



# The urgency of establishing a legal basis for amicus curiae in the administrative court system

Cindy Chairunisa<sup>1</sup>, Adelina Mariani Sihombing<sup>1</sup>, Herdy Ansyari Harahap<sup>1,\*</sup>

<sup>1</sup> Faculty of Law, University of North Sumatra, Medan, 20155, Indonesia.

\*Correspondence: cindychairunisa@students.usu.ac.id

Received Date: December 10, 2024

Revised Date: February 28, 2025

Accepted Date: February 28, 2025

## ABSTRACT

**Background:** In the current developments and evidentiary mechanisms, one of the interesting things is the application of amicus curiae (friend of the judiciary). The application of amicus curiae has actually been widely used in Indonesia, especially in cases of administrative disputes. Even though it is widely used, there are no regulations regarding amicus curiae that specifically regulate its use, such as the time period for filing it or who can submit an amicus curiae. This article aims to explain the urgency of establishing a legal basis related to the application of amicus curiae in the State Administrative Court system. **Methods:** Writing this article uses normative legal research methods with a statutory approach and a comparative approach. The target comparison countries are America and France. **Findings:** From the research results, it was found that the application of amicus curiae has been widely used by judges in deciding disputes in the field of state administration, but to date there is no legal basis that specifically regulates amicus curiae, thus creating a legal vacuum in terms of the criteria for people who can file amicus curiae, the standard format or form of amicus curiae, as well as the time period for submitting amicus curiae. **Conclusion:** This study emphasizes the necessity of establishing a legal framework to govern the use of amicus curiae in the State Administrative Court system. Clear regulations outlining eligibility, submission timelines, and formats are crucial to ensuring transparency and enhancing the judicial process in administrative disputes. It is recommended that the government draw upon the practices of other nations, such as the United States and France, to develop a comprehensive legal framework for amicus curiae in Indonesia. **Novelty/Originality of This Study:** By comparing the practices in the United States and France, this article offers practical insights and recommendations for enhancing the role of amicus curiae in enriching judicial decisions, a topic that has not been thoroughly addressed in the Indonesian legal context.

**KEYWORDS:** amicus curiae; administrative court; administrative law.

## 1. Introduction

Indonesia is essentially a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution (Constitutional Court, n.d.). Consequently, the entire order of life of the nation and state must be based on legal norms. Law as an instrument made for the benefit of humans to live in prosperity, order and based on a sense of justice. The embodiment of these legal norms is by organizing judicial institutions carried out by the Supreme Court and other bodies regulated in laws and regulations.

One of these judicial institutions is the administrative court or State Administrative Court which carries out a judicial function to resolve disputes between the central and regional governments and their citizens (Sudarsono, 2021). The regulation of this court is

### Cite This Article:

Chairunisa, C., Sihombing, A. M., & Harahap, H. A. (2025). The urgency of establishing a legal basis for amicus curiae in the administrative court system. *Lexovate: Jurnal Perkembangan Sistem Peradilan*, 2(1), 43-55. <https://journal-iasssf.com/index.php/Lexovate/article/view/1386>

**Copyright:** © 2025 by the authors. This article is distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).



regulated in Law No. 51 of 2009 concerning amendments to Law No. 5 of 1986 concerning State Administrative Courts.

Similar to general courts such as criminal or civil, the State Administrative Court also has its own specific procedural law. In the procedural law of the State Administrative Court, the judge is the main pillar in the trial. Therefore, there is the principle of active judges in court (*Dominus Litis*) adopted in the procedural law of the State Administrative Court. (Weda et al., 2021). The active judge means that the judge not only determines the submission by the parties or the required grace period, but also includes the examination of files, research, and arguments put forward by the parties in their lawsuit.

The application of this principle is also evident at the evidentiary stage, where judges play a more active role in seeking material truth and are given the authority to determine the extent to which evidence can be presented. This approach is reinforced by Article 107 of Law No. 5 of 1986, which emphasizes the discretionary power of judges in the State Administrative Court. According to this provision, judges have the authority to decide what matters need to be proven, determine who bears the burden of proof, prioritize which evidence should be considered during the proceedings, and assess the strength of the evidence that has been submitted.

In the practice and development of existing evidentiary mechanisms, one of the interesting things is the existence of *amicus curiae* (friends of court). *Amicus curiae* is a legal concept where individuals or organizations that are not litigants but are concerned about a case by providing their legal opinion in court (Farber, 2024). *Amicus curiae* is given only as an opinion and not in the form of an opposition so that in this case the judge can consider it or not (Sukinta, 2021).

*Amicus curiae* (friend of the court) is a party who participates in a case without having a direct interest in the case (Wofford, 2020). Unlike the intervening party, the friend of the court (*amici*) does not have a position as a party involved in the case, but as a party who provides attention and opinions on the case. *Amicus curiae* is a mechanism in the judicial process that allows outside parties to provide input in the form of considerations that can assist judges in making decisions on a case.

The application of *amicus curiae* has been widely practiced in common law countries, such as the United States which regulates *amicus curiae* in Rule 37 of the Rules of the Supreme Court and Article 29 of the Federal Rule of Appellate Procedure which provides guidelines regarding who can become *amicus curiae* and submit *amicus* briefs (Legal Information Institute, 2022). Not only common law countries, the use of *amicus curiae* has also been widely used in civil law countries such as France, which has recognized *amicus curiae* in its trial practice (Haholongan, 2024).

