



Amicus curiae in enriching the consideration of judges when making decision on criminal case

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ABSTRACT

Background: This study aims to determine and analyze how *amicus curiae* can enrich the consideration of judges' decisions to impose a criminal case decision and to determine and analyze the contribution of *amicus curiae* in criminal cases in Indonesian courts by Supreme Court Judges. **Methods:** The research method uses the Normative Juridical type, with in-depth analysis of several decisions, literature, journals, and doctrines. **Findings:** The results show that *amicus curiae* is not explained normatively in Indonesian legislation because it is a legal system adopted from the United States. Judges in handing down a decision can never be separated from the social desires demanded by reality, this makes judges have to carefully consider the decision of a case until an additional opinion from an *amicus curiae* is needed. It was found that *amicus curiae* as a "neutral" party was used by judges to be considered in handing down a case orally or in writing. *Amicus curiae* has participated in the development and decision of jurisprudence in the field of criminal law, where an *amicus* can state his statement both at the first, appellate and cassation court stages. **Conclusion:** The conclusion of this research shows that the contribution of *amicus curiae* can assist judges in carrying out their duties fairly and wisely. The existence of *amicus curiae* has been proven to be found in many criminal case decisions, both at the first instance, appeal and cassation stages. Although there are no basic rules governing its position in Indonesian legislation. **Novelty/Originality of this article:** This study provides a novel analysis of how *amicus curiae*, despite not being explicitly regulated in Indonesian legislation, has been utilized by Supreme Court judges in criminal case decisions.

KEYWORDS: *amicus curiae*; criminal offenses; judges' consideration; supreme court.

1. Introduction

Amicus curiae comes from the Latin words "*amicus*" which means "friend" and "*curiae*" which means "court". The English term is "Friend of Court". *Amicus curiae* was created from Roman law, which grew and applied to the "common law" legal system. Regarding the regulation of *amicus curiae*, there are no statutory provisions in Indonesia, so there are doubts about judges using the opinion of an *amicus curiae*. In fact, *amicus curiae* is often found in complex cases in Indonesia (Krisnalita et al., 2022).

Amicus curiae or friends of the court is not a new thing in the world of law, especially in the world of criminal law. The application of *amicus curiae* has become commonplace in Indonesia and is utilized by judges in the examination and consideration of a decision (Aulia & Muksin, 2020; Farikhah, 2021; Pralampita, 2020). In the case of proving the guilt of the defendant, it should not be done carelessly, so judges expand access to information and opinions of the public who want to provide input in a case for further consideration.

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According to data recorded in the Supreme Court's decision directory until 2022, there were 32 cases in Indonesia that received *amicus curiae* submissions (Suntoro, 2022). The use of *amicus curiae* by the Supreme Court in the Indonesian judiciary is still growing and interesting to analyze in more depth. Judges must make decisions that are fair and wise, through various considerations on all aspects of the law and relevant facts.

Criminal law is a rule that regulates offenses and crimes for the public interest (Nabila et al., 2021). These offenses and crimes are threatened by sanctions in the form of suffering for those concerned. Criminal law contains the principles of justice, legal certainty, individualization of criminal law, and the purpose of rehabilitation (Tomakati, 2023).

In a narrow sense, according to the object and subject of law, the role of law enforcement officials in the judiciary in the implementation of law enforcement, which consists of judges, prosecutors, and lawyers who carry out judicial activities for violations of the law (Hadi, 2024). Law enforcement is often referred to as *rechistoepassing* and *rechtshandhaving* (Dutch), law enforcement (American). In the practice of law enforcement in court, law enforcement officials can invite experts in fields relevant to the case being tried to be consulted.

Criminal cases have far-reaching effects, both for the perpetrators and for the whole of society. *Amicus curiae* participation helps judges by providing additional input, opinions and suggestions in handling complex cases. *Amicus curiae* is an entity that provides legal views to judges without being directly involved in the case. However, sometimes judges do not use the opinion and voice of an *amicus curiae*. If the judge has difficulty in gathering the information sufficient to fully understand certain aspects of a case, especially with regard to complex or specific legal issues, judges may decide to listen to the views of an *amicus curiae*.

