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THE ROLE OF AMICUS CURIAE IN THE CRIMINAL CASE EVIDENCE SYSTEM IN INDONESIA

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ABSTRACT

This study examines the role of amicus curiae in Indonesia's criminal evidence system and explores the opportunities for its internalization within criminal procedural law. The absence of explicit regulation in the Indonesian Criminal Procedure Code (KUHAP) has created a legal vacuum, although public participation through amicus curiae has the potential to enrich judicial reasoning. This research employs a normative legal method with statutory, conceptual, comparative, and case approaches, utilizing primary, secondary, and tertiary legal materials collected through library research. The findings indicate that amicus curiae plays a significant participatory role in strengthening judicial objectivity, yet it has not gained formal legitimacy within positive law. Article 180 of the KUHAP provides only interpretative space for judges, unlike Poland, which explicitly regulates amicus curiae under Articles 90–91 of the Kodeks Postępowania Karnego. Therefore, a strategic step is needed to internalize the amicus curiae principle into the Draft Criminal Procedure Code (RUU KUHAP) by affirming judicial authority, developing a conceptual foundation within its academic manuscript, and establishing technical guidelines through a Supreme Court Regulation (PERMA). The government and the Supreme Court should also promote training for law enforcement officials to understand amicus curiae as an epistemic instrument of evidence. By adopting Poland's practice, Indonesia can build a more transparent, accountable, and just criminal justice system aligned with the principle of due process of law.

Keywords: Amicus Curiae, Criminal Evidence, Criminal Procedure Code, Public Participation in Justice, Legal Reform.

INTRODUCTION

Criminal justice in Indonesia plays a crucial role in ensuring the upholding of the law and protecting human rights. A key aspect of this judicial system is the burden of evidence, which serves as the basis for judges in determining material truth. The Criminal Procedure Code (KUHAP) limits the number of valid pieces of evidence to five, but developments in modern criminal cases demonstrate the need for additional instruments that can broaden judges' perspectives when deciding cases. This legal vacuum has opened up space for discussion about the role of amicus curiae, or friends of the court.[1]

Amicus curiae is understood as a third party that provides legal input to the court, particularly in cases involving public interest or complex legal issues. In Indonesian practice, the existence of amicus curiae does not yet have a normative basis in the Criminal Procedure Code, but several courts have considered them in their decisions. This raises legal questions regarding the status and legitimacy of amicus curiae in the evidentiary system, while also indicating legal uncertainty that could potentially impact judicial consistency.[2] Academic studies confirm that although amicus curiae is not considered formal evidence, it can serve as a means of strengthening judges' convictions within the negative legal system. The additional perspective provided by amicus curiae can help judges understand the social context and public interest surrounding a case. Therefore, this instrument is considered capable of providing added value to the achievement of substantive justice.

Compared to other countries, the practice of amicus curiae has gained normative legitimacy, even in civil law systems. Peru, for example, has included explicit provisions for amicus curiae in its 2021 Nuevo Código Procesal Constitucional. Meanwhile, in the United States, amicus briefs have long been an integral part of the judicial process, particularly in constitutional cases and public issues. This comparison demonstrates that formal regulation of amicus curiae in Indonesia is not impossible.[3]

However, without clear regulations, the practice of amicus curiae in Indonesia has the potential to be abused or treated inconsistently by judges. Several studies have highlighted that its existence must be regulated to prevent political pressure or bias in the judiciary.[4] Thus, the urgency of this research lies in the need to analyze the role of amicus curiae in the Indonesian criminal evidence system and at the same time formulate the prospects for its regulation to align with the principles of legal certainty, justice, and public participation in the judiciary.

1. RESEARCH METHOD

1.1. TYPE OF RESEARCH

This study uses two research questions regarding the role of amicus curiae in the criminal evidence system in Indonesia and the extent of the opportunities and obstacles to accommodating it within the framework of criminal procedure law. This research question is methodologically directed at finding answers to the legal limitations in the Criminal Procedure Code (KUHAP), which does not recognize amicus curiae as formal evidence, but in reality, is starting to be used in judicial practice. Because the nature of the problem emphasizes legal norms and doctrinal construction, this study

[1] Undang-Undang Nomor 8 Tahun 1981 tentang KUHAP.
[2] Aulia, F., & Muksin, M. R. S, The Position Of *Amicus Curiae* Under The Indonesian Law Of Evidence. *Jurnal Media Hukum*, Vol. 27, No. 2, 2020. 218-220.
[3] Chandra Mo.han, S, The Amicus Curiae: Friends No More?, *SingaporeJournal Legal Studies,* 2010. 4.
[4] Sukinta, S, Konsep dan Praktik Pelaksanaan Amicus Curiae Dalam Sistem Peradilan Pidana, *Administrative Law and Governance Journal*, Vol. 4, No. 1, 2021. 94-95.

uses a normative legal research type. Normative legal research is considered relevant because it allows for an in-depth review of norms, principles, doctrines, and jurisprudential practices related to the amicus curiae issue.[5]

1.2. APPROACHES USED

The approach used encompasses several analytical strategies. First, a statutory approach examines provisions in the Criminal Procedure Code (KUHAP), the Judicial Power Law, and related regulations relevant to the burden of evidence. Second, a conceptual approach examines academic ideas and legal theory regarding amicus curiae as an instrument of public participation in the judiciary. Third, a case approach analyzes court decisions in Indonesia, particularly cases that have considered amicus curiae documents. Fourth, a comparative approach examines the practices of other countries, such as Poland, that have granted normative legitimacy to amicus curiae.