In Indonesia itself, *amicus curiae* began to be used since the existence of the Constitutional Court. The Constitutional Court began to introduce the concept of *amicus* as a mechanism to resolve cases that are complicated or have very broad implications for religious freedom, human rights and other social issues. The use of *amicus curiae* is based on existing provisions although its use is not clearly regulated. For example, Article 5 paragraph (1) of Law No. 48 of 2009 on Judicial Power and Constitutional Court Regulation No. 06/PMK/2005 relating to Procedural Guidelines in Cases Testing Laws against the Constitution of the Republic of Indonesia (BPK RI, 2009).

The role of *amicus curiae* can be a new innovation in collecting additional data or information that can enrich the judge's consideration (Baltag, 2020). The role of *amicus* is also not only limited to the court phase, but also in supporting the investigation process such as to evaluate whether a legal incident constitutes a violation or not. In addition, *amicus curiae* can not only be submitted by lawyers, but also individuals or institutions that have expertise on the case at hand or can also be experts in certain fields who convey opinions based on their specialization that need to be considered by the judge.

The practice of *amicus curiae* has actually been used frequently in Indonesia, especially in cases of administrative disputes such as the case of the construction permit of the cement factory PT S.G. Tbk against the people of Rembang, the case of PT P.U.A. against the Regent

of South Sorong, the honorary teacher dispute in Langkat Regency and various other cases (Amadhea & Marali, 2023).

Based on the examples of *amicus curiae* that have been widely practiced in Indonesia, it can be seen that *amicus curiae* can provide potential in assisting law enforcement in Indonesia. However, unfortunately, there are still obstacles in its application. For example, there is a lack of legal clarity regarding *amicus curiae* so that there is still confusion about its implementation, such as the criteria that can submit *amicus curiae*, the time period and so on. In addition, there is still a lack of understanding and awareness of the role of *amicus curiae* at the level of legal practitioners and the public so that the implementation of *amicus curiae* cannot be implemented optimally. Therefore, this research aims to further examine the urgency of the application of *amicus curiae* as well as compare its application in other countries that have already implemented *amicus curiae*.

## 2. Methods

This article is prepared using normative legal research methods related to the review of legislation, legal principles, and theoretical studies, which are carried out through a statute approach and comparative approach. The statutory approach is carried out by examining all laws and regulations related to the implementation of *Amicus curiae*. While the comparative approach is carried out by comparing the law of a country with other countries (Amiruddin, 2006). In this research, a comparison is made to see the comparative implementation of *amicus curiae* in America and France. These two countries were chosen because they have different legal systems and have recognized and regulated the application of *amicus curiae* in their trial practice.

As for the nature of this research, it is included in descriptive legal research to describe the state and development of *Amicus curiae* in various countries, its application, and its regulations both at the regional and international levels. In conducting this research using primary legal materials and secondary legal materials. Primary legal materials include Indonesian laws and regulations such as Law No. 48 of 2009 concerning Judicial Power, Law No. 51 of 2009 concerning amendments to Law No. 5 of 1986 concerning State Administrative Courts, and Constitutional Court Regulation No. 06/PMK/2005 concerning Procedural Guidelines in Cases of Law Testing against the Constitution of the Republic of Indonesia. Secondary legal materials include books, journals, articles, cases, and official reports relevant to the implementation of *amicus curiae* (BPK RI, 1986).

In collecting data, this research uses library research techniques by studying and analyzing various literatures to obtain data from valid sources. After obtaining data from valid sources, the data will be presented descriptively analytically.

## 3. Result and Discussion

### 3.1 Application of *amicus curiae* in state administrative court proceedings

The use of *amicus curiae* in the dispute resolution process in courts originated in the Roman legal tradition in the ninth century. *Amicus curiae* was initially used at the appellate level and in cases that were considered large and important in countries with a common law legal system (Rondo & Firmansyah, 2023). Interestingly, although *amicus curiae* are commonly applied by common law countries, it has also begun to be applied in Indonesia and other civil law countries over time as a result of the encouragement of Non-Governmental Organizations (NGOs) that informally submit *amicus* briefs to courts in civil law countries that do not recognize *amicus* briefs or *amicus curiae* in their legislation.

*Amicus Curiae* is also known by another name, namely Friends of Court (Krisnalita et al., 2022; Mwesigwa, 2024). An *amicus curiae* can be filed by one individual. If more than one individual submits it, the parties are referred to as *amici curiae*. *Amicus Curiae* is widely used in various types of cases, including constitutional and human rights cases. Non-governmental organizations, academic institutions and interest groups often file *amicus*

briefs to provide additional perspective. In cases such as *Brown v. Board of Education* and *Roe v. Wade* in the United States, many amicus briefs were filed to provide views from various social and legal perspectives.

According to Black's Law Dictionary, an amicus curiae is an individual who is not directly involved in a lawsuit or dispute, but petitions or is asked by the court to submit a written opinion on a case because the individual has a substantial interest in the case or a strong interest in the case. Amicus Curiae is also known as a friend of the court.

