

## Amicus Curiae at the Crossroads of Justice: Shaping Fair Court Decisions

Sahuri Lasmadi, Angga Aldilla Gusman, Moh Hasyim Asy'ari, Ammar Zul Haidar, Mutia Carolina Fransica

### CITE THIS ARTICLE AS

Lasmadi, Sahuri, Angga Aldilla Gusman, Moh Hasyim Asy'ari, Ammar Zul Haidar, and Mutia Carolina Fransica. "Amicus Curiae at the Crossroads of Justice: Shaping Fair Court Decisions". *Unnes Law Journal* 11, no. 1 (2025): 135-160. <https://doi.org/10.15294/ulj.v11i1.3471>.

### AIMS AND SCOPE

The *Unnes Law Journal* is a peer-reviewed scholarly journal that publishes high-quality research on Indonesian law and its interaction with regional and global legal developments. Established in 2012, the Journal aims to advance rigorous legal scholarship and promote evidence-based **discourse on law, justice, and governance**. The Journal focuses on theoretical, interdisciplinary, empirical, and comparative studies of law, with particular attention to legal issues that shape Indonesia's legal system and its role within Southeast Asia. It welcomes manuscripts that analyze legal reform, institutional development, and contemporary legal challenges from diverse methodological perspectives. The scope of the Journal includes, but is not limited to: Legal theory, jurisprudence, and philosophy of law; Comparative law and Southeast Asian legal studies; Law and economics; Criminology, criminal justice, and crime studies; Legal history and socio-legal research; Gender justice and feminist legal studies; Politics, public policy, and law reform; Law, culture, and society; and Law and literature. By fostering academically rigorous and internationally relevant research, The *Unnes Law Journal* seeks to contribute to the development of legal knowledge, support progressive law reform, and strengthen scholarly engagement within Indonesia and the global legal community.

### EDITORIAL TEAM

**Editor in Chief:** *Rahayu Fery Anitasari* (Universitas Negeri Semarang, Indonesia). **Managing Editors:** *Ridwan Arifin* (Universitat de Barcelona, Spain), *Sang Ayu Putu Rahayu* (Universitas Negeri Semarang, Indonesia). **Editorial Board:** *Souad Ahmed Ezzerouali* (Dhofar University, Oman), *Henk Addink* (Utrecht Universiteit, the Netherlands), *Sumanto Al Qurtuby* (Kyoto University, Japan), *Reid Mortensen* (University of Southern Queensland, Australia), *Admiral* (Universitas Islam Riau, Indonesia), *Zico Junius Fernando* (Universitas Bengkulu, Indonesia), *Eko Nuriyatman* (Universitas Jambi, Indonesia), *Haekal Al Asyari* (University of Debrecen, Hungary), *Varun Chhachhar* (University of Lucknow, India), *Adnan Ibrahim Sarhan* (University of Sharjah, United Arab Emirates), *Muhammad Ikram Nur Fuady* (University of Liverpool, United Kingdom)






## Amicus Curiae at the Crossroads of Justice: Shaping Fair Court Decisions

Sahuri Lasmadi, Angga Aldilla Gusman, Moh Hasyim Asy'ari, Ammar Zul Haidar, Mutia Carolina Fransica

**ABSTRACT.** Judges play an important role in the implementation of law enforcement, as they are tasked with making decisions that reflect the principles of justice. In their decision-making process, judges must consider and align with the values embedded in the community, as the law exists to serve humanity, not the other way around. The concept of *Amicus Curiae* (friends of the court) refers to input provided by individuals or organizations that are not directly involved in a case but have a vested interest in its outcome. This research explores the significance of *Amicus Curiae* in the Indonesian legal system, specifically examining its potential to optimize legal justice. It also investigates how judges incorporate *Amicus Curiae* submissions into their decision-making process to ensure fair and just rulings. The research adopts a normative juridical approach, utilizing legal, case, comparative, and conceptual analyses. The findings reveal that *Amicus Curiae* can play a crucial role in enhancing the judicial process in Indonesia by providing valuable perspectives on facts and legal issues pertinent to the case. While it does not interfere with the core issues being examined by the judges, *Amicus Curiae* contributes to the overall understanding of the case, thereby facilitating more informed, equitable decisions. The presence of *Amicus Curiae* in legal proceedings ultimately supports the realization of justice by shedding light on important legal and factual matters.

**KEYWORDS.** Amicus Curiae, Judicial Decision-Making, Legal Justice, Indonesia Legal System, Normative Juridical Approach

# Amicus Curiae at the Crossroads of Justice: Shaping Fair Court Decisions

Sahuri Lasmadi<sup>1</sup>✉, Angga Aldilla Gusman<sup>1</sup>, Moh Hasyim Asy'ari<sup>1</sup>,  
Ammar Zul Haidar<sup>2</sup>, Mutia Carolina Fransica<sup>3</sup>

<sup>1</sup> Faculty of Law, Universitas Jambi, Jambi, Indonesia

<sup>2</sup> Faculty of Law, Monash University, Melbourne, Australia

<sup>3</sup> Faculty of Law, Tsinghua University, Beijing, China

✉ Corresponding email: [sahuri@unja.ac.id](mailto:sahuri@unja.ac.id)

## Introduction

In Indonesia, the role of *amicus curiae*—literally meaning “friend of the court”—has increasingly come to symbolize the intersection of legal advocacy and the pursuit of justice.<sup>1</sup> As Indonesia’s judicial system continues to evolve, the contribution of non-litigants to court decisions has gained prominence, particularly in high-profile or complex cases. The idea of allowing third-party interventions in legal proceedings serves as a check on the balance of power, providing the court with expert opinions, additional perspectives, and legal arguments that might otherwise be overlooked. In a country where judicial independence and fair trials are paramount, the use of *amicus curiae* is a critical tool in ensuring that justice is not only done but seen to be done.<sup>2</sup>

---

<sup>1</sup> Aulia, Fadil, and Muchlas Rastra Samara Muksin. "The Position of Amicus Curiae under the Indonesian Law of Evidence." *Jurnal Media Hukum* 27, no. 2 (2020): 217-227; Kholiq, Abdul. "Amicus Curiae: Position and Role in Issuing Decisions by Judges as an Effort to Achieve Substantive Justice." *Veteran Law Review* 6, no. 2 (2023): 164-175.

<sup>2</sup> Nurdiyanti, Erlinda Putri, et al. "Authority of Amicus Curiae in Constitutional Proceedings: Bridging Society and the Constitutional Court." *West Science Law and Human Rights* 2, no. 3 (2024): 218-224; Suntoro, Agus. "Urgence and Challenges of

Historically, Indonesia's legal landscape has been shaped by a mix of traditional values and modern legal frameworks. However, despite strides toward a more democratic and transparent system, challenges related to judicial impartiality, access to legal resources, and the protection of human rights persist. *Amicus curiae* briefs can play a vital role in addressing these issues by providing courts with insights from diverse sectors, such as human rights, environmental law, and international law. Through the use of these briefs, courts can make more informed decisions, particularly in cases involving public interest or the protection of fundamental rights, ensuring that decisions are well-rounded and reflect a broader understanding of the issues at stake.

As Indonesia continues to strengthen its democracy and legal systems, *amicus curiae* stand at a crossroads. It has the potential to enhance transparency, promote justice, and build public trust in the judiciary. Yet, its proper integration into the legal system requires careful consideration of how third-party interventions are used. In a society with deeply entrenched cultural and political influences, ensuring that *amicus curiae* contributions serve the interests of justice rather than become tools for political or ideological bias is crucial. Balancing these forces will determine whether *amicus curiae* will become a powerful instrument for positive change in Indonesia's legal landscape or whether it will become an underutilized tool in an otherwise flawed system.

