

The Role of Amicus Curiae in Influencing The Confidence of Judges in The Supreme Court and Constitutional Court

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ABSTRACT

Recently, the topic of Amicus Curiae has become a hot topic of discussion among the legal observer community. On the one hand, the Amicus Curiae is of the opinion that it can significantly influence the judge's confidence, but on the other hand, it is of the opinion that the Amicus Curiae cannot influence it because there are other factors that influence it, namely the facts of the trial. This research is qualitative research with a descriptive approach, namely describing Amicus Curiae, its history, meaning, and its role in influencing judges' beliefs. The data used in this research is secondary data that researchers obtained from statutory regulations, books, scientific articles, and other things that are usually used in qualitative research. These data were analyzed using the stages of data collection, data selection, data reduction, data analysis, and drawing conclusions. The result in this article show that the position of Amicus Curiae is only limited to opinions from scientific articles and opinions scattered on social media. The difference is that this specification is addressed to the Constitutional Court judges before making a decision. However, specifically personally, this could influence the judge's psychology to remind him of things that happened in the trial and carefully pay attention to the two different perspectives. Amicus Curiae also consists of various types of varied sentences. If it is related to the decision of the Constitutional Court in resolving disputes over the results of the 2024 Presidential and Vice Presidential General Election, there are things that are different compared to the decision on resolving disputes over the results of the previous year's Presidential and Vice Presidential General Election, where there are 3 judges who took dissenting opinion decisions compared to five other judges. It is possible that this difference is caused by one of the factors due to the existence of the 24 Amicus Curiae.

Keywords : *Amicus Curiae, Confidence of Judges, Constitutional Court*

INTRODUCTION

The practice of including Amicus Curiae originates from Roman law starting from the 9th century. Initially this practice was applied in countries that adhere to the common law system, especially in appellate courts. This idea was also applied during proceedings within the scope of international law, especially in cases relating to human rights. Recently, the application of Amicus Curiae has been implemented. regulated in countries that adhere to a civil law system. In the United States, before the case of *Green v. Biddle* at the beginning of the 19th century the court did not allow the participation of

Amicus Curiae in the judicial process. However, in the early 20th century Amicus Curiae became an important role in civil rights and abortion cases. In the 17th and 18th centuries, participation in the Amicus Curiae was recorded in the All England Report. In this report there is a description of Amicus Curiae, including: a. The most important function of Amicus Curiae, namely to classify factual issues, describe legal problems and represent certain groups; b. Amicus Curiae, dealing with facts and legal issues, does not have to be made by lawyers; c. Amicus Curiae, not related to the plaintiff or defendant, but has an interest in the case; d. Have permission to participate as Amicus Curiae (Rozi, 2018).

In Indonesia, Amicus Curiae is not yet widely used. To date, there have been several Amicus Briefs that have been submitted to a number of courts in Indonesia, including: Amicus Curiae submitted by the community of press independence activists to the Supreme Court in connection with the review of the Time magazine case versus Suharto, secondly related to the case of Upi Asmaradana who submitted an Amicus Brief as ad informandum to examine judges in examining cases at the Makassar District Court. The Indonesian judiciary does not have a regulatory basis relating to Amicus Curiae, but in Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power explains that judges and constitutional justices must explore, follow and understand the values of law and justice that exist in society (Peraturan Mahkamah Konstitusi Nomor 06/PMK/2005 Tentang Pedoman Beracara Dalam Perkara Pengujian Undang-Undang, 2005).

Amicue Curiae or what can also be called "friends of court" are opinions from individuals or organizations who do not act as parties in a case but are concerned or have an interest in a case. Article 14 of the Constitutional Court Regulation Number 06/PMK/2005 argues that a Related Party which has an indirect interest is a party whose position, main duties and functions require their statement to be heard or a party whose statement needs to be heard as additional information (ad informandum), namely a party who, because of his or her authority, is not directly affected by the subject matter of the request, but because of his/her high concern for the request. It could be said that the concept of Amicus Curiae has been partially adopted by the Constitutional Court as contained in regulations (Malla Avila, 2022).