Amicus curiae can be classified into two categories: those acting for personal or group interests in favor of one of the parties to a case, and those acting for the benefit of the public or the wider community (Yeremia & Rachman, 2024). Its role in the judicial process is particularly significant in complex or controversial cases, as it provides valuable insights that may otherwise be overlooked. There are several key roles played by amicus curiae. First, providing additional perspective is crucial, as amicus curiae can offer a fresh viewpoint on the legal issue being examined, which is especially important in cases involving controversial or ambiguously worded legislation. Second, providing information and analysis allows amicus curiae to present pertinent data, research, or legal analysis, helping judges to gain a broader understanding of the context surrounding the case. Finally, supporting fairness and transparency is another essential function, as amicus curiae involvement ensures a more transparent and equitable judicial process. It also contributes to ensuring that judicial decisions reflect the broader values of fairness.

However, in the Indonesian judicial system, there is no specific regulation regarding amicus curiae. Even so, the submission of amicus curiae has begun to be used in several cases as a consideration for judges in giving decisions even though amicus curiae is not included as an evidentiary tool. Amicus curiae is a material that can assist judges by presenting new perspectives from experts or interested parties (Rondo & Firmansyah, 2023).

The presence of amicus curiae in Indonesia has become increasingly common in various trials, including those within the scope of state administration disputes. Several cases from the Administrative Court/*Pengadilan Tata Usaha Negara* (PTUN) illustrate the involvement of amicus curiae in supporting the judicial process.

First, Greenpeace submitted an amicus curiae titled "Climate Crisis Has Opened the Door to Hell, Defending Forests Is the Best Effort to Withstand It" in September 2023 to the Panel of Judges at the South Jayapura Administrative Court. This submission was in relation to the Decree of the Head of the Papua Province One Stop Integrated Service and Investment Office concerning the Environmental Feasibility of the Oil Palm Plantations development by PT I.A.L. Greenpeace's involvement aimed to assist the judges in strengthening legal considerations regarding the state's responsibility to ensure meaningful public consent and participation in the Environmental Impact Assessment/*Analisis Mengenai Dampak Lingkungan* (AMDAL) of development projects on the Awyu Tribe's customary land. The case was decided with Decision No. 6/G/LH/2023/PTUN-JPR (Puskaha Djojodigono, 2023).

In another case, Binsar Gultom filed a lawsuit against the Judicial Commission's policy regarding the acceptance of Supreme Court judge candidates from non-career elements, after failing to pass the selection three times. In this case, two amicus curiae were submitted: one by the Center for Human Rights Law Studies (HRLS) Faculty of Law Universitas Airlangga, the Indonesian Human Rights Teachers Union/*Serikat Pengajar Hak Asasi Manusia* (SEPAHAM), and others, and another by the Indonesian Legal Aid Foundation/*Yayasan Lembaga Bantuan Hukum Indonesia* (YLBHI) and the Center for Constitutional Studies/*Pusat Informasi Pajak Kito* (PUSAKO) Faculty of Law, Andalas University. These submissions were received by the panel in March and April 2019 (Hasannudin & Rahayu, 2022).

The case involving PT Semen Gresik Tbk's cement plant construction permit against the people of Rembang also saw the submission of an amicus curiae, providing opinions on the case and highlighting the impact of the cement factory on the livelihoods of farmers in Rembang (HuMa Indonesia, 2019).

In the lawsuit involving PT A.S.I. and PT P.U.A. regarding the decision of the Regent of South Sorong, an *amicus curiae* was filed by several organizations, including Yayasan Pusaka, Greenpeace Indonesia, and Indonesian Environmental Vehicle/*Wahana Lingkungan Hidup Indonesia* (WALHI) Papua. The *amicus curiae* argued that the Makassar Administrative Court misapplied the law, particularly regarding the grace period for the lawsuit and licensing laws. The judge's decision rejected the lawsuit filed by the two palm oil companies and upheld the revocation of their licenses (Roberthus & Pertiwi, 2022).

Finally, in the case of 103 Langkat honorary teachers who were victims of fraud in the Langkat PPPK selection, an *amicus curiae* was filed by professors, academics, and six deans of Law Faculties in Sumatra. The case, filed under TUN dispute No. 30/G/2024/PTUN.MDN, addressed issues related to fraud in the selection process (Analisa, 2024).

The State Administrative Court or what is referred to as the PTUN is a judicial institution that is a forum for the community, both individuals and civil legal entities to file a lawsuit if they feel that a State Administrative Decree/*Keputusan Tata Usaha Negara* (KTUN) issued by an official or state administrative body harms their interests. The party filing the lawsuit will request that the judge declare that the KTUN sued by the plaintiff is declared null or invalid as well as submit a request for compensation for the losses he has suffered. Therefore, it can be said that the Administrative Court provides protection for the rights of the community.