Furthermore, the idea of the rule of law was first coined by Plato and then emphasized by his student, Aristotle. Plato described that good governance is a government governed by law. This idea was supported by Aristotle who stated that a good state is a state governed by a constitution and sovereignty of law.<sup>3</sup> The interpretation of the rule of law is in line with the theory of legal sovereignty which explains that the supreme power in a country is the law.<sup>4</sup> Ernst Utrecht divides the rule of law into two, namely the formal rule of law or classical rule of law and the material rule of law or

---

Regulation of Amicus Curiae in The Judicial System." *Jurnal Hukum dan Peradilan* 11, no. 3 (2022): 523-544; Lasmadi, Sahuri. "The Urgency of Amicus Curiae in Court as a Basis for Judges' Consideration in Making Fair Decisions." *Pakistan Journal of Criminology* 16, no. 4 (2024): 1313-1324.

<sup>3</sup> Arfawie, Kurde H. Nukthoh. *Telaah Kritis Teori Negara Hukum*. (Yogyakarta: Pustaka Pelajar, 2005), p. 14.

<sup>4</sup> Affandi, Muchtar. *Himpunan Kuliah Ilmu Ilmu Kenegaraan*. (Bandung: Alumni, 1971), p. 167.

## AMICUS CURIAE AT THE CROSSROADS...

modern rule of law.<sup>5</sup> In the formal rule of law, the law was originally created only to maintain order and security. The powers of the state were understood to be limited, hence the name night watchman state (*nachtwakersstaat*).<sup>6</sup> Meanwhile, the rule of law in the material sense is not only intended to maintain public order, but the state is also considered responsible for ensuring the welfare of its people. Departing from this pragmatic understanding, the conception of a (*welfare state*) or modern legal state was born.<sup>7</sup>

As a welfare-based legal state—as articulated in the preamble and reinforced in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia—the Country committed to upholding the principles of justice, legal certainty, and expediency, as outlined by the German legal philosopher

---

<sup>5</sup> Utrecht, Utrecht. *Pengantar Hukum Administrasi Negara Indonesia*. (Jakarta: Ichtiar, 1962), p. 9.

<sup>6</sup> Bahri, Teuku Saiful. *Perkembangan Ilmu Negara dalam Peradaban Globalisasi Dunia*. (Yogyakarta: CV Budi Utama, 2018), p. 294.

<sup>7</sup> Sukmana, Oman. "Konsep dan desain negara kesejahteraan (welfare state)." *Sospol* 2, no. 1 (2016): 103-122; Putra, Marsudi Dedi. "Negara kesejahteraan (welfare state) dalam perspektif Pancasila." *Likhitaprajna* 23, no. 2 (2021): 139-151. Furthermore, it is emphasized that the challenges of implementing a welfare state in Indonesia are multifaceted, arising from both structural and socio-economic factors. One primary issue is the unequal distribution of resources, particularly between urban and rural areas. While major cities like Jakarta experience economic growth, many rural regions face poverty, limited access to healthcare, and inadequate infrastructure. This imbalance complicates efforts to ensure that all citizens benefit equally from the welfare system. Another challenge is the sustainability of social programs in the face of a growing population. Indonesia's welfare state, which includes health insurance (BPJS) and social assistance programs, faces funding constraints, particularly in light of economic volatility and fluctuating government revenues. The country also struggles with a relatively low tax-to-GDP ratio, limiting the financial resources available for social spending. Moreover, political and administrative inefficiencies, such as corruption and bureaucratic delays, hinder the effective delivery of welfare services. While Indonesia has made strides in improving its welfare policies, including expanding access to education and healthcare, the lack of coordination between government levels and agencies often leads to fragmented or ineffective implementation. These challenges reflect the complexity of building a comprehensive and equitable welfare state that meets the needs of all Indonesian citizens. *See also* Saputra, Rian, and Silaas Oghenemaro Emovwodo. "Indonesia as legal welfare state: The policy of Indonesian national economic law." *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 1-13; Dimiyati, Khudzaifah, et al. "Indonesia as a legal welfare state: A prophetic-transcendental basis." *Heliyon* 7, no. 8 (2021); Yuda, Tauchid Komara, and Stefan Kühner. "Bringing Indonesia into the global welfare regime debate: A literature review and future research agenda." *Asian Social Work and Policy Review* 17, no. 2 (2023): 103-114; Sumarto, Mulyadi. "Welfare regime change in developing countries: Evidence from Indonesia." *Social Policy & Administration* 51, no. 6 (2017): 940-959.

Gustav Radbruch.<sup>8</sup> These three fundamental values serve as the guiding pillars of Indonesia's legal system, ensuring that laws are not only enacted but also function to uphold fairness and order. Ideally, these values should coexist in harmony, supporting the balanced functioning of the legal system. However, in practice, they often conflict, giving rise to tensions, or *spannungsverhältnis*, where one value may be prioritized over another. In such instances, justice must take precedence. Justice, within the context of law, involves the fair and equitable distribution of rights and duties—between individuals, the state, and the government. This concept requires that the law seeks to place things in their rightful order, ensuring that individuals' rights are respected while obligations are appropriately assigned.

In practice, regulations that provide explanations merely as interpretations, without embedding clear norms, are often difficult to implement effectively. Justice is not solely realized through the creation of legal norms or statutes; true justice is experienced through the decisive actions of the judiciary, particularly through the judge's ruling in court. Addressing the issue of justice, it is evident that law enforcement remains a persistent and unresolved challenge in Indonesia. As Plato once noted, the imperfections of the law are often revealed through the emergence of law enforcement practices that, while consistent with legal provisions, may conflict with human rights or a broader sense of justice. In Indonesia, public dissatisfaction and growing distrust of law enforcement are widespread, with many citizens perceiving that the value of justice is not being fully upheld. Consequently, judges should not merely act as the mouthpiece of the law (*les bouches, qui prononcent les paroles de la loi*)<sup>9</sup>, mechanically applying legal

---

<sup>8</sup> Radbruch, Gustav. "II. Legal Philosophy." *The legal philosophies of Lask, Radbruch, and Dabin*. (Cambridge, MA: Harvard University Press, 1950), pp. 43-224. See also Chroust, Anton-Hermann. "The philosophy of law of Gustav Radbruch." *The Philosophical Review* 53, no. 1 (1944): 23-45.

<sup>9</sup> The phrase *les bouches, qui prononcent les paroles de la loi* ("the mouths that pronounce the words of the law") reflects an older view of the judicial role, wherein judges are seen as neutral enforcers of law, applying legal texts without personal interpretation. This idea aligns with the classical separation of powers theory, particularly as articulated by Montesquieu in *The Spirit of the Laws* (1748), where he argued that judges should act impartially, applying laws created by the legislature without altering or influencing their content. Montesquieu's model emphasized judicial neutrality to preserve the integrity of the legal system. However, modern legal theorists have critiqued this passive view of judicial roles. H.L.A. Hart in *The Concept of Law* (1961) contended that while judges are bound by legal rules, they often exercise discretion in interpreting vague or ambiguous laws. This interpretation is necessary for achieving consistency and justice when the law is not clear-cut. Similarly, Ronald Dworkin, in *Law's Empire* (1986),

## AMICUS CURIAE AT THE CROSSROADS...

texts to cases. Instead, they must consider three essential components in legal decision-making: justice, certainty, and expediency. Only by balancing these elements can the judicial system fulfill its role in ensuring fairness and restoring public confidence in the rule of law.

