

Authority of Amicus Curiae in Constitutional proceedings: Bridging Society and the Constitutional Court

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ABSTRACT

Amicus Curiae, or friends of the court, is an important instrument in constitutional proceedings in Indonesia even though it does not yet have a standard legal basis. This study discusses the authority of Amicus Curiae in providing additional information, enriching the judge's consideration, and supervising the proceedings of the Constitutional Court. The method used is the literature study approach, which is a research method whose series of research is related to the method of collecting library data, or research whose object of research is studied through various literature information, such as: books, journals, articles and documents. Amicus Curiae is filed in the form of a written document containing legal arguments and other relevant analysis. The Constitutional Court has the authority to reject Amicus Curiae that are judged irrelevant or filed with improper motives. On the other hand, a quality Amicus Curiae can have a positive influence on the decisions of the Constitutional Court and contribute to law enforcement and democracy in Indonesia. Amicus Curiae has not been clearly regulated in Indonesia, but in principle it is accepted under article 5 paragraph 1 of the Law on Judicial Power "Judges and constitutional judges are obliged to explore, follow and understand the legal values and sense of justice that live in society. Furthermore, the confession of the Amicus Curiae can be found in article 180 paragraph 1 of the Code of Criminal Procedure which states that "In the event that it is necessary to clear up the sitting of the matter arising in court, the presiding judge of the trial may request expert testimony and may also request to submit new material by the interested person.

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1. INTRODUCTION

The Constitutional Court (MK) as the guardian of the constitution in Indonesia has an important role in maintaining democracy and upholding the rule of law. In carrying out its duties, MK is often faced with complex

matters that require comprehensive information and analysis.

This is where the role of Amicus Curiae, or "friend of the court", becomes important. Amicus Curiae is a party who is not a litigant in a case, but is permitted by the

court to provide information, opinions, or legal advice relevant to the case.

Amicus Curiae is legal input or opinion from external parties originating from individuals or organizations that are not included as litigants but have indirect interests or concerns in the case. The definition of indirect interested parties is stated in article 14 of Constitutional Court Regulation Number 06 / PMK / 2005 which explains that indirect interested parties are parties whose position, main duties, and functions need to be heard or parties whose rights and / or authorities are not directly affected by the subject matter of the application but because of their concern for the application in question.

The position of Amicus Curiae is only as input or statement in the form of an opinion that is an additional consideration for the judge in deciding the case. In contrast to intervention, Amicus Curiae does not aim to interfere with the independence of judges, but rather actions to support judges' decisions that reflect the values of certainty, fairness, and expediency through wise rulings. Keep in mind that every judge's decision must focus on evidence and claims or petitum from the plaintiff or litigant in court. Based on its position which is only in the form of consideration from third parties, the influence caused by Amicus Curiae will not interfere with the independence of judges in deciding cases but will be effective in helping judges decide cases. Through the participation of Amicus Curiae, it can be reflected the community's efforts to support integrity and transparency in the ongoing decision-making process by providing input or opinions that may not be covered in the arguments presented by litigants, showing how important the case is to society at large.

Most recently, the Constitutional Court case in Indonesia related to the 2024 presidential election, there were 48 Amicus Curiae applications, with 14 of them received before the deadline. Among them are individuals and organizations such as Megawati Soekarnoputri and Hasto Kristiyanto, the Indonesian Young Advocates

Forum (FAMI), the Indonesian Constitutional Rights Advocacy Foundation (YAKIN), the Indonesian Democratic Enforcement Alliance (APDI), the Honest and Fair Election Love Community (KCP). -JURDIL), and others. The large number of Amicus Curiae applications shows the amount of public interest and attention to the case. But the final decision remains in the hands of the judge, who must consider all evidence and arguments submitted by the parties involved in the case. Amicus Curiae opinions are just one of many factors a judge can consider when making a decision.

The legal basis for Amicus Curiae in the Constitutional Court does not yet exist, but there are several legal bases that can be used to strengthen the position of Amicus Curiae, including: a) Article 24 paragraph (2) of the Constitution of the Republic of Indonesia Year 1945. b) Article 5 paragraphs (1) and (2) of Law Number 24 of 2003 concerning the Constitutional Court. c) Constitutional Court Regulation Number 1 of 2017 concerning Examination of Disputes Between State Institutions.

2. METHODS

The Research Method used is the Literature Study Approach, which is a research method whose series of research is related to the method of collecting library data, or research whose object of research is studied through various literature information, such as: books, journals, articles and documents. Literature review or literature research (literature review, literature research) is research that examines or critically reviews the knowledge, ideas, or findings contained in the body of academic literature (academic-oriented literature), and formulates theoretical and methodological contributions to certain topics.