1.3. SOURCES OF LEGAL MATERIALS

The types of legal materials used include primary materials in the form of laws and regulations, court decisions, and constitutions related to the system of evidence. Secondary materials include textbooks, legal journal articles, academic research results, and the opinions of criminal law and criminal procedure experts to support the analysis. Tertiary materials, in the form of legal dictionaries and encyclopedias, are used to enhance conceptual understanding.[6]

1.4. DATA COLLECTION AND ANALYSIS

Data collection was conducted through literature review and document review relevant to the research topic. The analytical technique used was descriptive analysis, an approach aimed at producing logical conclusions consistent with the research objective, namely, to understand the role of amicus curiae in the criminal case evidence system in Indonesia.

2. DISCUSSION

2.1. BACKGROUND OF THE CASE

This study examines the role of amicus curiae in Indonesia's criminal evidence system and explores the opportunities for its internalization within criminal procedural law. The absence of explicit regulation in the Indonesian Criminal Procedure Code (KUHAP) has created a legal vacuum, although public participation through amicus curiae has the potential to enrich judicial reasoning.

2.2. JUDICIAL CONSIDERATIONS

The existence of amicus curiae does not yet have an explicit normative basis in the Criminal Procedure Code, but substantively it can be linked to Article 180 paragraph (1) of the Criminal Procedure Code which provides space for judges to ask for the opinion of third parties in the interests of fairer evidence. The author emphasizes that although amicus curiae is not included in the five valid evidence according to Article 184 of the Criminal Procedure Code, calling for it to

[5] Marzuki, Peter Mahmud. *Penelitian hukum: Edisi revisi*, Kencana Prenada Media Media Group, Jakarta, 2017. 133.
[6] Amiruddin dan H. Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2018. 163.

remain relevant as a non-formal consideration to strengthen the judge's belief in legal facts, as has been considered in several national decisions such as Decision *Number. 265/Pid.Sus/2017/PN Mtr* and *Number. 1537/Pid.B/2019/PN Jkt.Utr.* Therefore, judges can use the views of amicus curiae as reflective considerations as long as they do not violate the principles of impartiality and judicial independence.

2.3. LEGAL ANALYSIS

The concept of amicus curiae can be used as an epistemic tool in criminal case evidence, to broaden the judge's perspective beyond the formal limits of the five pieces of evidence in the Criminal Procedure Code. Through a comparative approach, the author shows that Poland has explicitly regulated this concept in the Kodeks Postępowania Karnego (Articles 90–91), which grants social organizations the right to submit written opinions in court as a form of public participation (social representation).[7] This model is considered ideal for Indonesia because it can accommodate public participation without compromising the independence of judges. Based on an analysis of the legal system of Poland and several other civil law countries, the author recommends that the Draft Criminal Procedure Code explicitly regulate the position of amicus curiae as a non-litigation instrument in criminal case evidence.[8]

2.4. IMPLICATIONS OF THE DECISION

The need for reform of Indonesian criminal procedure law to accommodate amicus curiae as part of a modern, transparent and participatory evidentiary system. Recognition of non-litigation third parties will strengthen the principle of due process of law and open up space for civil society and academics to contribute to the criminal process.[9] Furthermore, amicus curiae can be a means of increasing judicial accountability through scientific and ethical input, as has been implemented in Poland and other civil law countries. Therefore, the author proposes that the Supreme Court and lawmakers immediately prepare a PERMA (Supreme Court Regulation) and a special article in the Criminal Procedure Code Bill to regulate the procedures for accepting and considering amicus curiae in prison.[10]

3. CONCLUSION

This study concludes that the concept of amicus curiae has important urgency in the Indonesian criminal justice system as a non-litigation instrument capable of strengthening the transparency and objectivity of judges in assessing evidence. Although the Criminal Procedure Code has not provided an explicit legal basis for the existence of amicus curiae, substantively this practice can be accommodated through the interpretation of Article 180 paragraph (1) of the Criminal Procedure Code which allows judges to accept the opinions of other parties in the interests of justice. Thus, amicus curiae acts as a third-party advisor who provides academic, moral, and social views to assist judges in obtaining rational and proportional legal beliefs.

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[7] Płoszka, A, *Strategic litigation in a time of populism: Poland's experience. German Law Journal*, 25, 2024. 893–909.

[8] Thomas, J. R, & Liman, V, 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,* Vol. 13, No. 1, 2024, 168-170.

[9] Ksatria, Cokorda A A D, Prinsip Amicus Curiae Terhadap Putusa Hakim Dalam Perkara Pidana Di Indonesia. *Ethics and Law Journal: Business and Notary*, Vol. 3, No. 1, 2025. 312-317.

[10] Sukinta, S, Konsep dan Praktik Pelaksanaan Amicus Curiae Dalam Sistem Peradilan Pidana, *Administrative Law and Governance Journal*, Vol. 4, No. 1, 2021. 95-97.

Lessons learned from the Polish legal system, as outlined in the Kodeks Postępowania Karnego (Articles 90–91), demonstrate that the role of social organizations as amicus curiae can be formally exercised without compromising judicial independence. Therefore, the author recommends that the draft Criminal Procedure Code and the Supreme Court Regulation (PERMA) explicitly regulate the mechanisms and limitations for amicus curiae participation in criminal cases in Indonesia. These regulations are expected to be a concrete step towards a more open, participatory criminal justice system that upholds the principles of substantive justice and due process of law.

AUTHORS' CONTRIBUTIONS

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Ksatria, Cokorda A A D, Prinsip Amicus Curiae Terhadap Putusa Hakim Dalam Perkara Pidana Di Indonesia. *Ethics and Law Journal: Business and Notary*, Vol. 3, No. 1, 2025. 312-317. https://doi.org/10.61292/eljbn.255

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