The matters adjudicated in the State Administrative Court are matters concerning administrative law. In carrying out its activities, of course the government will have a relationship with the people or society which is then regulated in administrative law. Government officials or agencies that carry out administrative functions in accordance with the general principles of good government/*Asas-asas Umum Pemerintahan yang Baik* (AUPB) and as regulated in Law No. 30 of 2014 concerning Government Administration. Administrative law is a branch of law whose main concentration is to ensure that the course of government is in accordance with applicable legal principles and does not violate the rights of the wider community (Ibad, 2021). an important aspect of administrative law is the object of administrative binding as a whole. In this case, officials or government agencies that issue a state administrative decision must comply with existing administrative procedures (Yustiana, 2019).

Administrative law or *administratief recht* regulates government responsibility for decisions and actions taken by the government. If a government decision or action harms an individual or the wider community, then the individual or community can file a lawsuit to the state administrative court. This shows that administrative law not only regulates but also provides protection for people's rights. Administrative law has a role as a counterweight between state administrators, in this case the government and individuals or society.

All legal matters pertaining to the State Administrative Court are governed by Law Number 5 of 1986 concerning the State Administrative Court. This legislation serves as the legal foundation enabling individuals to file lawsuits against decisions made by state administrative bodies or officials. Such actions may be pursued if the administrative decisions in question infringe upon specific rights or are deemed inconsistent with the general principles of good governance.

Article 53, paragraph 1 of Law Number 5 of 1986 on State Administrative Courts stipulates that any individual or legal entity who believes their interests have been adversely affected by a state administrative decision issued by an official or administrative body may submit a written lawsuit to the court, requesting that the contested decision be annulled or declared legally invalid (Susanto, 2019).

According to Article 1, point 3 of Law Number 5 of 1986 concerning State Administrative Courts, a State Administrative Decree is defined as a written decision issued by a State Administrative Body or Official, constituting an administrative legal act based on prevailing laws and regulations, which is concrete, individual in nature, and final, and which results in legal consequences for a person or civil legal entity.

In the process of proof in the state administrative court, the judge is active (*Dominus Litis*). In addition, in the process of proof there is the principle of free and limited proof (*Vrij Bewijs*). Article 100 of Law No. 5 of 1986 concerning State Administrative Courts states that in state administrative courts there are several things that are mentioned as evidence, namely letters or writings, expert testimony, witness testimony, acknowledgment of the parties, and the judge's knowledge.

### *3.2 Urgency of establishing the legal basis of amicus curiae in Indonesia*

The presence of *amicus curiae* in Indonesia itself has been found in many trials, including trials held within the scope of state administration. However, in its application, there is no specific legal basis governing *amicus curiae*. This can occur because the adoption of *amicus curiae* in Indonesia was motivated by pressure from non-governmental organizations by submitting *amicus* briefs to the court despite knowing that Indonesia has not discussed or regulated *amicus curiae* directly and explicitly. As a result, *amicus curiae* is applied without a legal umbrella and there are many legal gaps in its application.

One of these legal lacunae is the absence of specific standards or criteria regarding who is eligible to submit *amicus curiae*. In practice, as stated in the “*Amicus Brief*” made in case No. 97/G/2020/PTUN.JKT, it is said that *amicus curiae* can be submitted by any party who feels interested. This means that there is no restriction on who can file an *amicus curiae*. As long as they have an interest, they can express their opinion regarding the case. Although the person who files an *amicus curiae* is usually an expert or a group of experts, there are no specific criteria as to which expert may file an *amicus curiae*, whether it is related to how long his experience as an expert or how much research or discovery he has done so that he can be said to be an expert. This is dangerous because, as stated in the *amicus curiae* in case No. 6/G/LH/2023/PTUN.JPR, *amicus curiae* are usually done because of a desire to influence the outcome of a case involving the wider community. It is unimaginable how severe the effect will be if the *amicus curiae* considered by the judge in deciding the case does not come from an expert who can be fully trusted.

*Amicus curiae* in substance is indeed an opinion from an expert, but it does not have the evidentiary power of testimony obtained from an expert. This is because the *amicus* brief made by *amicus curiae* does not contain an oath. The *amicus* brief submitted does not have a standardized standard because there is no regulation governing it. As a result, *amicus* briefs in court do not have a uniform format. The procedure for filing an *amicus curiae* brief is not regulated so that the *amicus curiae* may feel confused regarding the steps he must take in the process of filing an *amicus* brief.

In Decision No. 270/G/2018/PTUN-JKT, it is said that *amicus curiae* is based on the provisions of Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which states that judges and constitutional judges are obliged to explore, follow, and understand the values of law and a sense of justice that live in society and Article 50 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which states that court decisions must not only contain the reasons and basis for the decision, but also contain certain articles of the relevant laws and regulations or unwritten sources of law that are used as the basis for judging. However, judges' recognition of *amicus curiae* as a legal value and a sense of justice that lives in society can raise new problems. This is because if the judge recognizes the position of *amicus curiae* in the decision he issued as a community value, then the panel of judges must be willing to adopt the contents of the *amicus curiae* as a community value, which in reality has content that is contrary to community values, meaning that the panel of judges will act as if they are deviating from the community value itself (Bagashka et al., 2024; Tyaningrum et al., 2025). It should be noted that what is in scholarship is sometimes not in line with what happens in society. So, it can be said that stating that *amicus curiae* can be accepted by judges as values in society is not appropriate.