In the United States judicial system the definition of Amicus Curiae is "A person or an organization who is not a party to the case but has an interest in an issue before the court may file a brief or participate in the argument as a friend of the court. An amicus curiae asks for permission to intervene in a case usually to present their point of view in a case which has the potential of setting a legal precedent in existing areas of activity, often in civil rights cases".²⁶ According to the United States Supreme Court, Amicus Curiae is "a person or group who is not a party to a lawsuit, but has a strong interest in the matter, will petition the court for permission to submit a brief in the action

with the intent of influencing the court's decision" (Ni Putu Widyarningsih, 2020). Thus, in the judicial system in the United States there are three categories related to Amicus Curiae, including: a. Submit a request to intervene in a case that is being heard in order to influence the judge's decision in court. b. Providing information to the court relating to problems that the judge considers doubtful or misunderstood by the judge. c. Amicus Curiae is carried out by one or more people or organizations that are not part of the family involved in the case (Putri, 2022).

In Indonesia, the concept of Amicus Curiae is not widely known and applied, either by academics or practitioners. In the Supreme Court regulations, the Indonesian judiciary does not have regulations that directly discuss Amicus Curiae, but Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power explains that judges and also constitutional justices are required to explore, follow and understand the legal values and sense of justice that exist in society. There are other supporting regulations, namely Article 14 of the Constitutional Court Regulation Number 06/PMK/2005 which explains that related parties who indirectly have an interest are "parties whose statements, because of their position, main duties and functions, need to be heard" or "parties who are required to The statement is heard as ad informandum, namely a party who, because of their rights or authority, is not directly affected by the subject of the petition but because they care about the petition in question (Peraturan Mahkamah Konstitusi Nomor 06/PMK/2005 Tentang Pedoman Beracara Dalam Perkara Pengujian Undang-Undang, 2005). It could be said that the concept of Amicus Curiae has been partially adopted by the Constitutional Court in its regulations. Another regulation that has the opportunity to allow the use of the Amicus Curiae concept in the criminal justice system in Indonesia is Law Number 8 of 1981 concerning the Criminal Procedure Code which is explained in Article 180 paragraph (1) of the Criminal Procedure Code that in cases where it is necessary to clarify the situation In cases that come to trial, the presiding judge may ask for expert information and may also request the submission of new material by those who have an interest. Indirectly, this article has the opportunity to allow the concept of Amicus Curiae in the trial process of criminal cases in Indonesia (Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman, 2009).

Ahead of the decision on the dispute over the General Election of President and Vice President, Amicus Curiae or commonly known as Amici has become an interesting topic of conversation among the community, especially observers of law and the constitution. One side believes that the Amicus Curiae can influence the judge's beliefs because the Amicus Curiae was written with the conscience of a well-known figure and has great influence, and is related to the facts of the case (Prakoso, 2018). However, on the other hand, the party believes that Amicus Curiae does not really influence the beliefs of the Constitutional Court judges because the most important thing is the facts in the trial. Therefore, this research aims to analyze and describe the extent to which the

RESEARCH METHODS

Recently, the topic of Amicus Curiae has become a hot topic of discussion among the legal observer community (Lexy J. Moleong, 2018). On the one hand, the Amicus Curiae is of the opinion that it can significantly influence the judge's confidence, but on the other hand, it is of the opinion that the Amicus Curiae cannot influence it because there are other factors that influence it, namely the facts of the trial (Imam Gunawan, 2014). This research is qualitative research with a descriptive approach, namely describing Amicus Curiae, its history, meaning, and its role in influencing judges' beliefs (Lexy J. Moleong, 2014). The data used in this research is secondary data that researchers obtained from statutory regulations, books, scientific articles, and other things that are usually used in qualitative research (Sugiyono, 2019). These data were analyzed using the stages of data collection, data selection, data reduction, data analysis, and drawing conclusions (Andalisto et al., 2022).