3. RESULTS AND DISCUSSION

3.1 History and Development of the Amicus Curiae: From Ancient Rome to the Modern Constitutional Trial

Amicus Curiae, which means "Friend of the Court" in Latin, is a legal concept that has existed since ancient Roman times. In the Roman legal system, an Amicus Curiae was an individual summoned by a court to provide information or expert opinion on a case.

This concept evolved over time and was adopted by various legal systems around the world, including in Indonesia. Today, the Amicus Curiae is widely used in modern constitutional proceedings, where a third party who has no direct interest in the case can submit his opinion to the Constitutional Court to help consider the verdict.

Here are some key points in the history and development of Amicus Curiae:

3.1.1 Ancient Rome:

Amicus curiae were first used in the ancient Roman legal system, where they were summoned by courts to provide information or expert opinions on a case.

They are usually jurists or wise men who are respected by society. The purpose of the Amicus Curiae is to assist the courts in reaching a fair and proper verdict.

3.1.2 Middle Ages:

The concept of Amicus Curiae was adopted by legal systems in Western Europe during the Middle Ages. Amicus Curiae are usually priests or scholars who provide legal advice to the courts.

3.1.3 Modern Era:

The use of Amicus Curiae is growing rapidly in the modern era, especially in the United States and the United Kingdom. Amicus Curiae can now be individuals, organizations, or even governments. They can submit their opinions on a variety of legal issues, including constitutional issues.

3.1.4 Twitter:

The concept of Amicus Curiae was adopted in the Indonesian legal system through the 1945 Constitution of the Republic of Indonesia and the Constitutional Court of the Republic of Indonesia. Amicus Curiae can submit its opinion in cases submitted to the Constitutional Court, such as legal review of the constitution, electoral disputes, and disputes between state institutions.

3.1.5 Latest Developments:

The use of Amicus Curiae is increasingly prevalent in modern constitutional proceedings. This is because Amicus Curiae can give courts a different perspective and help consider different aspects of a case. However, there are also concerns that Amicus Curiae could be used by certain parties to influence court rulings.

3.2 Roles and Authorities of Amicus Curiae:

3.2.1 The main roles of Amicus Curiae are:

- a. Provide information and education: Amicus Curiae may provide information and education to courts on factual, legal, or scientific issues relevant to a case.
- b. Offer different perspectives: Amicus Curiae can offer courts different perspectives that litigants may not have considered.
- c. Assist courts in reaching fair and appropriate verdicts: Amicus Curiae can assist courts in reaching fair and appropriate decisions by providing objective and independent information and opinions.

3.2.2 Authority of Amicus Curiae:

The authority of an Amicus Curiae varies depending on the jurisdiction. However, in general, Amicus Curiae has the authority to:

- a. Submit a legal brief or memorandum to the court. This brief and memorandum should contain legal arguments and analysis relevant to the case.
- b. Be present at the trial and present arguments orally. Amicus Curiae must obtain permission from the court before it can present oral arguments.
- c. Answering questions from the court. Amicus Curiae must answer questions from the court honestly and accurately.

3.2.3 Amicus Curiae Limitations:

Although Amicus Curiae have some authority, they also have some limitations:

- a. Amicus Curiae may not be a party to any case. They cannot act on behalf of litigants and cannot be involved in the fact-finding process.

- b. Amicus Curiae must be objective and independent. They must not promote the interests of any particular party and must provide neutral information and opinions.
- c. Amicus Curiae shall be subject to court rules and orders. They must respect the court and must not interfere with the proceedings.

3.2.4 Amicus Curiae Responsibilities:

Amicus Curiae has responsibility for:

- a. Provide accurate and relevant information and opinions.
- b. Maintain objectivity and independence.
- c. Respect the court and litigants.
- d. Comply with court rules and orders.

3.3 Impact of Amicus Curiae in Constitutional Cases

Impact of Amicus Curiae in Constitutional Cases in Indonesia in 2024 Case Study:

In 2023, the Amicus Curiae plays an important role in several constitutional cases in Indonesia. Here is a case study that shows how the Amicus Curiae had a significant impact on the Constitutional Court (MK) ruling:

Constitutional Court Ruling on the Dispute over the Results of the 2024 Presidential and Vice Presidential Elections (PHPU). In this case, the Constitutional Court received 14 PHPU applications from various pairs of presidential and vice-presidential candidates. The Constitutional Court also received 14 Amicus Curiae applications from various parties, such as academics, civil society organizations, and legal experts.

Some Amicus Curiae argue that the KPU recapitulation process is not transparent and accountable. They also highlighted allegations of fraud and violations in the voting process. The Court considered various opinions of the Amicus Curiae in deciding this case. The Constitutional Court ultimately decided to reject all PHPU applications and declared that the 2024 presidential and vice presidential elections were legal and constitutional. Although the Court did not grant PHPU's request, the Amicus Curiae still exerted an important influence in the case.