Judges in making decisions consider several things, namely juridical, sociological, and factual considerations. However, judges are not only bound by existing considerations. From some of the author's statements in his research, it can be concluded that normatively *amicus curiae* is not regulated in Indonesian legislation. However, the facts on the ground show that *amicus curiae* has been widely applied in court.

In the application of *amicus curiae* in any case, especially in criminal cases. Many *amicus curiae* submissions or applications are found in children's issues, specifically in the case of sexual violence and "Domestic Violence/*Kekerasan Dalam Rumah Tangga*" (KDRT). The position of *amicus curiae* in this case in fact assists victims in regaining their rights which have been taken away by the perpetrator. Although the position of *amicus curiae* is not as a third party involved in the case. However, the *amicus* provides additional statements for the judge to assist in the review of the verdict.

Amicus curiae contributes to helping judges consider and enrich in handing down a verdict. After studying and analyzing several reference sources, the author decides to compile a Scientific Paper which has the title "*Amicus Curiae* in Enriching the Consideration of Judges when Making Decision on Criminal Case".

Table 1. Previous research about *amicus curiae*'s

| Name Author | Journal Title and Year of Publication | Conclusion |
|---|--|---|
| Louisa Yesami Krisnalita, Mutiaran, Grace Sharon, Ani Munirah Mohamad | "The Legal Position of <i>Amicus Curiae</i> 's Opinion on Criminal Judicial Processes in Indonesia" (2022) | The Indonesian judiciary has filed <i>amicus</i> briefs in several trials. However, the basis of the rule is not in clearly regulated. Opinion that the submission of an <i>amicus curiae</i> in a trial is an interesting concept because it provides various perspectives on the case being tried. This encourages public enthusiasm for cases that require more attention and support from the public society. |

| | | |
|-----------------------------------|---|---|
| Afdhal Ananda Tomakati | "Conception of Criminal Law Theory in Development Science Law" (2023) | The term "criminal law" refers to the provisions contained in the Criminal Code/ <i>Kitab Undang-Undang Hukum Pidana</i> (KUHP), which covers criminal offenses, criminal responsibility, and criminal offenses and punishment. Criminal law has a purpose as a general preventive, and special preventive. Thus, criminal law is the rules regarding matters that limit human behavior in eliminating violations for the sake of human rights. |
| Cindi Wi, Haryadi, Dheny Wahyudhi | "The Form of Amicus Curiae Against Children As Victims of Sexual Violence" (2024) | In 2018, the <i>Institute for Criminal Justice Reform</i> (ICJR) submitted an <i>amicus curiae</i> letter to the Jambi State High Court in Muara Bulian District Court. Related to cases involving children as a victim of sexual violence and abortion. The submission was entitled "Efforts to Prevent Sexual Offenses Against Victims" as a friend of the court. This <i>amicus curiae</i> is intended to provide legal advice to protect the rights of witnesses and victims. |

2. Methods

The type of research used in this study is normative juridical, which examines the legislation and legal rules that apply regarding *amicus curiae* in Indonesia. According to Peter Mahmud Marzuki (Hidayat, 2021), the research approach is the entire mechanism and activities in research. The research approaches used in this research are; (1) concept approach, (2) statutory approach, and (3) case approach.

The description of the types and methods of collecting legal materials in this study includes primary, secondary, and tertiary legal materials. Primary legal materials refer to authoritative sources that serve as the main foundation for this research, specifically the Law on Judicial Power. Secondary legal materials are those that assist in interpreting or explaining the primary legal materials, such as literature related to *amicus curiae* and relevant legal doctrines. Meanwhile, tertiary legal materials are used to provide additional guidance and clarification regarding both primary and secondary sources, including articles, journals, and references such as the Big Indonesian Dictionary. The analysis method employed in this research involves several stages: identifying relevant legal materials, inventorying them systematically, organizing them into a coherent structure, interpreting their meanings within the research context, and finally, evaluating their relevance and implications to the legal issues under investigation.

