://icjr.or.id/wp-content/uploads/2021/07/Amicus-Curiae-untuk-M.-Asrul-ICJR.pdf., accessed 28 Dec 2023.

Izarova, Iryna, Bartosz Szolc-Nartowski, and Anastasiia Kovtun, "Amicus Curiae: Origin, Worldwide Experience and Suggestions for East European Countries", *Hungarian Journal of Legal Studies*, vol. 60, no. 1 (2019), pp. 18-39. https://doi.org/10.1556/2052.2019.60103

Samuel Krislov, "The Amicus Curiae Brief: From Friendship to Advocacy", *The Yale Law Journal*, vol. 72, no. 4 (1963), pp. 694-721. https://doi.org/10.2307/794698

Kochevar, Steven, "Amici Curiae in Civil Law Jurisdcitions", *The Yale Law Journal*, vol. 122, no. 7 (2013), pp. 1653-1669. http://hdl.handle.net/20.500.13051/10053

Komisi Yudisial Republik Indonesia, *Bunga Rampai Memperkuat Peradaban Hukum dan Ketatanegaraan Indonesia*, Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2019.

Malik, Rizal Hussein Abdul, Antonius Sidik Maryono, and Pramono Suko Legowo, "Penerapan Amicus Curiae dalam Pemeriksaan Perkara di Pengadilan Negeri Tanggerang", *Soedirman Law Review*, vol. 4, no. 2 (2022), pp. 153-163. https://doi.org/10.20884/1.slr.2022.4.2.189

Pakendek, Adriana, "Cerminan Keadilan Bermartabat dalam Putusan Pengadilan Berdasarkan Pancasila", *Jurnal Yustisia*, vol. 18, no. 1 (2017), pp. 23-37. http://dx.doi.org/10.53712/yustitia.v18i1

Pralampita, Linda Ayu, "Kedudukan Amicus Curiae dalam Sistem Peradilan di Indonesia", *Lex Renaissance*, vol. 5, no. 3 (2020), pp. 558-572. https://doi.org/10.20885/JLR.vol5.iss3.art4

Prastyo, Angga, "Batasan Prasyarat Partisipasi Bermakna dalam Pembentukan Undang-Undang di Indonesia", *Jurnal Hukum dan Peradilan*, vol. 11, no. 3 (2022), pp. 405-436. https://doi.org/10.25216/jhp.11.3.2022.405-436

Qabrati, Ilir, "The Concept of Law and Justice", *Prizren Social Science Journal*, vol. 4, issue. 3 (2020), pp. 69-73. https://doi.org/10.32936/pssj.v4i3.188

Ramli, Muhammad Afzal, and Gede Tusan Ardika, "Studi Kritis terhadap Ragam Konsep Negara Hukum", *Media Keadilan: Jurnal Ilmu Hukum*, vol. 10 no. 2 (2019), pp. 132-147. https://doi.org/10.31764/mk:%20jih.v10i2.1969

Rebe, Ryan J, "Examining the Link between Dollars and Decisions: A Multi-State Study of Campaign Contributions and Judicial Decision Making", PhD. Dissertation, Texas Tech University, 2013, https://ttu-ir.tdl.org/bitstream/handle/2346/50644/Rebe_Ryan_Diss.pdf?sequence=1, accessed 28 Dec 2023.

Safitri, Eva, "Perjalanan Kasus Pembunuhan Brigadir J hingga Ferdy Sambo dkk Disidangkan", *detikNews* (17 Oct 2022), https://news.detik.com/berita/d-6351835/perjalanan-kasus-pembunuhan-brigadir-j-hingga-ferdy-sambo-dkk-disidangkan, accessed 27 Dec 2023.

Suadi, Amran, "The Theory of Biological Justice in Legal Philosophy and Its Application in Judges' Decisions", *Jurnal Hukum dan Peradilan*, vol. 9, no. 3 (2020), pp. 449-464. http://dx.doi.org/10.25216/jhp.9.3.2020.449-464

Sukinta, "Konsep dan Praktik Pelaksanaan Amicus Curiae dalam Sistem Peradilan Pidana di Indonesia", *Administrative Law & Governance Journal*, vol. 4 issue. 1 (2021), pp. 89-98. https://doi.org/10.14710/alj.v4i1.89 - 98

Widiyantoro, Reza Bagoes, "Peranan Amicus Curiae pada Proses Pembuktian dalam Sistem Peradilan Pidana di Indonesia (Studi di Pengadilan Negeri Kendal)", Thesis, Indonesia: Universitas Islam Sultan Agung, 2022, http://repository.unissula.ac.id/25765/1/30301800324_fullpdf.pdf, accessed 28 Dec 2023.

Widyaningsih, Ni Putu, "Amicus Curiae dalam Proses Peradilan Pidana Anak sebagai Pengguna Narkotika" *Jurnal Kertha Semaya*, vol. 8, no. 7 (2020), pp. 1092-1100. https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/61938

Court Decision Number 273 PK/PDT/2008.

Court Decision Number 371/Pid.B/2020/PN.Jkt.Utr.

Court Decision Number 798/Pid.B/2022/PN Jkt.Sel.

Court Decision Number 45/PID.B/2012/PN.MR.

Court Decision Number 780/Pid.B/2014/PN Dps.

Council of Europe, Rules of Court European Court of Human Right, 2024.

*Peraturan Mahkamah Konstitusi Nomor 2 Tahun 2021*/Constitutional Court Regulation Number 2 of 2021.

*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*/1945 Constitution of the Republic of Indonesia.

*Undang-Undang Republik Indonesia Nomor 8 Tahun 1981*/ Act Number 8 of 1981, *LN. 1981/ No. 76*, *TLN No. 3209*.

*Undang-Undang Republik Indonesia Nomor 5 Tahun 1986*/ Act Number 5 of 1986, *LN. 1986/ No. 77*, *TLN No. 3344*.

*Undang-Undang Republik Indonesia Nomor 39 Tahun 1999*/ Act Number 39 of 1999, *LN. 1999/ No. 165*, *TLN No. 3866*.

*Undang-Undang Republik Indonesia Nomor 48 Tahun 2009*/ Act Number 48 of 2009*, LN. 2009/ No. 157*, *TLN No. 5076*.