Another legal vacuum in the implementation of *amicus curiae* lies in the timing of the submission of the *amicus curiae* itself. The absence of regulations related to submission time can create new problems. Judges are said to be obliged to explore, follow and

understand the legal values and sense of justice that live in society. If amicus curiae is indeed considered a legal value and a sense of justice that lives in society, if amicus curiae is submitted on the D-1 of the decision agenda, it is possible that the judge will ignore the amicus curiae because he has completed making the decision with the risk that the party who submitted the amicus curiae feels entitled to protest the judge's reasoning under the pretext that as long as the decision has not been read out, they have the right to submit their amicus brief as amicus curiae. Otherwise, the judge must explore, follow and understand the amicus curiae submitted and postpone the decision agenda.

Based on these legal lacunae, it is necessary to form legislation related to amicus curiae. It is hoped that with a clear legal basis, the implementation of amicus curiae can be carried out optimally.

In looking for references to form a legal basis governing amicus curiae in trials, Indonesia can learn from countries that have a long history of applying amicus curiae and have regulated amicus curiae in their legislation. If you want to see the history of the application of amicus curiae, the most significant development of amicus curiae has occurred in common law countries since the 1990s (Farber, 2020). Amicus curiae used in the common law legal system has developed in civil law countries, such as the European Union and Southeast Asian countries. In its development, of course, amicus curiae applied in common law countries will have differences with amicus curiae applied in civil law countries. The development of amicus curiae in civil law countries is motivated by two reasons. First, amicus curiae came about because many non-governmental organizations submitted amicus briefs to the courts even though the laws and regulations of the judiciary did not formally recognize amicus curiae. Second, there are civil law countries that formally recognize amicus briefs through laws, court decisions and regulations.

The United States is said to be the most successful country in implementing amicus curiae because the frequency of amicus curiae submissions in each case reaches an average of 13 amicus briefs for each trial (Izarova et al., 2019). Meanwhile, France is one of the countries that recognizes amicus curiae and amicus briefs in its jurisdiction, although in the practice of filing amicus curiae in civil law countries, many civil law countries do not recognize or regulate amicus curiae and accept amicus curiae submissions only because of pressure from non-governmental institutions. Arrangements related to amicus curiae in the United States and France can be adopted to be applied in Indonesia. Of course, the adoption cannot necessarily apply the rules in America and France because it is still necessary to think about the compatibility of the rules applied by the two countries with Indonesian legal conditions and consider what rules are needed in Indonesia.

In American trials, the role of amicus curiae in the Supreme Court of the United States is regulated in Rule 37 of the Rules of the Supreme Court and Article 29 of the Federal Rule of Appellate Procedure which provides guidelines regarding who can become amicus curiae and file amicus briefs.

Rule 37 of The Rules of the Supreme Court reads as follows:

*"Amicus curiae briefs that bring to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. Only an attorney admitted practicing before the particular Court may file it."*

Article 29 of the Federal Rule of Appellate Procedure reads as follows:

*"The United States or its officers or agencies or a state may file an amicus curiae's brief without the consent of the parties or leave of the court; any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing."*

Based on this legal basis, it can be seen that in America amicus briefs can be filed by lawyers in certain courts. An amicus brief can be filed without the approval or permission

of the court if it is done by the state through officials or institutions of the American state. If there are other parties who want to file an amicus brief, then the submission must first obtain approval from the parties. In practice, it is stated that in an American case, on average, up to 13 amicus curiae submissions are received. Based on this, it can be concluded that there is no limit to the number of amicus curiae submissions in a case. The American regulation regarding only certain people or parties who can file amicus curiae can and should be applied in Indonesia, so that not just anyone can participate in other people's disputes or cases. However, the unlimited number of amicus curiae submissions is unlikely to be applicable in Indonesia given the principle of simple, speedy and low-cost justice. If the acceptance of amicus curiae is not limited in number or time limit, then the dispute resolution process will take a long time and a long-winded process that no longer meets the criteria of simple, fast and low-cost principles.

In addition to learning from the United States, Indonesia can also learn from France as a fellow civil law country as well as a country that has historical links in Indonesian law. The use of Amicus Curiae in France first occurred when the French High Court asked the President of the French Association to provide Amicus Curiae and convey his opinions and views in a case at that time. France is one of the civil law countries that recognizes amicus curiae and amicus briefs in its jurisdiction. In fact, in the practice of amicus curiae submissions in civil law countries, many civil law countries do not recognize or regulate amicus curiae and accept amicus curiae submissions only because of pressure from non-governmental institutions. Amicus Curiae in France is regulated in Article 27 France Code of Civil Procedure, Article 75 France Code of Civil Procedure and Article 181 France Code of Civil Procedure.