3. Results and Discussion

3.1 Supreme court judges' consideration in deciding criminal cases in the court

Judge's consideration or *ratio decidendi* is an argument or reason used by the judge as a legal consideration which is the basis for deciding the case. Judges' considerations can be classified into 2 (two), namely juridical and non-juridical. Juridical considerations are considerations of judges based on juridical facts revealed in the trial and by law which are determined as something that must be considered in making decisions, such as the prosecutor's indictment, the defendant's testimony, witness testimony, evidence, and

articles in the law governing criminal matters. Meanwhile, non-juridical considerations can be seen from the defendant's background, the defendant's condition and the defendant's religion.

The court is a means for individuals in dispute to obtain legal certainty, justice and benefit in a case (Permanasari, 2021). These three concepts are consistently considered by judges in the process of adjudicating a case. The first is the concept of legal certainty, which refers to the accuracy and predictability of the law in creating societal order. Legal certainty ensures that individuals are more likely to comply with laws and regulations, as they understand the consequences of their actions. Second, the concept of justice emphasizes equal rights and responsibilities before the law for all individuals, without exception, thereby upholding the principle of fairness. Lastly, the concept of legal expediency focuses on the usefulness of law, highlighting its role in delivering tangible benefits and positive outcomes for society at large (Abi-Hassan et al., 2023). Together, these three principles guide judicial reasoning in ensuring that legal decisions are not only lawful but also fair and beneficial (Ketaren et al., 2023).

The existence of legal certainty, justice, and usefulness can be seen through the argumentation and consideration of the decision. To be able to overcome these cases, judges in making decisions must be independent, impartial, and independent (Permadi & Wisnaeni, 2020). Judges are only bound by events, relevant facts and legal rules of juridical basis.

In the criminal justice process, judges are always guided by the proof system as stipulated in Article 183 of the Criminal Procedure Code, namely the negative proof system. In determining the guilt or innocence of an accused individual, there are two fundamental components that must be considered. First, the process of proof must be conducted in accordance with legally prescribed procedures and supported by admissible legal evidence. Second, the judge's personal conviction or belief, developed through the assessment of evidence presented during the trial, also plays a critical role. The purpose of punishment itself can be seen from two perspectives: as a form of retribution or as a forward-looking mechanism aimed at correcting the behavior of the offender. In this context, there are three prominent theories that explain the rationale behind sentencing, as outlined by (Rivanie et al., 2022). The first is the absolute theory (retributive theory or *vergeldingstheorie*), which asserts that punishment is justified solely as retribution for the wrongdoing committed. This theory emphasizes that the suffering imposed on the offender is a necessary consequence of their actions, and serves as a moral balancing of harm caused. The second is the relative theory (utilitarian theory), which views punishment as a tool to protect public interests by preventing future crimes, thereby serving both as a deterrent and a means of retribution. The third, known as the combined theory, integrates elements of both the absolute and relative theories. Often referred to as the modern or integrative theory, it seeks to balance the goals of retribution and societal protection. This approach emphasizes that punishment should contribute to the maintenance of public order while ensuring that the suffering imposed is proportionate and not excessive in relation to the crime committed.

The basis for the judge's consideration to determine the verdict is a form of reasoning that forms the basis for conducting and organizing the consideration of the judge's decision. Before a judge decides a case, the judge must first make a series of decisions that have been considered, so that many things are used by the judge in deciding a case. If judges base their decisions only on the law and not on conscience, then justice and expediency will not be guaranteed. However, the judge's verdict also serves to resolve cases in order to uphold law and justice. Judges' decisions are not based on arbitrariness, but on principles, social policy, and morality. A series of considerations must be taken into account by the judge in formulating a decision in a criminal case. First, the judge must determine whether the accused has indeed committed the criminal act as charged. This involves a thorough examination of the facts and evidence presented during the trial. Second, the judge must assess whether the defendant's actions constitute a criminal offense and whether the defendant can be held legally accountable and found guilty.

Finally, if the defendant is proven guilty, the judge must decide on the appropriate punishment, ensuring that it is proportionate and in accordance with the law. These stages reflect the structured and comprehensive process required in reaching a fair and just verdict.

