



## The Arrangement of the Amicus Curiae in the Judicial System and Its Implications for the Consideration of Constitutional Judges in the Dispute over the Results of the 2024 Presidential Election

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| <b>ABSTRACT</b> <p>This research examines amicus curiae in the Indonesian judicial system, especially in the case of a dispute over the results of the 2024 Presidential General Election. The method used is normative legal research with a conceptual approach and comparative approach. Amicus curiae, or friends of the court, is an instrument that allows third parties, who are not directly involved in litigation, to provide views or information to the court. Although not explicitly regulated in law, amicus curiae has been accepted in court practice, such as at the Constitutional Court in disputes over election results. In the context of the 2024 PHPU, amicus curiae contributions provide an in-depth look at the legal and social aspects associated with electoral procedures as well as consideration of complex legal issues and safeguard the integrity of the judicial process. Although amicus curiae is not legal evidence, it serves as a consideration that enriches the process of rechtsvinding and supports fairer and more transparent decisions. However, there are challenges in establishing the legal status of amicus curiae in the Indonesian legal system, as there is no clear regulation regarding its position. Therefore, it is important to have a more structured and legally certain regulation so that amicus curiae can function effectively in supporting the achievement of substantive justice.</p> <p><b>Keywords:</b> <i>Amicus curiae, Judicial System, Constitutional Court</i></p> |                               |                                |                              |

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## INTRODUCTION

Amicus curiae is a form of community participation in a case as a form of community supervision of ongoing law enforcement. Amicus curiae can act for three kinds of interests, namely; 1). For its own interests or the interests of the groups it

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represents that may be affected by the decision of the case, regardless of the interests of the parties, so that the court does not decide only on the grounds put forward by the parties; 2). For the benefit of one of the parties in the case and help strengthen his arguments so that the court has confidence to “win” that party or grant his application; and 3). For the public interest, in this case, the court’s friend provided information on behalf of the interests of the wider community who would receive the impact of the decision (Sukinta, S. 2021).

The existence of the amicus curiae can be a legal breakthrough in finding additional materials or information for judges in their legal considerations. Amicus curiae can be used as a new material for judges in forming their beliefs. Amicus curiae assists 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 help investigators in the investigation stage. The role of amicus curiae is to help in considering the existence or absence of a legal event that is a criminal act and to help provide legal considerations for investigators about a crime. Amicus curiae can provide expert information based on theoretical recommendations that can be used at the stage of legal remedies, both at the stage of appeal, cassation, and review. Amicus curiae does not have to be a lawyer, but has knowledge related to the case that makes his testimony valuable to the court. The indirect related party can be an expert in a certain field of science who provides views according to his expertise. It can also be a witness who sees, listens, experiences an event and others. Information can be given either orally in the trial or in writing. Files that are given in writing are usually called amicus brief and do not have to attend the trial to express their opinions.

Amicus curiae’s involvement is only limited to providing an opinion that can later be used by the judge as one of the considerations in deciding the case. Amicus curiae is not a party directly involved in the court. His position is different from that of the defendant, witness, judge, or other parties.

Amicus curiae has not been clearly regulated in Indonesia, but the legal basis for the acceptance of the concept of Amicus curiae in Indonesia is to refer to Article 5 paragraph (1) of Law Number 4 of 2009 concerning Judicial Power which reads “Judges and constitutional judges are obliged to explore, follow, and understand the values of law and the sense of justice that live in society”. This article is a reason for the judge to know the power of proof (Linda Ayu Pralampita, 2020). Based on the norms in the article, constitutional judges are required to explore the values that live in society. In general, amicus curiae consists of individuals or organizations that have special knowledge or interest in the issue discussed in the case. For example, in the case of a dispute over the results of the presidential election in Indonesia in 2024. In this case, the Constitutional Court (MK) has received as many as 48 amicus curiae ahead of the reading of the decision in the 2024 Presidential Election Results Dispute (PHPU) case. However, not all of them were investigated by the constitutional judge because the panel of judges at that time agreed that only the Amicus curiae received until April 16, 2024 at 16.00 WIB would be investigated by the constitutional judge (Fath Putra Mulya, 2024).