RESULT AND DISCUSSION

Amicus Curiae

The practice of including Amicus Curiae originates from Roman law starting from the 9th century. Initially this practice was applied in countries that adhere to the common law system, especially in appellate courts. This idea was also applied during proceedings within the scope of international law, especially in cases relating to human rights. Recently, the application of Amicus Curiae has been implemented. regulated in countries that adhere to a civil law system. In the United States, before the case of *Green v. Biddle* at the beginning of the 19th century the court did not allow the participation of Amicus Curiae in the judicial process. However, in the early 20th century Amicus Curiae became an important role in civil rights and abortion cases. In the 17th and 18th centuries, participation in the Amicus Curiae was recorded in the All England Report. In this report there is a description of Amicus Curiae, including: a. The most important function of Amicus Curiae, namely to classify factual issues, describe legal problems and represent certain groups; b. Amicus Curiae, dealing with facts and legal issues, does not have to be made by lawyers; c. Amicus Curiae, not related to the plaintiff or defendant, but has an interest in the case; d. Have permission to participate as Amicus Curiae (Rozi, 2018).

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The Role Of Amicus Curiae In Influencing The Confidence Of Judges In The Supreme Court And Constitutional Court

The application of the Amicus Curiae concept is only limited to expressing opinions or legal opinions. This concept is not mentioned in the evidence in the Criminal Procedure Code, because the power of evidence is in Article 183 of the Criminal Procedure Code. In this article, the judge who decides on a case is not permitted to impose a sentence without any basis based on at least two pieces of evidence that are considered valid with confidence based on that evidence (Hukum Acara Pidana, 1981).

Basically, the concept of Amicus Curiae can be in the form of a brief statement containing matters relating to arguments or discussions relating to points expressed in various forms, such as papers, articles and so on. In this case the Amicus Curiae created

must be academically accountable. In maintaining the quality of Amicus Curiae in Amicus submissions, there are things that need to be understood in the role of "friend of the court itself" including: 1. "friend of the court" or Amicus Curiae must provide services to the court to find justice and also have no conflict of interest, because the main goal of a "friend of the court" is to find justice. 2. A person or group is required to consider first and look at their knowledge and integrity so as not to conflict with the interests of the litigants. 3. The role of the Amicus Curiae will be to participate independently through permission or invitation from the court. Amicus Curiae has limited capacity to act legally because it is only an opinion and cannot submit a defense note (Ardyagarini, 2014).

In connection with the case of dispute over the results of the 2024 presidential and vice presidential general elections, there were 24 Amicus Curiae sent to the Constitutional Court, namely: Brawijaya (Truth Front for Democracy), Indonesian Democracy Defense Team (TPDI), TOP GUN, Alliance of Academics and Civil Society, Central Legal Studies and Social Justice (Center For Law And Social) FH UGM, Pandji R Hadinoto, Busyro Muqoddas, Saut Situmorang, Feri Amsari, Usman Hamid, Abraham Samad, Etc., UGM-UNPAD-UNDIP-AIRLANGGA Student Organization, Megawati Soekarnoputri & Hasto Kristiyanto, Indonesian Young Advocates Forum (FAMI), Indonesian Constitutional Rights Advocacy Foundation (YAKIN), Indonesian Democracy Enforcement Alliance (APDI), Amicus Stefanus Hendriyanto, Community for the Love of Honest and Fair Elections (KCP-JURDIL), INDONESIAN AMERICAN LAWYERS ASSOCIATION, Reza Indragiri Amriel, People's Movement to Save Indonesia with Change, Burhan Saidi Chaniago (STIH GPL Jakarta Student), Indonesian Law Care Advocacy Team, M Subhan, People's Movement to Sue (GRAM), Tuan Guru Deri Sulthanul Qulub, and Habib Rizieq Shihab, Din Syamsudin, Ahmad Shabri Lubis, Yusuf Martak, and Munarman. The 24 Amicus Curiae involved in cases of dispute over the results of the Presidential and Vice Presidential Elections constitute the largest number of Amicus Curiae in the history of the establishment of the Constitutional Court (Kartika, 2024).