The definition of judgment itself is a decision of the court in a lawsuit case based on a problems or dispute. Based on the definition given, this decision is a well-known court product which is also called "*Jurisdictiosa Contentiosa*". It is also called *Jurisdictiosa Contentios*, because there are two opposing parties in a dispute. The two parties are the defendant and the plaintiff. The judge's decision refers to the fact that the judge himself gives a statement. In essence, judges have a position or are serving as state officials. Therefore, it is clear that the judge has the authority to give a decision on every case in the trial. The judge's decision is with the aim of making a case clear and ending the dispute between the two parties.

A judge's decision carries three distinct types of legal power. The first is binding power, which obligates both litigating parties to accept and comply with the verdict issued. This includes *positive decisions*, which are presumed to be true and beyond challenge (*res judicata pro veritate habetur*), and *negative decisions*, which prevent a judge from re-examining the same case involving the same subject matter (*nebis in idem*). The second is evidentiary power, meaning that a final and legally binding decision by a judge may be used as valid evidence in future civil cases involving similar disputes. The third is executorial power, referring to the authority to enforce court rulings through state coercion or law enforcement mechanisms (*executoriale kracht*). This enforcement underscores that each verdict must be carried out "for the sake of justice based on the belief in the One and Almighty God," affirming both its legal and moral weight (Lubis, 2020). Examination in court is a crucial stage in the criminal law process, where it is carried out with the consideration of judges in comprehensive evidence through juridical considerations.

Table 2. Juridical considerations in judges' criminal court decisions

| No | Juridical Consideration | Description | Legal basis |
|----|-------------------------------------|--|---|
| 1 | Indictment by the Public Prosecutor | The indictment serves as the legal foundation for the criminal case and the basis for judicial examination. It must clearly describe the elements of the offense, the time and place of the crime, and the articles of law allegedly violated. | Article 143 Paragraph (1) and Paragraph (2) of the Indonesian Criminal Procedure Code |
| 2 | Witness testimony | Witness testimony is one of the primary forms of legal evidence. It must be based on facts directly seen, heard, or experienced by the witness and delivered under oath before the court. | Article 184 of the Indonesian Criminal Procedure Code |
| 3 | Defendant's statement | The defendant's statement constitutes valid legal evidence when it concerns acts committed, witnessed, or experienced by the defendant and is presented before the court. | Article 184 point (e) of the Indonesian Criminal Procedure Code |
| 4 | Physical evidence | Objects belonging to the suspect or defendant, either wholly or partially derived from the alleged criminal act, | Article 184 of the Indonesian Criminal Procedure Code |

| | | | |
|---|--------------------------|---|-----------------------------|
| 5 | Charged legal provisions | may be used as material evidence during the trial. The legal articles charged in the indictment are examined by the court to determine the nature of the offense committed by the defendant and to form the basis for sentencing. | As stated in the indictment |
| 6 | Juridical framework | All juridical elements collectively guide judges in reaching a fair, lawful, and well-reasoned decision. | Wibowo & Akbar (2022) |

(Wibowo & Akbar, 2022)

In making a decision, what has been discussed at the beginning will be recorded in the decision set book. Where the book is provided specifically for decisions. This book has the nature of confidentiality, which is in accordance with article 182 paragraph (7) Indonesian Criminal Procedure Code. A judgment in court may be rendered and announced on the same day, but it may be rendered and announced on another day. This must be notified to the public prosecutor, defendant, and legal counsel. In accordance with the provisions of Article 182 paragraph (8) Indonesian Criminal Procedure Code.