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Based on the recapitulation documents received from the Constitutional Court, there are only 14 Amicus curiae that meet the deadline. They are the Brawijaya Petition (Front of Truth for Democracy); Indonesian Democracy Defenders Team (TPDI) and Nusantara Advocates Movement (Perekat Nusantara); Alliance of Academics and Civil Society; Milestone of Unity Movement for the Nusantara (TOP Gun); Center for Law and Social Justice, Faculty of Law, Gadjah Mada University (UGM); Pandji R. Hadinoto; Busyro Muqoddas, Saut Situmorang, Feri Amsari, Usman Hamid, Abraham Samad, and others; and UGM Student Organization-Padjadjaran University-Diponegoro University-Airlangga University. Next, Megawati Soekarnoputri (who was conveyed by her attorney, Hasto Kristiyanto); Indonesian Young Advocates Forum (FAMI); Indonesian Constitutional Rights Advocacy Foundation (YAKIN); the Indonesian Alliance for Democracy Enforcement (APDI); Amicus Stefanus Hendriyanto; and the Community of Love for Honest and Fair Elections (KCP-JURDIL) (Constitutional Court of the Republic of Indonesia Online, April 17, 2024). They come from various circles, ranging from students, advocates, to former Presidents of the Republic of Indonesia, both in groups, institutions, and individuals. Amicus curiae is not the parties to the lawsuit in the Constitutional Court, but part of the community who shows attention to the 2024 Presidential Election Results Dispute case handled by the Constitutional Court. However, the Constitutional Court did not prohibit Amicus Curiae from submitting his aspirations (Constitutional Court of the Republic of Indonesia Online, April 17, 2024).

Amicus curiae is in principle not an intervention but appropriateness, in the sense that it is appropriate for the person who is involved, either directly or indirectly, to convey the amicus curiae. The existence of Amicus curiae will certainly contribute to strengthening the confidence of Constitutional Court judges in making evidence-based decisions in cases of disputes over the results of the presidential election, both those that have occurred now and those that will occur in the future, as a form of public participation in an open and accountable judicial process. However, the absence of a clear amicus curiae in Indonesian regulations can certainly be used by parties who are directly interested in disputes that occur to intervene in the legal process and the confidence of Constitutional Court judges in making decisions.

The urgency of this research lies in the need to explore these gaps, both in terms of regulation and implementation. This research is expected to provide practical and academic recommendations to strengthen the role of amicus curiae as an instrument that supports transparent and accountable justice. This is important in an effort to ensure substantive justice without sacrificing the principle of judicial independence.

## **RESEARCH METHODOLOGY**

Based on the problems researched by the author, in this study, the author uses the Normative (Normative Juridical Juridical) legal research method. With the approach, normative legal research is legal research conducted by researching literature materials, secondary data or literature legal research (Soerjono Soekanto and Sri Mamudji, 2012). The approaches in this study are conceptual approach and comparative approach. To

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support and complete the data, field research is carried out, namely research that is carried out by going directly into the field to obtain secondary data. The data that has been collected from literature research and from field research is then analyzed qualitatively, namely a data analysis method by grouping and selecting data obtained from research according to its quality and truth, then connected with theories from literature studies so that answers to problems in this research are obtained. In this data analysis, an inductive way of thinking is used, which is to conclude the results of research from special things and then draw general conclusions.

## **RESULT AND DISCUSSION**

### ***Amicus Curiae* in the Judicial System in Indonesia**

*Amicus curiae*, which means “*Friends of the Court*”, is a legal instrument that originally originated in the Roman legal tradition and flourished in Common Law countries, especially the United States. This term refers to a party who is not part of a litigation but has an interest in the outcome of a court decision. In practice, *amicus curiae* functions to provide opinions or information that can assist the court in assessing a case at hand. This opinion is often presented in the form of an amicus brief, which is then considered by the court in making a decision.