In law enforcement, ideally the main guidance is the basic values of the law itself as mentioned earlier. Judges are the main actors in the implementation of law enforcement functions. In the hands of a judge there is a great power and power to determine justice for justice seekers. Related to this, the main issue is the justice of the community towards the judge's decision because in essence the court helps justice seekers to achieve a fair, clean, objective and professional judiciary.<sup>10</sup> A judge will not be influenced by *prejudice* if he/she is objective and impartial. *Prejudice* is usually influenced by the social and political background of the judge's own life in deciding each case and is also influenced by the way the judge understands or views his/her position and function.<sup>11</sup> This is because in deciding a case, there must be happy and unhappy parties. Therefore, justice must be prioritized. This is as Satjipto Rahardjo once said that talking about human relations means talking about justice issues.<sup>12</sup>

Today, the facts that occur are inversely proportional to the ideals of law enforcement. In the micro sphere, there are many cases of injustice. One example is the case of Grandma Minah who was sentenced to prison for stealing three cocoa pods. This small incident turned out to have a long tail. The legal process continued until Grandma Minah was declared a defendant

---

argued that law is not merely a set of rules but involves principles that guide judicial decision-making. Dworkin proposed that judges must interpret laws in a way that aligns with moral and ethical values, promoting justice and fairness, rather than strictly adhering to the text. In Indonesia, the idea of judges as "mouthpieces" of the law is often critiqued, especially given the country's legal challenges. Scholars and reformers argue that judges must consider broader principles of justice, human rights, and fairness, balancing legal certainty with social equity in their decisions. Therefore, while the phrase suggests a passive judicial role, modern legal thought increasingly calls for a more dynamic and interpretive approach to justice. See Montesquieu, Charles. *Montesquieu: The Spirit of the Laws*. (Cambridge: Cambridge University Press, 1989); Hart, Herbert Lionel Adolphus. *The Concept of Law*. (Oxford: OUP Oxford, 2012); Dworkin, Ronald. *Law's Empire*. (Cambridge, MA: Harvard University Press, 1988).

<sup>10</sup> Monteiro, Josef M. "Putusan hakim dalam penegakan hukum di Indonesia." *Jurnal Hukum Pro Justitia* 25, no. 2 (2007).

<sup>11</sup> McCloskey, Robert G. *The American Supreme Court*. (Chicago: University of Chicago Press, 2010).

<sup>12</sup> Rahardjo, Satjipto. *Ilmu Hukum*. (Bandung: PT Citra Aditya Bakti, 2014), p. 169.

in the Purwokerto District Court.<sup>13</sup> Based on the case of Grandma Minah, law enforcement in Indonesia seems to be blunt to the top and sharp to the bottom. What should be questioned is what about the criminals with ties who do not feel the sharpness of the law. Law enforcement should be guided by justice, certainty and expediency. This is one of the implications of the implementation of the *civil law* system where written law becomes the prima donna as a source of law and influences the thinking style of judges.<sup>14</sup> So far, the mindset of judges in legal discovery is still shackled by formal legality or formal justice.

In the event that the judge decides the case he must explore, follow, and understand the values that exist in the life of the community because in principle the law is for humans, not the other way around. Thus, when the development of society continues to change, judges in law enforcement must also follow the changes that occur to meet the expectations of justice seekers by conducting legal discovery (*rechtsvinding*) to be able to apply it in concrete events submitted to them.<sup>15</sup> This relates to evidence in the judicial process. In the Indonesian Criminal Procedure Code, proof is one of the important stages in the criminal justice system. Proving the guilt of a defendant should not be done arbitrarily because it has an impact on the sentencing of the defendant. Evidentiary activities in criminal law basically aim to obtain truth within juridical limits, not within absolute limits, because absolute truth is difficult to obtain.<sup>16</sup> In the development of evidentiary mechanisms in the judiciary, there is a concept that is commonly heard but should be taken into account, namely *Amicus Curiae*. *Amicus Curiae* or

---

<sup>13</sup> Jadidah, Fikrotul. "Kasus Nenek Minah Ditinjau dari Perspektif Teori Hukum Positivisme." *IBLAM Law Review* 2, no. 3 (2022): 129-142. See also Putri, Kania Dewi Andhika, and Ridwan Arifin. "Tinjauan Teoritis Keadilan dan Kepastian dalam Hukum di Indonesia (The Theoretical Review of Justice and Legal Certainty in Indonesia)." *MIMBAR YUSTITIA: Jurnal Hukum dan Hak Asasi Manusia* 2, no. 2 (2018): 142-158; Bureni, Teguh Ujang. "Justice Dialogue in the Process of Criminal Justice." *Jurnal Dinamika Hukum* 18, no. 1 (2018): 54-60.

<sup>14</sup> Putra, Surya Desismansyah Eka. "Bingkai Keadilan Hukum Pancasila dalam Perspektif Hukum dan Relevansinya dengan Keadilan di Indonesia." *Jurnal Pendidikan Pancasila dan Kewarganegaraan* 27, no. 1 (2014); Adawiyah, Robiatul, and Umi Rozah. "Indonesia's criminal justice system with Pancasila perspective as an open justice system." *Law Reform* 16, no. 2 (2020): 149-162.

<sup>15</sup> Badriyah, Siti Malikhatun. "Penemuan hukum (*rechtsvinding*) dan penciptaan hukum (*rechtsschepping*) oleh hakim untuk mewujudkan keadilan." *Masalah-Masalah Hukum* 40, no. 3 (2011): 384-392.

<sup>16</sup> Komisi Yudisial. *Dialektika Pembaruan Sistem Hukum Indonesia*. (Jakarta: Komisi Yudisial Republik Indonesia, 2012), p. 285.



## AMICUS CURIAE AT THE CROSSROADS...

*friends of court* is input from individuals or organizations that do not act as parties to the case but have an interest in a case.<sup>17</sup> The concept of Amicus Curiae is a solution to the difficulty of realizing judges' decisions based on justice, certainty and expediency.

*Amicus Curiae* has been used by judges in Indonesia as a consideration before deciding cases. One of them was in the case of the premeditated murder of Brigadier Yosua in 2022. In that case, the superior, namely the Head of the Police's Profession and Security Division (Kadiv Propam), Ferdy Sambo, was the brain of the murder who ordered his subordinate Richard Eliezer to commit the murder. Then in the trial process of this case, Richard Eliezer has become the key to uncovering the previous murder has been designated as a "*Justice Collaborator (JC)*". *Justice Collaborator* is a concept to utilize information from criminals, the concept of collaboration between law enforcement officials and criminal offenders.<sup>18</sup> It all started with the prosecutor's sentence against the defendants, which the public felt was very unfair. As is known in this case the prosecutor actually demanded a sentence for him with 12 years in prison while other 'co-conspirators' were prosecuted less, which led to 122 academics consisting of professors and lecturers from various universities declaring themselves as friends of the court or "*amicus curiae*" for the defendant Richard Eliezer. The academics, who are members of the Indonesian Academics Alliance, submitted their support to the South Jakarta District Court on Monday, February 6, 2023. They supported Bharada E with the consideration that he was a JC. Richard Eliezer received JC status from the Witness and Victim Protection Agency (LPSK) because he had exposed the murder scenario made by his former superior, to cover up the murder of Brigadier Yosua. Then, the sentence imposed on Richard Eliezer was lighter than the prosecutor's demands. This is considered thanks to the 'legal concern' of the previous amicus curiae.<sup>19</sup>

---

<sup>17</sup> Widyaningsih, Ni Putu. "Amicus Curiae dalam Proses Peradilan Pidana Anak Sebagai Pengguna Narkotika." *Jurnal Kertha Semaya* 8, no. 7 (2020); Suntoro, Agus. "Urgence and Challenges of Regulation of Amicus Curiae in The Judicial System." *Jurnal Hukum dan Peradilan* 11, no. 3 (2022): 523-544; Soares, Cesaltina Angela, and I. Made Agus Mahendra Iswara. "Amicus Curiae in the Criminal Evidence System in Indonesia." *Sociological Jurisprudence Journal* 2, no. 1 (2019): 67-72.

<sup>18</sup> Sugiri, Bambang, Nurini Aprilianda, and Hanif Hartadi. "The position of convict as justice collaborator in revealing organized crime." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 8, no. 2 (2021): 255-274.