Based on Article 191 of the Indonesian Criminal Procedure Code, there are several types of judicial decisions that may be rendered in a criminal case (Maulidya et al., 2023). First, a verdict of release from all legal charges may be issued when the defendant is legally deemed not to have committed the criminal act as charged by the public prosecutor. This occurs if, during the trial process, the available evidence is insufficient to establish the defendant's guilt, and there are no convincing grounds that fulfill the legal standards of proof required for a conviction. Second, a judgment of acquittal from all charges may be rendered if the defendant is proven, both legally and convincingly, to have committed the alleged act; however, the act itself does not constitute a criminal offense under the law—such as when the conduct falls within the domain of civil law or constitutes a non-criminal act. Third, there are decisions that impose punishment, as stipulated in Article 193 of Indonesian Criminal Procedure Code. According to Article 193 paragraph (1), if the defendant's guilt is sufficiently proven and legally confirmed based on the indictment, the court must issue a ruling that includes a criminal sentence appropriate to the offense. In this type of decision, the judge is obligated to base the punishment on the charges proven in court, ensuring the sentence corresponds to the violation established through the judicial process.

Amicus Curiae in Indonesia has been applied since the era of President Soeharto in 2008 regarding Time magazine about General Soeharto (Thomas & Liman, 2024), until the last case regarding the presidential election dispute case in 2024. Judges in criminal cases base their decisions not solely on legal considerations, but also on several crucial dimensions. First, juridical facts are taken into account, which involve the judge's assessment of the indictment, the charges presented by the public prosecutor, and the elaboration of the elements that constitute the criminal offense. Second, sociological facts are considered, particularly in relation to circumstances that may aggravate or mitigate the defendant's responsibility, reflecting the broader social context of the offense. Third, facts revealed during the trial serve as a key foundation for the judge's decision-making process. Here, the criminal verdict is a discretionary act entrusted to the judge by the state. In exercising this discretion, the judge's capacity and professionalism are essential to ensure that the ruling is not only legally sound but also socially accepted by both the convicted individual and the wider community. In fact, judges when struggling to reach a decision on a complex case also need other information and facts about the case.

3.2 The position of *amicus curiae* in enriching judgments in criminal cases by supreme court judges at the court

An *amicus curiae* is a written or oral submission to the court (also known as an *amicus brief*). *Amicus briefs* are a step that Non-Governmental Organizations (NGOs) commonly take to the courts, even when they do not adopt a formal mechanism for accepting practice. The practice in the field shows that *amicus* briefs are mostly successful in written format provided that they have no correlation to the case or are "neutral", and sometimes *amicus* briefs are oral. *Amicus* can generally be categorized into three forms. First, it may involve granting permission to participate as an interested party during the trial process, allowing the *amicus* to contribute insights relevant to the case. Second, it includes submitting legal opinions or perspectives at the request of the judge, which can assist in clarifying complex legal or factual issues. Third, it encompasses providing information, data, or statements even in relation to a case that concerns the *amicus* themselves, thereby offering an additional dimension of input to support the court's understanding and deliberation.

Indonesian judges position *amicus curiae* only as another point of view to be considered, but *amicus curiae* are not part of the litigants and cannot intervene in any form. In the judicial process, a judge's decision should not be based on emotion, but must always be linked to the existence of evidence, as it affects the decision whether or not charges are appropriate for the crime committed. These decisions affect people's lives and jeopardize their rights. However, based on these provisions it appears that statutory evidence does not cover statutory courts, despite the fact that statutory courts are conducted in some instances. Courts themselves may issue opinions with the permission of the judge when the purpose of the court is to assist the court in the form of ideas, statements of fact or opinion, law and analogies. Therefore, in Indonesia there are legitimate sources of evidence including statutes, legal doctrine and case law.

In the development of Indonesian law, the process of criminal evidence is the main element of criminal procedure in the Indonesian public justice system to seek material truths. Evidence plays a very important role in criminal procedure law, and evidence basically stems from legal events. Finding the truth of an event requires a systematic process of action with precise and rational thinking. Due to the difficulty of determining the absolute truth, proof in the criminal process is expected to uphold the truth within the limits of the law, not within absolute limits. *Amicus curiae* is only limited to expressing opinions and not to fight because its position is a third party outside the case. Judicial institutions have independent power in resolving cases, and no one can intervene or influence the judge's decision. *Amicus curiae* is an effort to restore the rights of victims who have been violated as well as to generate and create a sense of justice in society. The purpose of public participation (*amicus curiae*) in law enforcement is to generate useful input and awareness from citizens and the public interest in order to improve decision-making. The process of public participation can influence the credibility of the judiciary for the better. The effectiveness of the submission of *amicus curiae* in court depends on the guarantee of freedom or independence of the court, especially in this case in criminal cases.