Article 27 France Code of Civil Procedure reads:

*"The judge carries out, even sua sponte, all useful inquiries. He has the power to hear without any formality any persons who may provide him with guidance as well as those whose interests may be aggrieved by his decision."*

Article 75 of the French Code of Civil Procedure reads:

*"Provides for third-party interventions which include submissions made by individuals or organizations outside the main litigants if they feel their interests will be affected by the decision."*

Article 181 of the French Code of Civil Procedure reads:

*"The judge may, during the process of verification, at trial or at any other venue, be assisted by an expert, or hear the parties or such other person whose testimony is useful to establishing the truth."*

Based on these two legal bases, the position of amicus curiae is clarified as one of the judge's tools in seeking the truth. The most highlighted point is that the legal basis for the submission of amicus curiae in France clearly allows judges to accept instructions from anyone either formally or informally as long as the testimony is useful to prove the truth. Articles 27, 75 and 181 of the French Code of Civil Procedure provide the opportunity for the submission of amicus curiae without creating any ambiguity as to the admissibility of amicus curiae in court.

Indonesia has regulated that both oral and written expert testimony must be made under oath in order to be considered by the judge as evidence. In PTUN proceedings, experts provide opinions because they are appointed by the parties or one of the parties. Confusion occurs when an amicus curiae who is an expert submits his opinion through writing in the form of an amicus brief without an oath regarding the information he provides, the position of the amicus brief he submits is also not as evidence, giving an opinion without being



appointed or the consent of the parties or one of the parties, but can still be accepted for consideration by the judge in the decision. These things make the acceptance of amicus curiae provided by experts to be considered by judges ambiguous so that a legal basis is needed that expressly regulates it. The following Table 1 compares the application of amicus curiae in Indonesia, France and the United States.

Table 1. The application of amicus curiae in Indonesia, France and the United States

Aspect	Indonesia	France	United States of America
Concept	Friend of the court in the absence of specific regulations	Friend of the court with clear regulations	Third-party intervention as a friend of the court with permission.
Legal basis	Article 5 paragraph (1) of Law No. 48/2009 on Judicial Power	Article 27, 75, dan 181 France Code of Civil Procedure	Rule 37 The Rules of The Supreme Court Article 29 Federal Rule of Appellate Procedure
Implementation	Limited and non-standardized due to a legal vacuum that governs	Structured with permission from the court	Extensive and accepted in various cases
Sample case	Dispute over PPPK selection in Langkat Regency, North Sumatra Province, dispute over general election results	Paris Court of Appeal seeks opinion	Many landmark cases used amicus, such as Brown v. Board of Education

#### 4. Conclusions

Amicus curiae or friends of the court are individuals or groups of experts who are not directly involved in a case, but submit written opinions to the court because they have a great interest in the case. Many states administrative cases have considered amicus curiae in their decisions. However, there is no legal basis governing amicus curiae, resulting in a legal vacuum. The government needs to strictly regulate the submission of amicus curiae in trials, especially in PTUN cases, considering that PTUN cases are cases related to losses experienced due to State Administrative Decrees issued by state officials. PTUN is a court created so that people who are oppressed due to KTUN issued by state officials can fight back and achieve justice. If the amicus curiae submitted and then considered by the judge does not have certain standards or even in the future results in a decision that is not worth justice, this can affect the level of public trust in the Administrative Court. Matters that need to be regulated regarding amicus curiae include rules related to the legal basis for the implementation of amicus curiae, the position of amicus curiae in the trial, the standards or requirements for filing amicus curiae, the format and method of filing amicus curiae, and the period for filing amicus briefs by amicus curiae. Indonesia can learn from countries that have implemented amicus curiae. Currently amicus curiae are not only used by common law countries, but also in civil law countries. The United States, through Rule 37 of the Rules of the Supreme Court and Article 29 of the Federal Rule of Appellate Procedure, provides guidelines regarding who is entitled to become an amicus curiae and the terms of amicus curiae involvement must be agreed by the parties. In France, the recognition of amicus curiae is found in Article 27 and Article 181 of the France Code of Civil Procedure, which emphasizes the position of amicus briefs provided by amicus curiae as material for the judge's consideration. Learning from the United States, it was learned that there are arrangements regarding who is entitled to become an amicus curiae and file an amicus brief. If the United States regulates that only lawyers, officials, and people who are approved by the parties to file amicus briefs can become amicus curiae, then perhaps Indonesia can regulate related parties who become amicus curiae must be people who have expertise with

certain criteria, are impartial, and are approved by both parties. In addition, what can be learned from the application of amicus curiae in the United States is the setting of amicus curiae limits so that the trial process does not take too long. As for France, what can be learned is a strict regulation regarding the acceptance of amicus curiae submissions that does not cause ambiguity in terms of the position of amicus curiae as material for judges' consideration.

### Acknowledgement

The authors would like to acknowledge and express his sincerest gratitude to the Student Executive Board, Faculty of Law, Universitas Bengkulu for their instrumental role in organizing the National Scientific Paper Competition in 2024. Their support and dedication have provided invaluable opportunities for academic development and collaboration, which have been instrumental in the completion of this manuscript.

### Author Contribution

Conceptualization, C.C.; Methodology, A.M.S.; Software, C.C., A.M.S., and H.A.H.; Validation, C.C., A.M.S., and H.A.H.; Formal Analysis, A.M.S.; Investigation, C.C.; Resources, C.C., A.M.S., and H.A.H.; Original Draft Preparation, C.C., A.M.S. and H.A.H.; Writting – Review & Editing, C.C., A.M.S. and H.A.H.

### Funding

This research received no external funding.

### Ethical Review Board Statement

Not available.

### Data Availability Statement

Data available upon request.