<sup>19</sup> Ompusunggu, Benni Mangiring. "The Role of Amicus Curiae in Influencing the Confidence of Judges in The Supreme Court and Constitutional Court." *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (2024): 1805-1813. Furthermore, the *amicus curiae* role in the *Brigadier Yosua* case—referring to the murder of Brigadier

*Amicus Curiae* Amicus Curiae has actually started to be recognized in Indonesia although it has only been applied in a few cases. The existence of *Amicus Curiae* brings fresh air to the reform of the judicial system in Indonesia. *Amicus Curiae* is a legal concept that allows third parties who feel an interest in a case to provide their legal opinion to the court. The involvement of interested parties in a case is only limited to providing opinions, not fighting. *Amicus Curiae* is a legal consequence of Indonesia's democracy. The participation of every citizen towards law enforcement is realized in the form of *Amicus Curiae*.<sup>20</sup>

---

Nofriansyah Yoshua Hutabarat—was instrumental in shaping the broader legal and social discourse surrounding the case. The case, which involved the murder of a police officer by high-ranking law enforcement officials, including former police general Ferdy Sambo, drew national attention due to the complex legal and political implications. As a result, various organizations and legal experts intervened as *amicus curiae* to offer additional perspectives on the case beyond the specific facts presented in court. The involvement of *amicus curiae* was especially critical in this case because it allowed experts in human rights, legal reform, and judicial independence to highlight the systemic issues that went beyond the crime itself. One of the major concerns was the question of police accountability and corruption within Indonesia's law enforcement institutions. By submitting *amicus curiae* briefs, these organizations advocated for transparency and fairness throughout the legal process, urging the court to consider the broader implications of the case for the integrity of the justice system. For instance, some *amicus curiae* briefs focused on ensuring that the trial would not be influenced by external pressures, especially given the involvement of powerful figures in the police force. Others emphasized the need for judicial independence and the protection of human rights, particularly in cases involving state actors. The submission of these briefs was intended to remind the court of its duty to uphold not only the letter of the law but also the principles of justice and fairness, which were essential to maintaining public trust in the judicial system. In the *Brigadier Yosua* case, the *amicus curiae* interventions highlighted the importance of an impartial legal process, contributing to a more comprehensive understanding of the case and its broader societal consequences. By providing expert legal opinions and raising issues of systemic concern, *amicus curiae* played a vital role in ensuring the trial reflected both legal principles and the need for broader institutional reform in Indonesia. See Iqbal, Muhammad. "Urgensi Peran Amicus Curiae Dalam Peradilan Pidana Di Indonesia." *Jurnal Justice Aswaja* 4, no. 1 (2025): 10-24; Larossa, Ratri Novita Jessica Widya Erdianti, and Wasis Suprayitno. "Juridical Review of the Position of Justice Collaborator and Amicus Curiae in Judge's Decision Number: 798/Pid. B/2022/Pn. Jkt. Sel." *International Conference on Law Reform (5th INCLAR 2024)*. Atlantis Press, 2025; Manullang, Sihol, and Marjan Miharja. "Peranan Saksi Ahli dalam Hukuman Richard Eliezer Sebagai "Justice Collaborator" Atas Pembunuhan Josua Hutabarat." *IBLAM Law Review* 4.3 (2024): 266-274; Haykal, Hassanain. "Rekonstruksi Penegakan Sanksi Pidana Terhadap Justice Collaborator dalam Perspektif Kepastian Hukum dan Keadilan." *UNES Law Review* 6, no. 2 (2023): 4691-4700.

<sup>20</sup> Sukinta, Sukinta. "Konsep dan Praktik Pelaksanaan Amicus Curiae dalam Sistem Peradilan Pidana Indonesia." *Administrative Law and Governance Journal* 4, no. 1 (2021): 89-98.

## AMICUS CURIAE AT THE CROSSROADS...

Based on the description previously described, it is very interesting to observe the dynamics related to law enforcement in Indonesia. The number of judges' decisions that are difficult for the public to accept because they are not based on the three legal values of justice, certainty, and expediency has led the author to analyze the existing problems, so that the formulation of the problems to be discussed in this study can be arranged, namely, How is the urgency of *Amicus Curiae* in the legal system in Indonesia to optimize and realize legal justice? And how is the judge's consideration of *amicus curiae* in making a just decision?

The research method is a scientific way to obtain valid data with the aim of discovering, proving, and developing knowledge so that it can be used to understand, solve and anticipate problems.<sup>21</sup> This writing uses normative juridical research methods through an approach based on primary legal materials by examining theories, concepts, legal principles and laws and regulations.<sup>22</sup> Research using normative juridical methods is legal research conducted by examining library materials or secondary data as a basis for research by conducting a search for regulations and literature related to the problem under study.<sup>23</sup> The method of approach used in this scientific article is normative juridical in which secondary sources of material are examined in the form of theories, regulations and legal rules using a statutory approach (*state approach*), *case approach*, *comparative approach*, *conceptual approach*.<sup>24</sup> The data source used in writing this scientific article is a secondary data source. Secondary data sources are data obtained or obtained from library materials or literature that has to do with the object of research.<sup>25</sup>

### The Urgency of *Amicus Curiae* in the Indonesian Legal System to Optimize and Realize Legal Justice

Black's Law Dictionary defines *Amicus Curiae* as a party who is not a party to the case, but who submits or is requested by the court to submit a

---

<sup>21</sup> Sugiyono, Sugiyono. *Metode Penelitian Kuantitatif, Kualitatif dan R&D*. (Bandung: Alfabeta, 2013).

<sup>22</sup> Soemitro, Ronny Hanitijo. *Metodologi Penelitian Hukum dan Jurimetri*. (Jakarta: Ghalia Indonesia, 1994).

<sup>23</sup> Soekanto, Soerjono and Sri Mamudji. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. (Jakarta: Rajawali Pers, 2001), pp. 13-14.

<sup>24</sup> Marzuki, Peter Mahmud. *Penelitian Hukum*. (Jakarta: Kencana, 2009).

<sup>25</sup> Ishaq, Ishaq. *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, (Bandung: Alfabeta, 2009).

written opinion (*Amicus Brief*) into the ongoing case because the person has an interest in it.<sup>26</sup> Regarding the history of *Amicus Curiae*, legal scholars differ on the origin of *Amicus Curiae*. However, many jurists consider *Amicus Curiae* to be an ancient legal concept and practice dating back to the Roman Empire.<sup>27</sup> In line with the development of civilization, the concept of *Amicus Curiae* is used in countries that adhere to the common law system. However, when *Amicus Curiae* was first introduced and practiced in the common law system is still debated by legal experts. Some argue that *Amicus Curiae* began to be commonly practiced in countries that adhere to the common law legal system, especially at the appellate level or in large and important cases since the 9th century. Others argue that *Amicus Curiae* was first introduced in the common law system in the 14th century.<sup>28</sup>

The existence of *Amicus Curiae* provides an opportunity for a person or group of people who feel they have an interest to convey data or legal facts related to a case in the judicial process. *Amicus Curiae* aims to shed light on the case being examined by the court. *Amicus Curiae* does not intervene in the matter being reviewed by the panel of judges, but is only limited to sharing opinions relating to facts and legal issues with related problems. *Amicus Curiae* is used to clarify factual issues, explain the legal issues that are involved and represent certain groups.<sup>29</sup> Therefore, *Amicus Curiae* can be used by judges as material to examine, consider and decide cases.

The concept of *Amicus Curiae* in the Indonesian legal system is based on the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that “*judges and constitutional judges are obliged to explore, follow, and understand the values of law and sense of justice that live in society*”. Then, in Constitutional Court Regulation Number 6 of 2005 concerning Procedural Guidelines in Law Review Cases Article 14 paragraph (4) also states that related parties with indirect interests are: a. parties whose position, main duties, and functions need to be heard; or

---

<sup>26</sup> Soares, Cesaltina Angela, and I Made Agus Mahendra Iswara. "Amicus Curiae in the Criminal Evidence System in Indonesia." *Sociological Jurisprudence Journal* 2, no. 1 (2019): 67-72.

<sup>27</sup> Kochevar, Steven. "Amici Curiae in Civil Law Jurisdictions." *Yale Law Journal* 122, no. 6 (2013).

<sup>28</sup> Gao, Henry S. "Amicus Curiae in WTO Dispute Settlement: Theory and Practice", *Cina Right Forum: The Journal of Human Rights in China* 1, no. (2006): 51-57.

<sup>29</sup> Marin, Patricia, et al. "Use of extra-legal sources in Amicus Curiae briefs submitted in Fisher v. University of Texas at Austin." *Education Policy Analysis Archives* 26, no. 38 (2018): 38-38.