The use of *amicus curiae* has been widely developed and recognized in many countries, both adhering to the common law and civil law legal traditions, as well as international courts such as the *Inter-American Court of Human Rights* and the *European Court of Human Rights*. In these countries, the amicus brief is often an integral part of the court’s decision. In France, for example, although this practice has been around since 1988, *amicus curiae* was only officially regulated in 2010. Likewise, the Netherlands began to recognize *amicus curiae* in 2021, although its application is still limited to administrative courts (Kochavar, S, 2013).

*Amicus curiae* provides an opportunity for individuals or institutions that are not directly involved in a dispute to express opinions or information that may not have been disclosed by the parties to the dispute. Although the court is not bound by the *amicus curiae* opinion, many cases show that the *amicus brief* makes a significant contribution in helping the court raise important legal issues that have a wide impact. Thus, *amicus curiae* plays an important role in enriching the judicial process, ensuring that more comprehensive and fair decisions are achieved (Arsil, 2022).

One form of contribution from *amicus curiae* is through the submission of *amicus brief* or written comments, which are often given by academics or experts in a certain field. This is very important, because it provides an additional in-depth perspective on the legal process, as well as reinforces the principle of the rule of law based on democracy. *Amicus curiae* can also ensure the integrity of the law enforcement process and open up insight for judges to consider aspects that may have been missed, so that the decisions taken better reflect substantive justice.

In addition, *amicus curiae* also maintains academic autonomy, because the participants of these views contribute freely without being bound by the interests of the

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parties involved in the case. This contribution also increases the efficiency of the legal process, considering that the sender of the *amicus curiae* is not required to be physically present in court. Thus, *amicus curiae* becomes one of the instruments that accelerate the resolution of cases, without reducing the quality of the decisions taken (Jeremiah, D., & Hakim, A. R, 2024).

In the practice of law enforcement in court, often law enforcement officers present experts who are relevant to the case being tried to provide opinions. In the context of the Criminal Procedure Law, this is in accordance with Article 184 paragraph (1) of Law Number 8 of 1981 which states expert testimony as one of the valid evidence. However, in its development, sometimes a group of people take the initiative to provide legal opinions related to a case even though it is not requested by the parties involved in the trial. This initiative is known as *amicus curiae* (Gandryani, F., & Hadi, F, 2023).

The application of *amicus curiae* in Indonesia has become an increasingly common practice, both in the Constitutional Court and in other legal cases. Concrete examples can be seen in major cases, such as the Review of Time Inc. Asia vs. H.M. Suharto, the criminal case involving Prita Mulyasari, and the murder case of Brigadier J. In all of these cases, *amicus curiae* provides important consideration for judges in decision-making. Parties involved in the submission of *amicus curiae*, such as NGOs, academics, and other organizations, also contribute to the court process by providing valuable insights (Siti, A, 2014). Although it has been applied in several cases in court, *amicus curiae* is still a matter of debate because there is no regulation that expressly regulates its status in the law of proof in Indonesia. This causes difficulties in placing the document in the category of evidence, either as witness statements, expert testimony, letter evidence, or indirect evidence. There are two points of view regarding the enforcement of this document: from a formal point of view, the *amicus curiae* document only has evidentiary value if it is linked to other evidence, while from a material point of view, the judge is given the freedom to assess the evidentiary value of the document according to his discretion (Aulia, F., & Muksin, M. R. S, 2020).

*Amicus curiae* is guided by Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which underlines the importance of the judge's obligation to explore legal values and a sense of justice that lives in society. In addition, in the Criminal Procedure Code (KUHP), although it is not directly regulated, Article 180 paragraph (1) provides space for public participation that can be taken into account by judges in decision-making.