Basically, there are no clear rules in the implementation of *amicus curiae*. When can an *amicus* be filed, what are the criteria that apply to individuals and institutions that can apply to the court, what are the legal implications in proving a crime, In addition, on what legal basis will the judge use it as an examination material. Of course, this raises the uncertainty of how, when, and in what way judges use *amicus curiae*. On what basis do judges use it as evidence, and what legal authority does *amicus curiae* have in the evidentiary system according to the Indonesian Criminal Procedure Code. basically *amicus curiae* is not a legal concept known in the Indonesian legal system, especially the evidentiary system in Indonesia and there is still no clear legal basis in its application, or there is indeed a legal vacuum in the regulation of *amicus curiae* in the case of proving a criminal offense in Indonesia.

There are still no provisions regarding *amicus curiae* in the Supreme Court Judiciary,

but in the Judiciary Law Number 48 of 2009, Article 5 Paragraph 1 states that, “Judges and Constitutional Court Judges are obliged to explore follow and understand the values of law and a sense of justice that lives in society”. This will be strengthened by the existence of Article 14 paragraph (4) of Constitutional Court Regulation Number 06/PMK/2005 stipulates that parties with indirect interests may be involved in a case under specific conditions. These include: (1) parties who, due to their position, principal duties, and functions, are deemed necessary to be heard by the court; and (2) parties considered important to be heard *ad informandum*—that is, those whose rights and/or authorities are not directly affected by the substance of the petition but who demonstrate substantial concern or interest in the matter being reviewed.

This means that parties who have rights and/or powers are not directly affected by the subject matter of the application, but rather their interest in the application concerned (Gede & Praditha, 2023). From this provision it is clear that the concept of *amicus curiae* is indirectly included in the regulation, although it is not explained in depth. *Amicus curiae* is a form of public examination of the judiciary. Examination is an activity carried out to examine or review various aspects of court proceedings, such as events, indictments, charges, and decisions.

Amicus curiae do not have the right to participate in the legal stages or influence the outcome of a particular case in a verdict, which leaves the judge free to determine or not determine the opinions presented. *Amicus curiae* is not only used in court, but also helps investigators in the investigation stage of a particular crime. The position of *amicus* itself can be used at any stage of the legal process, including appeal, cassation, and judicial review (Sukinta, 2021).

The strategy used in *amicus curiae* is to present evidence of legal facts that may not come from the court but from a variety of sources that may be unknown or inaccessible in the context of the law. The use of *amicus curiae* is most common in complex cases, both at the Court of Appeal level and at the Court of Cassation or Judicial Review level. The role of *amicus curiae* is a strategic alternative to using any other type of evidence. To prove a criminal case, an *amicus curiae*'s application to the court must contain the chronological content of the case, disclosure of facts in the field of study from a philosophical, sociological, and legal perspective, as well as an explanation of the reasons for the perpetrator's actions by explaining the elements of the criminal article and the legal basis for the application of sanctions in the Criminal Code. When the judge refers to legal provisions relating to jurisdiction, the judge must be able to take a broad view of the decision taken. Other information to support the achievement of justice can be obtained through input from litigants and outside parties, including information from experts and studies that discuss the case handled by the judge.

In judicial practice, judges have the freedom to adjust the cases they handle. This refers to the principle of judicial power, namely independent power “judicial power, which means that power is independent”. Through *amicus curiae*, law enforcement officials are essentially involved in the application of the criminal justice system, from the investigation stage to the proof in court by the judge, such as expert testimony that provides specific insights from theoretical research in accordance with the criminal offense committed by an offender. Although the rules regarding *amicus curiae* are not formally regulated and standardized, judges who provide substantive justice to justice seekers can use the principle that judges must adjudicate by obeying and understanding the principles of law, and the sense of justice of the community. The meaning of substantive justice in decision-making by judges can ignore the formulation of articles in the law if it ignores the sense of justice (Kholiq, 2023). However, it is still guided by formal procedures based on laws that function as a provider of legal certainty. Regarding the content of *amicus curiae*, it is basically interpreted in the form of a brief statement containing an opinion or discussion on a particular point which can also be expressed in the form of factual exposure or scientific legal opinion, for example papers, articles, and so on that can be academically accounted for. *Amicus curiae* also have limited capacity to act legally and to express their opinions in court.