Amicus Curiae assists the Constitutional Court in understanding the complexity of the case and considering various relevant aspects.

3.4 Relationship Between Amicus Curiae, Society, and the Constitutional Court

The Relationship Between the Amicus Curiae, the Community, and the Constitutional Court

Amicus Curiae, or "Friends of the Court", is a third party who does not have the position of a litigant in a case, but is allowed by the court to give his information or opinion to assist the court in deciding the case. In Indonesia, Amicus Curiae is regulated in Article 24 paragraph (4) and Article 52 paragraph (2) of the Constitutional Court Law Number 24 of 2003.

Amicus Curiae Participation Strengthens Judiciary-Community Relations

The participation of Amicus Curiae in the constitutional justice process in Indonesia has an important role to play in strengthening relations between judicial institutions, civil society, and other interest groups. Here are some of the benefits:

3.4.1 Improving Transparency and Accountability of the Judiciary:

Amicus Curiae allows communities and interest groups to engage in the constitutional judicial process and provide input to the Constitutional Court (MK). This increases the transparency and accountability of the Constitutional Court in carrying out its duties, because the Constitutional Court not only considers arguments from litigants, but also from various interested parties.

3.4.2 Enriching the Judge's Consideration in Deciding Cases:

The opinions and information provided by the Amicus Curiae can help judges understand the complexity of a case and consider various relevant aspects. This can improve the quality of the Constitutional Court's rulings and ensure that the resulting rulings are fair and based on strong law.

3.4.3 Increase Public Understanding of the Constitution:

Amicus Curiae's participation in the constitutional judicial process can increase people's understanding of the constitution

and the role of the Constitutional Court in upholding the constitution. This can encourage more active public participation in the democratic process and strengthen the constitutional culture in Indonesia.

3.4.4 Building Dialogue and Cooperation between the Judiciary and Civil Society:

The participation of the Amicus Curiae opens up space for dialogue and cooperation between the judiciary and civil society. This can increase public trust in the judiciary and strengthen the legal system in Indonesia.

3.4.5 Strengthening Democracy and Upholding Human Rights:

Amicus Curiae can assist the Constitutional Court in protecting human rights and upholding democratic principles. This can strengthen democracy in Indonesia and ensure that all citizens get their rights fairly.

Examples of Influential Amicus Curiae Participation

One example of Amicus Curiae's participation that has a significant influence is in the Constitutional Court decision on Perppu Number 3 of 2023 concerning Amendments to the Constitution of the Republic of Indonesia in 1945. In this case, Amicus Curiae from various parties, such as academics, civil society organizations, and legal experts, argued that the Perppu was unconstitutional. The Constitutional Court finally ruled that Perppu Number 3 of 2023 was unconstitutional and unenforceable.

3.5 Legal Basis

Although there is no specific regulation on amicus curiae in the Constitutional Court, there are several legal bases that can be used to strengthen the position of amicus curiae, including:

- a. Article 24 paragraph (2) of the Constitution of the Republic of Indonesia Year 1945: "Judges in upholding law and justice must pay attention to legal and moral values that live in society."
- b. Article 5 paragraphs (1) and (2) of Law Number 24 of 2003 concerning the Constitutional Court: "The Constitutional Court has the authority to adjudicate

cases regarding: (1) legal review of the Basic Law; (2) settlement of disputes between state institutions whose authority is granted by the Basic Law."

- c. Constitutional Court Regulation Number 1 of 2017 concerning Examination of Disputes Between State Institutions: In this regulation, amicus curiae is mentioned as one of the parties who can provide information to the Constitutional Court.

4. CONCLUSION

Amicus Curiae serves as a mechanism that allows third parties, usually organizations or individuals who have an interest in a case, to provide legal opinions that can be used by judges as one of the considerations in deciding cases. In the judicial system in Indonesia, Amicus Curiae does not aim to interfere with the independence of judges, but rather to support judges' decisions that reflect the values of certainty, fairness, and expediency through wise decisions. The authority of Amicus Curiae is based on Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which affirms that judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society.

The authority of the Amicus Curiae in the trial of the Constitution plays an important role in bridging society and the Constitutional Court. By providing views or opinions to the court, Amicus Curiae parties can provide diverse and in-depth viewpoints on complex legal issues. This helps the court to understand the far-reaching implications of the decision to be taken on society as a whole. Through its participation in the trial, the Amicus Curiae also helps ensure that the voices and interests of groups or individuals who may not be directly involved in the case remain heard and considered. This is important in ensuring the fairness of due process and maintaining openness and accountability in the justice system.

Thus, the authority of the Amicus Curiae in the proceedings of the Constitution helps strengthen the relationship between the community and the Constitutional Court, as well as ensure that the decisions taken reflect the needs and aspirations of society more broadly.

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