Although *amicus curiae* has not been recognized as valid evidence, it can still be considered by the judge in deciding the case. This is due to the absence of adequate regulations to regulate the legal status of *amicus curiae* explicitly. *Amicus curiae* is different from witness or expert witness, as it does not require special skills. Anyone who has information or views related to the case being handled, both directly involved parties and the general public, can give their opinion as *amicus curiae*. Thus, the role of *amicus curiae* is more about public participation that can enrich judges' considerations in making decisions.

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*Amicus curiae* makes an important contribution to the process of proof in the Indonesian legal system, which adopts the system of proving the law negatively as stipulated in Article 183 of the Criminal Code. Although *amicus curiae* is not a valid piece of evidence, the opinion he conveys can strengthen the judge's confidence in deciding the case. The evidentiary process that prioritizes the judge's conviction allows the judge to consider various inputs, including from a third party who submits *an amicus brief* which can ultimately support the achievement of a fair and wise decision. Thus, judges can produce decisions that are more comprehensive, fair, and reflect the public interest, as well as maintain a balance between legal certainty, legal utility, and legal justice (Linda Ayu Pralampita, 2020).

The legal position of *amicus curiae* in the Indonesian judicial system is still not specifically regulated in laws and regulations. However, the concept of *amicus curiae* can be accepted through the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which requires judges to explore and follow the legal values that live in society. This article is the basis for the application of *amicus curiae*, because it obliges judges to provide a sense of justice in accordance with the social development of the community. In this context, *amicus curiae* is expected to assist judges in realizing social justice, especially in cases related to social justice aspects.

As a form of community participation, *amicus curiae* can provide input to judges regarding relevant legal opinions or views in the case being handled. In this case, *the amicus curiae* serves to provide broader consideration to the judge in reaching a fair decision. However, *amicus curiae* cannot replace the role of expert witnesses or ordinary witnesses, because its function is more to provide additional information or perspectives that are considered useful to the court. For example, in some cases, *amicus curiae* has been used to add insight to judges in deciding cases, as happened in the case of Prita Mulyasari.

Although *amicus curiae* does not yet have a formally regulated position in laws and regulations, this concept is still recognized as a form of public participation in the judicial process. Therefore, even though it is not mandatory, the use of *amicus curiae* can still be considered by judges to create a fair decision and reflect a growing sense of justice in society (Malik, R. H. A., et al, 2022).

*Amicus curiae* in the Indonesian judicial order serves as a consideration for judges in determining decisions in the case being handled. Although its existence is mentioned in the laws and regulations related to judicial power and the Criminal Procedure Code (KUHAP), *amicus curiae* is not considered a staple element institutionalized in the Indonesian criminal justice system. *Amicus curiae* is only considered as a form of public participation that provides opinions or input to the court, not as evidence or binding legal resistance. This indicates that *amicus curiae* acts as a third party that provides relevant views but does not directly affect the substance of the legal decision (Praditha, D. G. E, 2023).

However, although *amicus curiae* is not made a major part of the legislation, the importance of its application in the Indonesian judicial system needs to be further

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considered. *Amicus curiae* is a form of community participation in supervising law enforcement in court. Although it is not mandatory for judges to use in examining, considering, and deciding cases, the role of *the Amicus curiae* is still important for the advancement of a democratic rule of law. In the future, Indonesia needs to regulate the role of *Amicus curiae* in assisting the process of proving criminal cases in order to achieve the justice that society expects (Rahmadi, A. A. G., & Budiana, I. N, 2021). The existence of *amicus curiae* can provide added value in ensuring legal certainty and justice in the judicial process, by enriching the judge's views on legal aspects that may not be disclosed by the parties to the case.