### Conflicts of Interest

The authors declare no conflict of interest.

### Open Access

©2025. The author(s). This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license, and indicate if changes were made. The images or other third-party material in this article are included in the article's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this license, visit: <http://creativecommons.org/licenses/by/4.0/>

### Reference

- Amadhea, R. I., & Marali, M. (2023). *Meninjau Ulang Peran Amicus Curiae dalam Sistem Peradilan Pidana di Indonesia*. <https://www.hukumonline.com/berita/a/meninjau-ulang-peran-amicus-curiae-dalam-sistem-peradilan-pidana-di-indonesia-lt64e34a5d244d2?page=2#>
- Amiruddin, Z. A. (2006). *Pengantar Penelitian Suatu Peneliian Hukum*. Raja Grafindo.
- Analisa. (2024). *Sengketa Guru Honorer Langkat, Guru besar dan Akademisi Ajukan Amicus Curiae*. <https://analisadaily.com/berita/baca/2024/09/12/1055510/sengketa-guru-honorer-langkat-guru-besar-dan-akademisi-ajukan-amicus-curiae/>

- Bagashka, T., Chapa, S., & Tiede, L. (2024). Influenced by Power or Reasons? The Role of Amicus Curiae Briefs in Constitutional Court Decision-Making. *East European Politics and Societies*, 38(1), 5-29. <https://doi.org/10.1177/08883254221148485>
- Baltag, C. (2020). The Role of Amici Curiae in Light of Recent Developments in Investment Treaty Arbitration: Legitimizing the System?. *ICSID Review-Foreign Investment Law Journal*, 35(1-2), 279-310. <https://doi.org/10.1093/icsidreview/siaa021>
- BPK RI. (1986). *Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara*. <https://peraturan.bpk.go.id/Details/46914/uu-no-5-tahun-1986>
- BPK RI. (2009). *Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*. <https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009>
- Constitutional Court. (n.d.). *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Constitutional Court. <https://www.mkri.id/public/content/infoumum/regulation/pdf/UUD45%20ASLI.pdf>
- Farber, S. (2020). *The Amicus Curiae Phenomenon - Theory, Causes and Meanings*. Transnational Law & Contemporary Problems (TLCP) (2019). <https://tlcp.law.uiowa.edu/sites/tlcp.law.uiowa.edu/files/2024-08/farber.pdf>
- Farber, S. (2024). The Advantages and Disadvantages of the Amicus. In *The Amicus Curiae Phenomenon: Theory, Causes and the Significance of Third Party Interventions* (pp. 59-81). Cham: Springer Nature Switzerland. [https://doi.org/10.1007/978-3-031-67225-5\\_3](https://doi.org/10.1007/978-3-031-67225-5_3)
- Greenpeace. (2023). *Krisis Iklim Telah Membuka Pintu Neraka, Mempertahankan Hutan adalah Upaya Terbaik Menahannya*. Greenpeace Indonesia. <https://www.greenpeace.org/static/planet4-indonesia-stateless/2023/10/ab806b72-amicus-curiae-for-awyu-greenpeace.pdf>
- Haholongan, J. E. (2024). The Introduction of Amicus Curiae as Formal Legal Instrument to Enhance Judicial Integrity. *Judex Laguens*, 2(2), 237-264. <https://doi.org/10.25216/ikahi.2.2.8.2024.237-264>
- Hasannudin, M. I., & Rahayu, A. Y. S. (2022). Peranan Amicus Curiae Pada Putusan Gugatan Terhadap Proses Seleksi Calon Hakim Agung. *Jurnal Yudisial*, 15(1), 1-26. <https://doi.org/10.29123/jy.v15i1.533>
- HuMa Indonesia. (2019). *Peninjauan Kembali Putusan No. 064/G/2015/PTUN-SMG dan Putusan No. 135/B/2015/PT.TUN-SBY*. <https://herlambangperdana.wordpress.com/wp-content/uploads/2019/04/amicuscuriaerembang-final.pdf>
- Ibad, S. (2021). Hukum Administrasi Negara Dalam Upaya Penyelenggaraan Pemerintahan Yang Baik. *HUKMY: Jurnal Hukum*, 1(1), 55-72. <https://doi.org/10.35316/hukmy.2021.v1i1.55-72>
- Izarova, I., Szolc-Nartowski, B., & Kovtun, A. (2019). Amicus curiae: origin, worldwide experience and suggestions for East European countries. *Hungarian Journal of Legal Studies*, 60(1), 18-39. <https://doi.org/10.1556/2052.2019.60103>
- Krisnalita, L. Y., Mutiarany, M., Sharon, G., & Mohamad, A. M. (2022). The Legal Position of Amicus Curiae's Opinion on Criminal Judicial Processes in Indonesia. *Justitia Jurnal Hukum*, 6(1). <https://doi.org/10.30651/justitia.v7i1.12807>
- Legal Information Institute. (2022). *Amicus Curiae*. [https://www.law.cornell.edu/wex/amicus\\_curiae](https://www.law.cornell.edu/wex/amicus_curiae)
- Lubis, M. S. (2021). *Analisis Yuridis Peran Amicus Curiae (Sahabat Pengadilan) dalam Sistem Peradilan Pidana di Indonesia pada Pengadilan Negeri Medan (Studi Putusan No. 1612/Pid. B/2018/PN. Mdn Jo Putusan No. 748/Pid/2018/PT. Mdn)*. Universitas Medan Area.
- Mwesigwa, H. (2024). Befriending a Hostile Court: The Development of Amicus Curiae in Uganda. *SSRN*, 5059629. <https://dx.doi.org/10.2139/ssrn.5059629>
- Puskaha Djodjodigono. (2023). *Pertimbangan Izin Sosial dan Penilaian Dampak Perubahan Iklim Suatu Keharusan*. <https://pusaka.or.id/pertimbangan-izin-sosial-dan-penilaian-dampak-perubahan-iklim-suatu-keharusan/>