Article 180 paragraph (1) of the Criminal Code states “the presiding judge may request expert testimony and may also request that new material be submitted by those concerned.” The sentence indirectly refers to *amicus curiae*. Therefore, it can be said that the concept of *amicus curiae* has been used in the criminal justice system in Indonesia even though it is not specifically regulated. The existence of *amicus curiae* can be a legal advancement that provides additional material and information to judges in their legal considerations.

Amicus curiae is not normatively regulated in the legislation, *amicus curiae* is in fact found in many cases of child crimes and domestic violence in court. Although it does not rule out the possibility of being found in other cases in criminal cases. Sexual violence is the most common crime committed against children. Frequent acts of sexual violence against children include sexual harassment and rape. In this case, the authorities can use the idea of strengthening evidence in the case of a victim of child sexual abuse with the idea of an *amicus curiae*. In juvenile criminal cases, the involvement of *amicus curiae* helps to increase the judge's consideration in the case of sexual violence crimes. Sanctions for sexual violence committed by the perpetrator must be balanced with what the victim has received. Both physically and non- physically (Wi & Wahyudhi, 2024). Failure to protect the identity of children under the age of 18 (eighteen) years is a form of crime that cannot be ignored. The safety and identity of children is essential to protect their rights in their growth and development. The concept of *amicus curiae* in Indonesia refers to the process of providing assistance to individuals who have an interest in a particular case or practice in facilitating the court by attaching related data or facts.

More than 14,000 women in Indonesia were victims of domestic violence during 2024. This was stated on CNN Indonesia news. The Ministry of Women's Empowerment and Child Protection/*Pemberdayaan Perempuan dan Perlindungan Anak* (PPPA) said domestic violence was the most common sexual violence in 2024. Data listed on Online Information System for the Protection of Women and Children/*Sistem Informasi Online Perlindungan Perempuan dan Anak* (SIMFONI-PPPA) shows that the total reports of sexual violence that have entered the ministry as of January 1, 2024 to date are as many as 24,154 cases, of which female victims accounted for 20,922 and approximately 61.2% of women were victims of domestic violence until 2024. In 2024, several Supreme Court decisions addressed cases of sexual violence, both in the context of domestic violence and offenses involving children. These include Supreme Court Decision Number 764 PK/Pid.Sus/2024, Decision Number 2038 K/Pid.Sus/2024, Decision Number 4055 K/Pid.Sus/2024, Decision Number 1764 K/Pid.Sus/2024, and Decision Number 256 K/Pid.Sus/2024. These rulings reflect the judiciary's ongoing efforts to uphold justice and provide legal protection, particularly for vulnerable groups such as women and children affected by sexual violence. It is suspected that many cases of domestic violence do not report if they experience sexual violence (Danasari & Setiyono, 2022). This is because victims feel afraid that they will get other harassment and there is no protection for victims.

One example of a case of sexual violence in Case Number 81/PID.SUS/2024/PN Arm. The Coalition Against Gender-Based Violence filed an *amicus curiae* (Friends of the Court). The coalition, which consists of 27 community organizations, cares about and supports the legal process of handling cases of criminal acts of sexual violence committed by groups (Gang Rape) totaling 9 people against a 14-year-old child in the period November 2023 - January 2024. According to the author, the submission of *amicus curiae* by the coalition against gender-based sexual violence is an encouragement to reduce the number of sexual violence cases that occur in Indonesia. Where the community is not only a mere spectator in cases that harm women's rights, but can also provide voices, statements, and forms of encouragement in order to minimize these cases.