In order for the practice of *amicus curiae* to have a clear and uniform legal basis in its implementation, it is necessary to have further regulation through regulations in laws and regulations. This arrangement is expected to create legal certainty, so that *amicus curiae* is not just a legal product used by courts in Indonesia, but an instrument that has a clear and structured legal position (Avantika Putri Julian, et al., 2022). This certainty is important so that the functions and objectives of the *amicus curiae* can be carried out properly and effectively and it is necessary to make clear criteria and procedures for its submission, including the specifications of the case that can be applied. This must be regulated through laws and regulations to provide clear guidelines for all parties involved in providing fair and objective legal considerations.

The importance of *amicus curiae* in Indonesian judicial practice shows the need for clearer rules both materially and formally related to this mechanism. More structured regulation can strengthen the acceptance of *amicus curiae* in the Indonesian judicial system and make it a legitimate instrument in clarifying the principles of a democratic state. It is hoped that with clear regulations, *amicus curiae* can be a more effective strategy in enriching judges' considerations, supporting a fairer law enforcement process.

### ***Amicus curiae* on the Dispute over the Results of the 2024 Presidential Election at the Constitutional Court**

*Amicus curiae* or friends of the court, has an important role in providing an in-depth and comprehensive legal view to the Court. The presence of *Amicus curiae* is a tangible manifestation of public participation in the judicial process that prioritizes the principles of transparency and accountability, as mandated in Article 24 paragraph (1) of the 1945 Constitution. In the context of resolving disputes over the results of the general election (PHPU) as contained in Decision Number 1/PHPU. PRES-XXII/2024 and Number 2/PHPU. PRES-XXII/2024, contribution of *amicus curiae* .

In the 2024 Presidential Election Results Dispute (PHPU), the legal views provided in the form of *amicus curiae* help the Court to enrich the perspective in assessing the subject matter of the case, especially related to complex legal issues that require in-depth understanding. The presence of *amicus curiae* not only complements the legal analysis that has been submitted by the parties, but also broadens the Court's horizons in ensuring that decisions taken are not only fair, but also in line with constitutional principles.

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Furthermore, the participation of *amicus curiae* reflects the public's commitment to upholding the rule of law. Through its contribution, the Court can ensure that the judicial process runs objectively and reflects substantive justice. In the context of PHPU, the view of *amicus curiae* is one of the factors that can strengthen the legitimacy of the Court's decision in the eyes of the wider public.

The existence of *amicus curiae* in Decision Number 1/PHPU. PRES-XXII/2024 and Number 2/PHPU. PRES-XXII/2024 is not only relevant, but also essential. Their views help the Court to bridge the gap between legal theory and the need for practical justice, so that the resulting verdict is able to provide legal certainty while fulfilling the community's sense of justice.

The Constitutional Court confirmed that they had received written statements from various parties as *amicus curiae* regarding the dispute over the results of the 2024 Presidential General Election. *Participating Amicus curiae* include various elements of society such as organizations, academics, advocates, and student representatives. Among them are the Brawijaya Petition, TPDI, Nusantara Adhesives, Academics and Civil Society Alliance, as well as several Student Executive Bodies from leading universities. This involvement reflects broad public participation in the judicial process. The court received a total of 14 *Amicus curiae statements* which were submitted on time until the deadline of April 16, 2024 at 16.00 WIB. However, information that comes in after that time is not considered. The participation of *the amicus curiae* shows the enthusiasm of various parties in providing relevant inputs to help the Court consider the subject matter more comprehensively.

*Amicus curiae* memberikan perspektif tambahan yang beragam, mencakup analisis hukum, prinsip keadilan, dan demokrasi, yang diharapkan dapat memperkaya pertimbangan Mahkamah. Sebagai bentuk apresiasi, Mahkamah menyatakan bahwa partisipasi ini selaras dengan prinsip peradilan yang terbuka dan akuntabel, sebagaimana diamanatkan dalam Pasal 24 ayat (1) UUD 1945. Partisipasi aktif ini juga dianggap sebagai kontribusi nyata dalam memperkuat proses peradilan yang adil.