## AMICUS CURIAE AT THE CROSSROADS...

b. parties who need to be heard as *ad informandum*, namely parties whose rights and/or authorities are not directly affected by the subject matter of the petition but because of their high concern for the petition. Thus, it can be said that the concept of *Amicus Curiae* has been partially adopted by the Constitutional Court in its regulations.<sup>30</sup>

Another country that has implemented *Amicus Curiae* is South Africa. *Amicus Curiae* in South Africa has been formally recognized both by judicial practice through dicta and in legislative acts. At the Legislative level, provisions relating to *Amicus Curiae* are contained in the Constitutional Court Rules of 1994. In 2000 a similar provision was also incorporated into the rules governing procedure regarding Amici in the High Court, namely in Article 10(1) which states that any person interested in any matter before the court with the written consent of all parties to the matter may be admitted thereto as *Amicus Curiae* on such terms and conditions, and with such

---

<sup>30</sup> Republic of Indonesia. *Constitutional Court Regulation Number 6 of 2005 concerning Procedure Guidelines in Legal Review Cases*, Article 14 paragraph (4). It is also emphasized that In Indonesia, the concept of *amicus curiae* has been employed in several high-profile cases to provide expert perspectives on complex legal and societal issues. One such case was the 2007 judicial review of the 1945 Constitution amendment, where *amicus curiae* briefs were submitted by legal experts and civil society groups. These interventions focused on ensuring that the Constitutional Court's decision reflected not only legal principles but also societal values around democracy and the balance of power. Another notable example is the 2017 blasphemy case against Jakarta Governor Basuki Tjahaja Purnama (Ahok), where human rights organizations submitted *amicus curiae* briefs. These briefs argued that the case had broader implications for freedom of speech and religious tolerance, urging the court to consider human rights protections alongside the legal norms in the case. *Amicus curiae* has also been used in environmental protection cases in Indonesia, where NGOs have submitted briefs in cases involving deforestation and illegal logging. These briefs often reference international environmental agreements and the country's obligations under global legal frameworks, influencing judicial decisions related to environmental conservation. These cases highlight how *amicus curiae* can provide valuable insights, ensuring that court decisions are informed by broader societal concerns, such as human rights and environmental sustainability, rather than being limited to the immediate facts of the case. See also Peterson, Daniel. "Blasphemy prosecutions in Indonesia and the Ahok case: Majoritarianism versus liberalism." *Crime and Punishment in Indonesia*. (London: Routledge, 2020), pp. 397-429; Gandryani, Farina, and Fikri Hadi. "Peran Perguruan Tinggi dalam Penegakan Hukum di Indonesia Melalui Amicus Curiae." *Jurnal Yudisial* 16, no. 2 (2023): 161-182; Cindy, W. I., Haryadi Haryadi, and Dheny Wahyudi. "Bentuk Amicus Curiae Terhadap Anak Sebagai Korban Kekerasan Seksual." *PAMPAS: Journal of Criminal Law* 5, no. 2 (2024): 127-138; Fiqri, Muhammad Ilham, and Achmad Rifai. "Analisis Pengaruh Amicus Curiae terhadap Pengambilan Putusan Hakim dalam Perkara Pidana di Indonesia." *Keadilan: Jurnal Penelitian Hukum dan Peradilan* 3, no. 2 (2025): 21-30

privileges as may be agreed in writing with all parties before the Court or as directed by the presiding judge. The next article also explains the mechanism, conditions, and procedures for filing *Amicus Curiae*. The application of *Amicus Curiae* in the South African High Court is limited to Constitutional matters only.<sup>31</sup> Legal provisions governing *Amicus Curiae* related to constitutional issues require judges to accept additional evidence or information from *Amicus Curiae* in order to produce a fair decision.

*Amicus Curiae* plays a very important role in human rights litigation in South Africa, which is reflected in the court's deliberations and decisions in relation to the involvement of *Amicus Curiae*. Not only that, *Amicus Curiae* also has a much greater contribution in South African litigation on economic, social and cultural rights. These are reflected in the case of *Government of the Republic of South Africa and Others v. Grootboom and Others* (known as the Grootboom case).<sup>32</sup> The existence of *Amicus Curiae* in South Africa has greatly assisted judges in the protection of rights for all South Africans. The Constitutional Court of South Africa has stated that *Amicus Curiae* plays

---

<sup>31</sup> Jonas, Obonye. "The participation of the amicus curiae institution in human rights litigation in Botswana and South Africa: a tale of two jurisdictions." *Journal of African Law* 59, no. 2 (2015): 329-354.

<sup>32</sup> The *Grootboom case* (2000) is a landmark ruling by the Constitutional Court of South Africa that addressed the right to adequate housing, as guaranteed under Section 26 of the South African Constitution. The case involved a group of people, including Ms. Grootboom, living in informal settlements, who argued that the government's housing policies failed to meet the needs of the most vulnerable, violating their constitutional right to access adequate housing. The Constitutional Court ruled in favor of the applicants, emphasizing that the right to housing is a positive right that requires the government to take reasonable measures to progressively provide access to adequate housing. The Court established the principle that socio-economic rights, like housing, impose positive obligations on the state and must be fulfilled through "reasonable legislative and other measures." It also introduced a "reasonableness" standard to assess whether government policies met the needs of vulnerable groups. While the Court did not demand immediate housing for everyone, it required the government to adopt policies addressing urgent needs. The case was pivotal in affirming judicial enforcement of socio-economic rights and set the precedent for balancing government obligations with the practicalities of socio-economic challenges, highlighting ongoing struggles with housing delivery in South Africa. See Sachs, Albie. "The judicial enforcement of socio-economic rights: The Grootboom case." *Democratising Development*. (Leiden: Brill Nijhoff, 2005), pp. 131-152; Sloth-Nielsen, Julia. "Too little? Too late? The implications of the Grootboom case for state responses to child-headed households." *Law, Democracy & Development* 7, no. 1 (2003): 113-136; Wesson, Murray. "Grootboom and beyond: Reassessing the socio-economic jurisprudence of the South African Constitutional Court." *South African Journal on Human Rights* 20, no. 2 (2004): 284-308.

## AMICUS CURIAE AT THE CROSSROADS...

an important role in its jurisprudence, as the involvement of *Amicus Curiae* in litigation to submit briefs has had a positive impact in many cases in South Africa, for example in the settlement of *Mazibuko and Others v City of Johannesburg and Others*, water rights cases, health rights and even cases related to domestic violence. The involvement or participation of *Amicus Curiae* in court proceedings in South Africa is also carried out by non-governmental organizations (NGOs) in the provision of briefs in court which contribute greatly to litigation in South Africa with implications for improving the quality of decisions or judgments in the courts in South Africa.<sup>33</sup>

*Amicus Curiae* in the legal system in Indonesia can optimize and realize legal justice. The use of the *Amicus Curiae* concept provides a sense of justice, contains legal certainty, and provides legal benefits for the litigants. *Amicus Curiae* helps judges in carrying out their obligations to explore the values of justice that exist in society. *Amicus Curiae* can not only be applied at the trial stage, but can also assist investigators in the investigation stage. The existence of *Amicus Curiae* in South Africa has been formally recognized which has a very good impact on jurisprudence in South Africa and has become a major issue in law enforcement in the country.

## Judges' Consideration of *Amicus Curiae* in Making Justice Decisions

In criminal justice, *Amicus Curiae* can be considered by judges because in the Criminal Procedure Code the evidentiary system adopted is a negative statutory evidentiary system whose provisions show that in proof two valid pieces of evidence are required and the judge's confidence. Although *Amicus Curiae* cannot be said to be valid evidence, *Amicus Curiae* can be used as a judge's consideration, because in the theory of proof the law negatively not only requires at least two valid pieces of evidence but also the judge's confidence.<sup>34</sup> This means that *Amicus Curiae* can help judges to be fair and wise in deciding a case. This provision obliges judges to open the widest

---

<sup>33</sup> Jonas, The participation of the amicus curiae institution in human rights litigation in Botswana and South Africa: a tale of two jurisdictions", pp. 344-345.