- Roberthus, Y., & Pertiwi, P. S. (2022). *Menang di PTUN, Bupati Sorong Selatan Cabut Izin Perkebunan 2 Perusahaan Sawit*. <https://regional.kompas.com/read/2022/05/24/074920078/menang-di-ptun-bupati-sorong-selatan-cabut-izin-perkebunan-2-perusahaan>
- Rondo, P. A. M., & Firmansyah, H. (2023). Pengaruh Peran Amicus Curiae Terhadap Proses Peradilan dan Kepastian Hukum. *UNES Law Review*, 6(2), 4463-4468. <https://doi.org/10.31933/unesrev.v6i2.1283>
- Sudarsono., Putra, A. P., Effendi, A., Norra, A. A., Wahyuni, D., Somantri, D., Efendi, A., Susilo, A. B., Endri, Mandagi., Sasmito, H. A., Putra, H. P., Hakim, M. R., Bimasakti, M. A., & Putra, M. A. (2021). *Kajian pembaruan hukum acara di peradilan tata usaha negara. Mahkamah Agung Republik Indonesia*. <https://ebook.bldk.mahkamahagung.go.id/index.php/product/121-kajian-pembaruan-hukum-acara-di-peradilan-tata-usaha-negara/>
- Sukinta, S. (2021). Konsep dan Praktik Pelaksanaan Amicus Curiae Dalam Sistem Peradilan Pidana Indonesia. *Administrative Law and Governance Journal*, 4(1), 89-98. <https://doi.org/10.14710/alj.v4i1.89%20-%2098>
- Susanto, S. N. H. (2019). Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi. *Administrative Law and Governance Journal*, 2(1), 126-142. <https://doi.org/10.14710/alj.v2i1.126-142>
- Tyaningrum, A. M., Safa'at, M. A., & Prasetyo, N. D. (2025). The Existence of Amicus Curiae in Constitutional Court Decisions: A Participation Theory Perspective. *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)*, 7(1), 16-31. <https://doi.org/10.47006/ijierm.v7i1.429>
- Weda, N. K. D. N. I., Arjaya, I. M., & Seputra, I. P. G. (2021). Penerapan Asas Hakim Aktif (Dominus Litis) dalam Persidangan di Pengadilan Tata Usaha Negara (Studi Kasus Putusan No. 1/G/2017/PTUN. DPS.). *Jurnal Preferensi Hukum*, 2(1), 27-32. <https://doi.org/10.22225/jph.2.1.3048.27-32>
- Wofford, C. B. (2020). Why try? Comparing the aims of parties and amici in US Supreme Court litigation. *Justice System Journal*, 41(2), 81-97. <https://doi.org/10.1080/0098261X.2020.1743799>
- Yeremia, D., & Hakim, A. R. (2024). Urgensi Pengaturan Amicus curiae Dalam Sistem Peradilan Pidana Di Indonesia (Studi Perbandingan Dengan Amerika Serikat). *Jurnal Darma Agung*, 32(4), 119-128. <https://doi.org/10.46930/ojsuda.v32i4.4441>
- Yustiana, D. (2019). *Hukum Administrasi Negara*. Mitra Sumber Rejeki. <https://sasanti.or.id/ojs/index.php/pm/article/view/59>

### Biographies of Authors

**Cindy Chairunisa**, a 7<sup>th</sup> semester student who is studying at the Faculty of Law, University of North Sumatra, specifically in the field of Civil Law BW .

- Email: [cindyaurora7423@gmail.com](mailto:cindyaurora7423@gmail.com)
- ORCID: N/A
- Web of Science ResearcherID: N/A
- Scopus Author ID: N/A
- Homepage: N/A

**Adelina Mariani Sihombing**, a 7<sup>th</sup> semester student who is studying at the Faculty of Law, University of North Sumatra, specifically in the field of Economic Law.

- Email: [linasihombing100@gmail.com](mailto:linasihombing100@gmail.com)
- ORCID: N/A
- Web of Science ResearcherID: N/A
- Scopus Author ID: N/A
- Homepage: N/A

**Herdy Ansyari Harahap**, a 3<sup>rd</sup> semester student currently studying at the Faculty of Law, University of North Sumatra.

- Email: [herdyharahap55@gmail.com](mailto:herdyharahap55@gmail.com)
- ORCID: N/A
- Web of Science ResearcherID: N/A
- Scopus Author ID: N/A
- Homepage: N/A