Furthermore, the Court affirmed that although the input from *the amicus curiae* was appreciated, its acceptance or influence on the decision still depended on the relevance and quality of the material presented. The Court emphasizes the importance of maintaining integrity and objectivity in every stage of decision-making, while remaining focused on fair law enforcement.

Considering the evidence from *the amicus curiae*, the Court will continue the review process on the subject matter of the application in this dispute. This approach demonstrates the Court's commitment to ensuring that the resulting verdict is not only based on positive facts and laws, but also reflects substantive justice and democratic values. The Court appreciates the presence of *the amicus curiae* above as a form of public participation in an open and accountable judicial process, regardless of the content of the material submitted. This step is in line with judicial principles aimed at upholding law and justice as mandated by Article 24 paragraph (1) of the 1945 Constitution. Furthermore, the

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Court considers the subject matter of the application submitted (Decision Number 1/PHPU. PRES-XXII/2024, 2024).

The submission of *amicus curiae* in disputes over the results of the 2024 Presidential General Election has a very strategic role in clarifying and deepening the interpretation of relevant laws and regulations. As a third party that is not directly involved in the case, *amicus curiae* can offer an objective view of the suitability of electoral procedures with democratic principles, such as fairness, transparency, and public participation. Furthermore, these third parties can identify the potential impact of decisions on the wider community, which provides a more holistic picture for constitutional judges to make wise decisions.

In this context, *the amicus curiae* serves not only as an additional source of information, but also as a tool to ensure that decisions taken by constitutional judges are not solely based on technical or legalistic aspects. On the contrary, *amicus curiae* helps judges take into account the social and political implications that may arise from a decision, which in turn favors the achievement of a more equitable and public interest decision. A decision that considers a broader perspective will reflect deeper democratic values and social justice for all people.

The role of *amicus curiae* also contains implications that require vigilance and caution from constitutional judges. Not all arguments submitted by third parties can be taken for granted without critical judgment. Judges need to assess the relevance and quality of each input given, considering whether the views really make a meaningful contribution to the understanding of the law in question or have the potential to distract from the substance of the case. Therefore, selectivity in accepting *amicus curiae* is an important aspect in maintaining the integrity of the legal process.

Furthermore, constitutional judges must be able to maintain their objectivity and neutrality in considering the input of *amicus curiae*. The submission of opinions by third parties should be seen as part of an effort to enrich legal considerations, not as a means to influence or distort the course of the legal process. Therefore, judges are expected to be able to sort out and decide on arguments that are in accordance with constitutional principles and their substantial relevance in the case under examination. The success of the judicial review process is highly dependent on the ability of judges to be independent and not be carried away by certain interests.

Overall, *amicus curiae* plays a role that cannot be underestimated in enriching the trial process in the dispute over the results of the 2024 Presidential General Election. With a thoughtful, selective, and careful approach, the role of *amicus curiae* can improve the quality of constitutional judges' decisions, as well as strengthen the credibility and legitimacy of those decisions. Thus, the existence of *amicus curiae* is one of the important instruments that supports the achievement of substantive justice, not only at the legal level, but also at the social and political level for the nation and state.

## CONCLUSION

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Although *amicus curiae* has not been explicitly regulated in the law, its existence plays an important role in enriching the judicial process. Although its legal status is not yet clear as a valid piece of evidence, *amicus curiae* makes a significant contribution through the submission of relevant opinions and information, which can broaden judges' horizons in making fairer decisions. This practice invites public participation, including from academics and community institutions, which helps judges to assess a case more comprehensively, especially in cases that have a wide impact on society. In the context of the dispute over the results of the 2024 Presidential Election, *amicus curiae* also enriched the perspective of the Constitutional Court by providing an in-depth view of the legal and social aspects related to election procedures. The involvement of various parties who presented *amicus curiae* reflects a commitment to ensure that the judicial process is not only based on positive facts and laws, but also includes democratic values and social justice. However, judges need to be selective in considering input from *amicus curiae* in order to maintain the objectivity and integrity of the legal decisions taken.

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