<sup>34</sup> Thomas, Jerry, and Vivaldi Liman. "Analysis of Opportunities for Implementing the Amicus Curiae Concept as a Form of Public Participation in The Judicial System in Indonesia." *Jurnal Hukum dan Peradilan* 13, no. 1 (2024): 1-32.

possible information and opinions from various groups of society, both litigants and through input from parties outside the case. In other words, *Amicus Curiae* can also be a means of rechtsvinding for judges to optimize and realize legal justice. *Amicus Curiae* provides alternatives to a case in the form of factual information, knowledge of a problem, and perspective on the policy implications of a judge's decision.<sup>35</sup>

The existence of *Amicus Curiae* is a legal breakthrough in seeking additional material or information for judges in their legal considerations and convictions, as well as assisting judges in carrying out their obligations to explore the values of justice that exist in society by providing testimony both orally in court and in writing.<sup>36</sup> This shows that *Amicus Curiae* makes judges more confident in determining their decisions, because *Amicus Curiae* not only examine and decide cases that are case-based, but also resolve social issues that may arise. In the judicial context, *Amicus Curiae* balances the position of the parties and the public interest and encourages the quality of court decisions, especially the support of empirical information. *Amicus Curiae* in this case is a form of community participation in a case, as well as a form of supervision carried out by the community towards ongoing law enforcement. This is in accordance with the principle of the rule of law adopted by Indonesia that every state decision must guarantee the participation of the community in the decision-making process because *Amicus Curiae* can be used as a forum for the community to participate in the judicial process by providing information related to existing facts so that it will encourage the realization of the values of legal justice.<sup>37</sup>

---

<sup>35</sup> Mardatillah, Aida. "Mendorong Pelembagaan Amicus Curiae dalam Sistem Hukum Indonesia", *Hukum Online*, <https://m.hukumonline.com/berita/baca/lt5e943879e2606/mendorong-pelembagaan-amicus-curiae-dalam-sistem-hukum-indonesia?page=all>, accessed 29 November 2023.

<sup>36</sup> Sukinta, "Konsep dan Praktik Pelaksanaan Amicus Curiae dalam Sistem Peradilan Pidana Indonesia", p. 95-96.

<sup>37</sup> Aulia, and Muksin. "The Position of Amicus Curiae under the Indonesian Law of Evidence." Furthermore, it is also highlighted that the position of *amicus curiae* (friend of the court) under Indonesian law of evidence faces several challenges due to its informal integration into the legal system, lack of clear procedural guidelines, and practical limitations. While the Law Number 48 of 2009 concerning Judicial Power requires judges to "*explore, follow, and understand the values of law and sense of justice that live in society*," the lack of specific provisions regarding *amicus curiae* means it is not systematically incorporated into judicial proceedings. This lack of formalization leads to inconsistencies in how *amicus curiae* contributions are considered by the courts, often limiting their influence on the final decision. Judicial independence also presents a challenge. In politically sensitive cases, judges may be reluctant to accept external



## AMICUS CURIAE AT THE CROSSROADS...

In several cases that occurred in Indonesia, judges have used *Amicus Curiae* as a consideration before deciding cases, one of which was in the Prita Mulyasari case. Prita Mulyasari was accused of committing criminal defamation against Omni International Hospital in verdict number 1269/Pid.B/2009/PN.Tng on charges of violating Article 27 paragraph (3) of Law Number 11/2008 on Electronic Information and Transactions, Article 310 and Article 311 of the Criminal Code (KUHP). The party who filed the Amicus Curiae was Anggara, a representative of five NGOs working in the field of law, to defend Prita Mulyasari's right to freedom of speech. The participation of ELSAM, ICJR, PBHI, IMDLN, and YLBHI in the Prita Mulyasari case was to bring an *Amicus Curiae* to provide views to the panel of judges regarding the criminal offense of insult which is categorized as an article that can ensnare anyone without considering the discrepancy between the offense and the provisions of human rights that have been recognized by the State of Indonesia. The five institutions provided recommendations to the panel of judges examining case number 1269/Pid.B/2009/Pn.Tng between Prita Mulyasari and the Republic of Indonesia.<sup>38</sup>

In decision number 1269/Pid.B/2009/PN.Tng, it is not stated that *Amicus Curiae* can be taken into consideration by the judge, but according to the opinion of several judges, *Amicus Curiae* can be taken into consideration by the judge, when it contains three values or elements, namely legal certainty, usefulness, and justice. There are other cases that also lead to the use of *Amicus Curiae*, such as the Upi Asmaradana case.<sup>39</sup> This case began

---

interventions due to fears of political pressure or bias, which could undermine the impartiality of the judiciary. Additionally, many organizations acting as *amicus curiae* face resource constraints, making it difficult for smaller groups to prepare and submit comprehensive legal briefs. This limits the diversity of perspectives that could be presented to the court, as only well-funded organizations tend to participate. Moreover, the concept of *amicus curiae* is not deeply ingrained in Indonesian legal culture. There is limited public awareness of its value, and both judges and legal professionals may be hesitant to embrace it fully. These challenges hinder the potential for *amicus curiae* to contribute effectively to the judicial process, particularly in cases involving complex social or human rights issues.

<sup>38</sup> Riyadi, Eddie Sius (ed). *Pidana Penghinaan adalah Pembatasan Kemerdekaan Berpendapat yang Inkonstitusional*. (Jakarta: eLSAM, 2010). Online at <https://perpustakaan.elsam.or.id/index.php?p=fstream-pdf&fid=283&bid=12943>

<sup>39</sup> Upi Asmaradana was an Indonesian filmmaker and media personality who found herself embroiled in a legal battle after being accused of defamation. The case began when Upi Asmaradana was sued for allegedly making defamatory statements about a well-known figure in Indonesian society. The statements were made in a television interview and were perceived by the plaintiff as damaging to their reputation. Upi Asmaradana's statements were related to the broader political and social climate in Indonesia,

with Upi being named a suspect by the South and West Sulawesi police because he filed a complaint with the National Police Headquarters and the Press God, and was charged with defamation, namely Article 310 and Article 317 of the Criminal Code (KUHP) with the accusation that he was slandering in writing. In this case, it is interesting to note how LBH Press was able to bring new changes to the development of positive law in Indonesia by introducing *Amicus Curiae* in the Upi Asmaradana trial. The *Amicus Curiae* filed in this case added information for the panel of judges examining the case. This can be said to be the same as the Prita Mulyasari case<sup>40</sup> which was

---

addressing issues of corruption and inequality. The case became highly publicized, not only because of its focus on freedom of speech but also due to the potential chilling effect it could have on public figures or ordinary citizens wishing to voice their opinions on societal matters. In this case, the issue of balancing defamation laws with the right to free expression became a central legal concern. The Upi Asmaradana case is notable for the involvement of *amicus curiae* submissions. Several legal experts and civil society organizations provided input to the court by submitting *amicus curiae* briefs. These briefs were essential in broadening the judicial understanding of the complex issues surrounding freedom of expression, defamation laws, and the rights of individuals in a democratic society. The *amicus curiae* briefs highlighted the importance of safeguarding free speech, especially when it concerns public figures and matters of public interest. They also brought attention to international standards on freedom of expression, suggesting that the court consider not just Indonesian law but also global legal perspectives in its decision-making process. The *amicus curiae* submissions helped frame the broader constitutional context, underscoring the need for a balance between individual reputations and public discourse.