Based on the explanation above, the researcher is of the opinion and formally concludes that the position of Amicus Curiae is only limited to opinions from scientific articles and opinions scattered on social media. The difference is that this specification is addressed to the Constitutional Court judges before making a decision. However, specifically personally, this could influence the judge's psychology to remind him of things that happened in the trial and carefully pay attention to the two different perspectives. Amicus Curiae also consists of various types of varied sentences. If it is related to the decision of the Constitutional Court in resolving disputes over the results of the 2024 Presidential and Vice Presidential General Election, there are things that are different compared to the decision on resolving disputes over the results of the previous year's Presidential and Vice Presidential General Election, where there are 3 judges who took dissenting opinion decisions compared to five other judges. It is possible that this

difference is caused by one of the factors due to the existence of the 24 Amicus Curiae.

CONCLUSION

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REFERENCES

- Andalisto, D., Saragih, Y., & Ibrahim, I. (2022). Analisis Kualitatif Teknologi 5G Pengganti 4G Di Indonesia. *Jurnal Edukasi Elektro*, 6(1), 01-09. <https://doi.org/10.21831/jee.v6i1.47021>
- Ardyagarini, P. (2014). *Analisis Hukum Terhadap Pendapat Amicus Curiae Pada Pembuktian Tindak Pidana Penghinaan (Studi Kasus Putusan Nomor 197/Pid/B/2009/PN.Mks)*. Univeritas Hasanuddin Makassar.
- Imam Gunawan. (2014). *Metode Penelitian Kualitatif*. Bumi Aksara.
- Kartika, I. (2024). "Amicus Curiae" PHPU Presiden Tahun 2024 Terbanyak Sepanjang Sejarah MK. MKRI.Id. <https://www.mkri.id/index.php?page=web.Berita&id=20210&menu=2>
- Lexy J. Moleong. (2014). *Metode Penelitian Kualitatif*. Remaja Rosdakarya. Lexy J. Moleong. (2018). *Metode Penelitian Kualitatif*. PT Remaja Rosdakarya, 2018.
- Peraturan Mahkamah Konstitusi Nomor 06/PMK/2005 tentang Pedoman Beracara Dalam Perkara Pengujian Undang-Undang, 2 MKRI.id 21 (2005).
- Malla Avila, D. E. (2022). Pedoman Beracara Dalam Perkara Pengujian Undang-Undang. In *Pedoman Beracara Dalam Perkara Pengujian Undang-Undang* (Issue 8.5.2017).

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Ni Putu Widyaningsih. (2020). Amicus Curiae Dalam Proses Peradilan Pidana Anak Sebagai Pengguna Narkotika. *Kertha Semaya: Jurnal Hukum*, 2(1), 17.

Prakoso, A. S. (2018). *Tinjauan Yuridis Terhadap Pendapat Sahabat Pengadilan (Amicus Curiae) Pada Proses Pembuktian Dalam Peradilan Pidana di Indonesia Dihubungkan Dengan Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana Dan Undang-Undang Nomo*. Universitas Padjajaran.

Putri, B. A. (2022). TINJAUAN HUKUM MENGENAI AMICUS CURIAE SEBAGAI PERTIMBANGAN HAKIM DALAM PUTUSAN PERKARA PIDANA DI INDONESIA. In *KEMENTERIAN RISET TEKNOLOGI DAN PENDIDIKAN TINGGI UNIVERSITAS BRAWIJAYA* (Issue 8.5.2017). UNIVERSITAS BRAWIJAYA FAKULTAS HUKUM MALANG.

Hukum Acara Pidana, 3 DPR RI 675 (1981).Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, 21 (2009).

Rozi, F. (2018). Sistem Pembuktian Dalam Proses Persidangan Pada Perkara Tindak Pidana. *Urnal Yuridis Unaja*, 1(2), 22.

Sugiyono. (2019). *Metode Penelitian Kuantitatif, Kualitatif, R&D*.