Judicial bodies play an important role in realizing human rights. Therefore, it is necessary to pay attention to the unity of the law applied in the form of applicable laws and regulations, including those that are closely related to the concept of humanity. Decisions in human rights cases require legal coherence and consistency in order to consider decisions fairly for victims and perpetrators. in this case *amicus curiae* can

provide assistance in the form of good legal knowledge and broaden understanding of cases in court, thus providing greater possibilities for the implementation of a fair, dynamic and democratic judiciary. Formally, the role of *amicus curiae* is limited to opinions that appear and are sourced from scientific articles and opinions disseminated on social media (Haholongan & Sidikalanh, 2024). From the judge's point of view, this can affect the judge's psychology in remembering things that happened at trial and paying attention from a different perspective.

The provision of *amicus* effectiveness guarantees the freedom to express one's opinion. It should be underlined that judges cannot be separated from the social desires demanded by reality. Judges have an important role in achieving human rights. Procedures that result in binding standards of decision-making stipulate that there is room for public participation such as *amicus curiae*.

4. Conclusions

Juridical considerations are considerations of judges based on juridical facts revealed in the trial and by law which are determined as something that must be considered in making decisions, such as the prosecutor's indictment, the defendant's testimony, witness testimony, evidence, and articles in the law governing criminal matters. Meanwhile, non-juridical considerations can be seen from the defendant's background, the defendant's condition and the defendant's religion. The court is a means for individuals in dispute to obtain legal certainty, justice and benefit in a case. The existence of legal certainty, justice, and usefulness can be seen through the argumentation and consideration of the decision. In the criminal justice process, judges are always guided by the proof system as stipulated in Article 183 of the Criminal Procedure Code, namely the negative proof system. Absolute theory requires the existence of punishment solely to provide retaliation for the actions committed by the perpetrators. The purpose of criminal punishment is not only to balance the actions of the perpetrators, but also to provide a goal for the perpetrators not to repeat their actions. The basis for the judge's consideration to determine the verdict is a form of reasoning that forms the basis for conducting and organizing the consideration of the judge's decision. The definition of judgment itself is a decision of the court in a lawsuit case based on a problems or dispute. Therefore, it is clear that the judge has the authority to give a decision on every case in the trial. Examination in court is a crucial stage in the criminal law process, where it is carried out with the consideration of judges in comprehensive evidence through juridical considerations. Several things can cause the prosecutor to determine this decision, if during the examination process it is found that the evidence carried out in the trial is insufficient to provide evidence of the defendant's guilt and in the absence of evidentiary principles that can negatively convince the judge according to the law. This decision is given to suspects who are proven to have violated the law legally and believed according to the law, but the problem is that the act is not included in a criminal offense, but rather a civil action or other action. In Article 193 of the Criminal Procedure Code, it is explained that if a problem can be solved by the defendant being sentenced to a criminal sentence in accordance with the offense and has been determined.

Amicus Curiae in Indonesia has been applied since the era of President Soeharto in 2008 regarding Time magazine about General Soeharto (Thomas & Liman, 2024), until the last case regarding the presidential election dispute case in 2024. In the sentencing process, capacity and professionalism are essential for the court's decision to be accepted by the convicted person and the community. *Amicus briefs* are a step that non-governmental organizations (NGOs) commonly take to the courts, even when they do not adopt a formal mechanism for accepting practice. The practice in the field shows that *amicus briefs* are mostly successful in written format provided that they have no correlation to the case or are "neutral", and sometimes *amicus* briefs are oral. Indonesian judges position *amicus curiae* only as another point of view to be considered, but *amicus curiae* are not part of the litigants and cannot intervene in any form. *Amicus curiae* is not normatively regulated in the legislation, *amicus curiae* is in fact found in many cases of child crimes and domestic violence

(KDRT) in court. Therefore, it is necessary to pay attention to the unity of the law applied in the form of applicable laws and regulations, including those that are closely related to the concept of humanity. Formally, the role of *amicus curiae* is limited to opinions that appear and are sourced from scientific articles and opinions disseminated on social media. The provision of *amicus* effectiveness guarantees the freedom to express one's opinion.

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