<sup>40</sup> The case involved Prita Mulyasari, a woman who filed a complaint with a hospital about the poor service she received during her treatment. After receiving unsatisfactory responses from the hospital, Prita posted her grievances on Facebook, where she shared her experience, which included critical comments about the hospital's staff and their treatment of her. Prita's post went viral, leading to widespread public discussion about the hospital's conduct. The hospital, feeling its reputation was harmed, filed a defamation lawsuit against Prita Mulyasari, and she was charged under Indonesia's Electronic Information and Transactions Law (ITE Law). In 2009, she was convicted by a lower court and sentenced to jail for violating the defamation provisions of the ITE Law, which criminalizes online content deemed harmful to a person's reputation. The case became a national issue, with widespread protests against the conviction, especially given the growing importance of social media as a platform for individuals to voice their opinions. Prita's conviction raised serious concerns about freedom of expression and the potential for abuse of defamation laws, especially in the digital era. The Prita Mulyasari case also involved the submission of *amicus curiae* briefs, particularly from civil society organizations and legal experts who argued that the case was not merely about individual defamation, but had broader implications for freedom of expression and public discourse in Indonesia. These *amicus curiae* interventions highlighted the significance of social media as a tool for public participation and democratic expression, especially for citizens who may not have other platforms to voice grievances. The *amicus curiae* submissions emphasized that the Electronic Information and Transactions Law (ITE Law) should not be used as a tool to stifle criticism or public

## AMICUS CURIAE AT THE CROSSROADS...

also used to add information for the judge in examining the case, or as another material to increase the judge's confidence in making a decision.

Based on this explanation, the concept of *amicus curiae* can serve as a tool for *rechtsvinding* (legal discovery) in aiding judges to render fair and informed decisions. The primary purpose of *amicus curiae* is to illuminate the issues at hand in the case under consideration by the court, without intervening in the core matters being evaluated by the panel of judges. Instead, it provides insights relevant to the factual and legal aspects of the case, thereby contributing to a deeper understanding of the issues at stake.

In several instances in Indonesia, such as the cases of Prita Mulyasari and Upi Asmaradana, judges have utilized *amicus curiae* submissions as part of their deliberations. The perspectives offered through these interventions were incorporated as supplementary material to bolster the judges' confidence in making a just and well-informed decision. Thus, *amicus curiae* can be seen as an effective tool for *rechtsvinding*, assisting judges in the process of legal discovery and enhancing their ability to make equitable decisions that reflect both the law and the broader societal context.

## Conclusion

In conclusion, the use of the *amicus curiae* concept within Indonesia's legal system offers significant potential to enhance the realization of justice. By providing expert opinions and additional perspectives on legal and factual matters, *amicus curiae* helps judges explore the values of justice embedded in society, which is in line with the mandate under Law Number 48 of 2009. It can play a critical role not only at the trial stage but also during the investigation phase, offering valuable insights that aid in the comprehensive understanding of the issues at hand. This broader role aligns with international practices, such as in South Africa, where *amicus curiae* has been formally recognized and positively impacted jurisprudence and law enforcement.

Furthermore, *amicus curiae* serves as an effective tool for *rechtsvinding* (legal discovery), assisting judges in issuing well-informed and fair

---

debate. Instead, it should be applied in a way that recognizes the importance of individuals' rights to free expression, particularly when the speech concerns public matters such as the quality of healthcare or services. They argued that the law should not be interpreted in a way that disproportionately punishes individuals for sharing their experiences or opinions, especially on platforms like social media.

decisions. In the Indonesian context, cases such as Prita Mulyasari, Upi Asmaradana, and the Brigadier Yosua murder case demonstrate how *amicus curiae* contributions provided essential information that strengthened the judicial decision-making process. By offering expert insights on complex legal and social issues, *amicus curiae* enables judges to make decisions that reflect both legal certainty and the societal values that underpin justice, enhancing the overall quality of judicial outcomes in Indonesia.

## References

- Adawiyah, Robiatul, and Umi Rozah. "Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System." *Law Reform* 16, no. 2 (2020): 149-162.
- Affandi, Muchtar. *Himpunan Kuliah Ilmu Ilmu Kenegaraan*. (Bandung: Alumni, 1971).
- Arfawie, Kurde H. Nukthoh. *Telaah Kritis Teori Negara Hukum*. (Yogyakarta: Pustaka Pelajar, 2005).
- Aulia, Fadil, and Muchlas Rastra Samara Muksin. "The Position of Amicus Curiae under the Indonesian Law of Evidence." *Jurnal Media Hukum* 27, no. 2 (2020): 217-227.
- Badriyah, Siti Malikhatun. "Penemuan Hukum (Rechtsvinding) dan Penciptaan Hukum (Rechtsschepping) oleh Hakim untuk Mewujudkan Keadilan." *Masalah-Masalah Hukum* 40, no. 3 (2011): 384-392.
- Bahri, Teuku Saiful. *Perkembangan Ilmu Negara dalam Peradaban Globalisasi Dunia*. (Yogyakarta: CV Budi Utama, 2018).
- Bureni, Teguh Ujang. "Justice Dialogue in the Process of Criminal Justice." *Jurnal Dinamika Hukum* 18, no. 1 (2018): 54-60.
- Chroust, Anton-Hermann. "The philosophy of law of Gustav Radbruch." *The Philosophical Review* 53, no. 1 (1944): 23-45.
- Cindy, W. I., Haryadi Haryadi, and Dheny Wahyudi. "Bentuk Amicus Curiae Terhadap Anak Sebagai Korban Kekerasan Seksual." *PAMPAS: Journal of Criminal Law* 5, no. 2 (2024): 127-138.
- Dimiyati, Khudzaifah, et al. "Indonesia as a legal welfare state: A prophetic-transcendental basis." *Heliyon* 7, no. 8 (2021).
- Dworkin, Ronald. *Law's Empire*. (Cambridge, MA: Harvard University Press, 1988).

## AMICUS CURIAE AT THE CROSSROADS...

- Fiqri, Muhammad Ilham, and Achmad Rifai. "Analisis Pengaruh Amicus Curiae terhadap Pengambilan Putusan Hakim dalam Perkara Pidana di Indonesia." *Keadilan: Jurnal Penelitian Hukum dan Peradilan* 3, no. 2 (2025): 21-30.
- Gandryani, Farina, and Fikri Hadi. "Peran Perguruan Tinggi dalam Penegakan Hukum di Indonesia Melalui Amicus Curiae." *Jurnal Yudisial* 16, no. 2 (2023): 161-182.
- Gao, Henry S. "Amicus Curiae in WTO Dispute Settlement: Theory and Practice", *Cina Right Forum: The Journal of Human Rights in China* 1, no. (2006): 51-57.
- Hart, Herbert Lionel Adolphus. *The Concept of Law*. (Oxford: OUP Oxford, 2012).
- Haykal, Hassanain. "Rekonstruksi Penegakan Sanksi Pidana Terhadap Justice Collaborator dalam Perspektif Kepastian Hukum dan Keadilan." *UNES Law Review* 6, no. 2 (2023): 4691-4700.
- Iqbal, Muhammad. "Urgensi Peran Amicus Curiae dalam Peradilan Pidana di Indonesia." *Jurnal Justice Aswaja* 4, no. 1 (2025): 10-24.
- Ishaq, Ishaq. *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, (Bandung: Alfabeta, 2009).
- Jadidah, Fikrotul. "Kasus Nenek Minah Ditinjau dari Perspektif Teori Hukum Positivisme." *IBLAM Law Review* 2, no. 3 (2022): 129-142.
- Jonas, Obonye. "The participation of the amicus curiae institution in human rights litigation in Botswana and South Africa: a tale of two jurisdictions." *Journal of African Law* 59, no. 2 (2015): 329-354.
- Kholiq, Abdul. "Amicus Curiae: Position and Role in Issuing Decisions by Judges as an Effort to Achieve Substantive Justice." *Veteran Law Review* 6, no. 2 (2023): 164-175.
- Kochevar, Steven. "Amici Curiae in Civil Law Jurisdictions." *Yale Law Journal* 122, no. 6 (2013).
- Komisi Yudisial. *Dialektika Pembaruan Sistem Hukum Indonesia*. (Jakarta: Komisi Yudisial Republik Indonesia, 2012).
- Larossa, Ratri Novita Jessica Widya Erdianti, and Wasis Suprayitno. "Juridical Review of the Position of Justice Collaborator and Amicus Curiae in Judge's Decision Number: 798/Pid. B/2022/Pn. Jkt. Sel." *International Conference on Law Reform (5th INCLAR 2024)*. Atlantis Press, 2025.

- Lasmadi, Sahuri. "The Urgency of Amicus Curiae in Court as a Basis for Judges' Consideration in Making Fair Decisions." *Pakistan Journal of Criminology* 16, no. 4 (2024): 1313-1324.
- Manullang, Sihol, and Marjan Miharja. "Peranan Saksi Ahli dalam Hukuman Richard Eliezer Sebagai "Justice Collaborator" Atas Pembunuhan Josua Hutabarat." *IBLAM Law Review* 4.3 (2024): 266-274.
- Mardatillah, Aida. "Mendorong Pelembagaan Amicus Curiae dalam Sistem Hukum Indonesia", *Hukum Online*, <https://m.hukumonline.com/berita/baca/lt5e943879e2606/mendorong-pelembagaan-amicus-curiae-dalam-sistem-hukum-indonesia?page=all>, accessed 29 November 2023.
- Marin, Patricia, et al. "Use of extra-legal sources in Amicus Curiae briefs submitted in Fisher v. University of Texas at Austin." *Education Policy Analysis Archives* 26, no. 38 (2018): 38-38.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. (Jakarta: Kencana, 2009).
- McCloskey, Robert G. *The American Supreme Court*. (Chicago: University of Chicago Press, 2010).
- Monteiro, Josef M. "Putusan Hakim dalam Penegakan Hukum di Indonesia." *Jurnal Hukum Pro Justitia* 25, no. 2 (2007).
- Montesquieu, Charles. *Montesquieu: The Spirit of the Laws*. (Cambridge: Cambridge University Press, 1989).
- Nurdiyanti, Erlinda Putri, et al. "Authority of Amicus Curiae in Constitutional Proceedings: Bridging Society and the Constitutional Court." *West Science Law and Human Rights* 2, no. 3 (2024): 218-224.
- Ompusunggu, Benni Mangiring. "The Role of Amicus Curiae in Influencing the Confidence of Judges in The Supreme Court and Constitutional Court." *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (2024): 1805-1813.
- Peterson, Daniel. "Blasphemy prosecutions in Indonesia and the Ahok case: Majoritarianism versus liberalism." In *Crime and Punishment in Indonesia*. (London: Routledge, 2020), pp. 397-429.
- Putra, Marsudi Dedi. "Negara kesejahteraan (welfare state) dalam perspektif Pancasila." *Likhitaprajna* 23, no. 2 (2021): 139-151.
- Putra, Surya Desismansyah Eka. "Bingkai Keadilan Hukum Pancasila dalam Perspektif Hukum dan Relevansinya dengan Keadilan di Indonesia." *Jurnal Pendidikan Pancasila dan Kewarganegaraan* 27, no. 1 (2014).

## AMICUS CURIAE AT THE CROSSROADS...

- Putri, Kania Dewi Andhika, and Ridwan Arifin. "Tinjauan Teoritis Keadilan dan Kepastian dalam Hukum di Indonesia (The Theoretical Review of Justice and Legal Certainty in Indonesia)." *MIMBAR YUSTITIA: Jurnal Hukum dan Hak Asasi Manusia* 2, no. 2 (2018): 142-158.
- Radbruch, Gustav. "II. Legal Philosophy." *The legal philosophies of Lask, Radbruch, and Dabin*. (Cambridge, MA: Harvard University Press, 1950).
- Rahardjo, Satjipto. *Ilmu Hukum*. (Bandung: PT Citra Aditya Bakti, 2014).
- Republic of Indonesia. *Constitutional Court Regulation Number 6 of 2005 concerning Procedure Guidelines in Legal Review Cases*.
- Riyadi, Eddie Sius (ed). *Pidana Penghinaan adalah Pembatasan Kemerdekaan Berpendapat yang Inkonstitusional*. (Jakarta: eLSAM, 2010). Online at <https://perpustakaan.elsam.or.id/index.php?p=fstream-pdf&fid=283&bid=12943>
- Sachs, Albie. "The judicial enforcement of socio-economic rights: The Grootboom case." In *Democratising Development*. (Leiden: Brill Nijhoff, 2005), pp. 131-152.
- Saputra, Rian, and Silaas Oghenemaro Emovwodo. "Indonesia as legal welfare state: The policy of Indonesian national economic law." *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 1-13.
- Sloth-Nielsen, Julia. "Too little? Too late? The implications of the Grootboom case for state responses to child-headed households." *Law, Democracy & Development* 7, no. 1 (2003): 113-136.
- Soares, Cesaltina Angela, and I Made Agus Mahendra Iswara. "Amicus Curiae in the Criminal Evidence System in Indonesia." *Sociological Jurisprudence Journal* 2, no. 1 (2019): 67-72.
- Soekanto, Soerjono and Sri Mamudji. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. (Jakarta: Rajawali Pers, 2001).
- Soemitro, Ronny Hanitijo. *Metodologi Penelitian Hukum dan Jurimetri*. (Jakarta: Ghalia Indonesia, 1994).
- Sugiri, Bambang, Nurini Aprilianda, and Hanif Hartadi. "The position of convict as justice collaborator in revealing organized crime." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 8, no. 2 (2021): 255-274.
- Sugiyono, Sugiyono. *Metode Penelitian Kuantitatif, Kualitatif dan R&D*. (Bandung: Alfabeta, 2013).

- Sukinta, Sukinta. "Konsep dan Praktik Pelaksanaan Amicus Curiae dalam Sistem Peradilan Pidana Indonesia." *Administrative Law and Governance Journal* 4, no. 1 (2021): 89-98.
- Sukmana, Oman. "Konsep dan desain negara kesejahteraan (welfare state)." *Sospol* 2, no. 1 (2016): 103-122.
- Sumarto, Mulyadi. "Welfare regime change in developing countries: Evidence from Indonesia." *Social Policy & Administration* 51, no. 6 (2017): 940-959.
- Suntoro, Agus. "Urgence and Challenges of Regulation of Amicus Curiae in The Judicial System." *Jurnal Hukum dan Peradilan* 11, no. 3 (2022): 523-544.
- Thomas, Jerry, and Vivaldi Liman. "Analysis of Opportunities for Implementing the Amicus Curiae Concept as a Form of Public Participation in The Judicial System in Indonesia." *Jurnal Hukum dan Peradilan* 13, no. 1 (2024): 1-32.
- Utrecht, Utrecht. *Pengantar Hukum Administrasi Negara Indonesia*. (Jakarta: Ichtiar, 1962).
- Wesson, Murray. "Grootboom and beyond: Reassessing the socio-economic jurisprudence of the South African Constitutional Court." *South African Journal on Human Rights* 20, no. 2 (2004): 284-308.
- Widyaningsih, Ni Putu. "Amicus Curiae dalam Proses Peradilan Pidana Anak Sebagai Pengguna Narkotika." *Jurnal Kertha Semaya* 8, no. 7 (2020).
- Yuda, Tauchid Komara, and Stefan Kühner. "Bringing Indonesia into the global welfare regime debate: A literature review and future research agenda." *Asian Social Work and Policy Review* 17, no. 2 (2023): 103-114.

\*\*\*



**“The amicus curiae brief allows a party to provide the court with information and insight that the court may not otherwise have received, which may assist the court in making a more informed decision.”**

*—Justice Ruth Bader Ginsburg (U.S. Supreme Court)*

**Acknowledgment**

None

**Funding Information**

None

**Conflicting Interest Statement**

The authors state that there is no conflict of interest in the publication of this article.

**Generative AI Statement**

None.

**History of Article**

Submitted : May 12, 2024

Revised : September 13, 2024; January 15, 2025; April 27, 2025

Accepted : March 30, 2025

Published : April 30, 2025

**Copyrights and License**

All writings published in this journal are the personal views of the authors and do not represent the views of this journal or the authors' affiliated institutions. Authors retain copyrights under the license of Creative Commons Attribution-NonCommercial-ShareAlike 4.0 (CC BY-NC-SA 4.0).