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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

The Position and Role of Amicus Curiae in Protecting Women in the Criminal Justice System in Indonesia

Habib Muhammad Taufani

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,

E-mail: habibmuhammad.std@unissula.ac.id

Abstract. *The submission of an amicus curiae can be considered an informal acknowledgement, as there is no legal basis that clearly recognizes the use of amicus curiae. When carrying out their considerations, judges exercise their authority by providing considerations that are implemented wisely. Judges are assumed to always know everything about the law, when the judge does not know, the judge's duty is to find out first. The importance of amicus curiae is limited to providing an opinion or legal opinion. Amicus curiae is not mentioned in the evidence available in the Criminal Procedure Code. Because the power of proof lies in Article 183 of the Criminal Procedure Code. Amicus curiae is also necessary in the process of law enforcement, especially in protecting the rights of women in conflict with the law. This writing uses a sociological or empirical legal research type. Based on the study conducted, it can be seen that the role and position of amicus curiae legally in criminal justice regulations in Indonesia regarding the protection of women in conflict with the law do not yet have legal certainty. The role of amicus curiae is very important in supporting the relevance of the world of justice as a place to realize justice for people who are in litigation amidst the social dynamics of society which continue to develop in a complex manner, however, this has not been balanced with clear regulations regarding the position and role of amicus curiae, such a situation clearly results in legal uncertainty for the position and role of amicus curiae in the national criminal procedural law system.*

Keywords: *Amicus Curiae; Criminal; Judicial; Women.*

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1. Introduction

Amicus curiae plays a crucial role in providing expertise in criminal evidence, ensuring clarity and clarity during trial proceedings. This includes defending women's rights. One role *amicus curiae* plays in protecting women is in the Prita Mulyasari case. Five non-governmental organizations (NGOs) working in the legal field filed an *amicus curiae* in the Prita Mulyasari case in October 2009. The five NGOs are the Indonesian Legal Aid Foundation (YLBHI), the Indonesian Legal Aid and Human Rights Association (PBHI), the Institute for Community Studies and Advocacy (ELSAM), the Institute for Criminal Justice Reform (ICJR), and the Indonesia Media Defense Litigation Network (IMDLN). Through the *amicus curiae*, they provide views on how the crime of defamation can be categorized as a flexible article that can ensnare anyone without paying attention to the context of the statement and is not in accordance with the provisions of human rights that have been recognized and ratified by the Indonesian state. In this case, a housewife named Prita Mulyasari was accused of defamation against Omni International Hospital. Mother of three children Society (ELSAM), Institute for Criminal Justice Reform (ICJR), and the Indonesia Media Defense Litigation Network (IMDLN). Through the *amicus curiae*, they provided their views on how the crime of defamation can be categorized as a flexible article that can ensnare anyone without considering the context of the statement and is not in accordance with the provisions of human rights that have been recognized and ratified by the Indonesian state. In this case, a housewife named Prita Mulyasari was accused of defamation against Omni International Hospital. This mother of three was sued after complaining about the service she experienced at Omni International Hospital Serpong, which was then spread on the internet in 2008. In the civil case, Prita was found guilty and required to pay compensation. However, on September 29, 2010, the Supreme Court granted Prita's cassation request so that she was released from all compensation worth Rp 204 million. Meanwhile, in the criminal case, Prita's case was again rolling at the Tangerang District Court. *Amicus curiae* was submitted by five NGOs in the legal field as supplementary information for the panel of judges examining Prita's case at the Tangerang District Court.

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Prita was then acquitted by the Tangerang District Court on June 25, 2009. However, the appeal filed by the Public Prosecutor (JPU) was granted by the Supreme Court on June 30, 2011, so that Prita was found guilty of the Omni International Serpong Hospital incident she experienced, which was then spread on the internet in 2008. In the civil case, Prita was found guilty and required to pay compensation. However, on September 29, 2010, the Supreme Court granted Prita's appeal so that she was released from all compensation worth Rp 204 million. Meanwhile, in the criminal case, Prita's case was again rolling in the Tangerang District Court. Amicus curiae was submitted by five NGOs in the legal field as supplementary information for the panel of judges examining Prita's case at the Tangerang District Court. Prita was then acquitted by the Tangerang District Court on June 25, 2009. However, The Supreme Court granted the Public Prosecutor's appeal on June 30, 2011, declaring Prita criminally guilty and sentencing her to six months in prison with a one-year probationary period. Undeterred, Prita filed another judicial review. The Supreme Court ultimately granted Prita's judicial review and overturned the Tangerang District Court's criminal decision and the Supreme Court's appeal on September 17, 2012. Prita was finally freed.¹

Looking at the narrative above, it is clear that in terms of *das sein*, namely *amicus curiae*, it has an important role in terms of breakthroughs amidst the need for evidence in court. Philosophically or *das sollen*, namely *amicus curiae* is a way to guarantee justice in criminal evidence rooms, especially for women.

¹Issha Harruma, Examples of Amicus Curiae in Various Cases in Indonesia, Kompas, accessed via: <https://nasional.kompas.com/read/2023/02/14/01000001/contoh-amicus-curiae-dalam-berbagai-kasus-di-indonesia>, on August 1, 2023.

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The urgency of the role of amicus curiae in reality has not gone hand in hand with its legal position in criminal procedural law. Amicus curiae in the Criminal Procedure Code is not explicitly regulated, only that several Articles in the Criminal Procedure Code implicitly open up the opportunity for the use of amicus curiae. Amicus curiae in Indonesia in reality is not widely known and used, either by academics or practitioners. The Indonesian judiciary under the Supreme Court does not have regulations regarding Amicus Curiae, but Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society." This is also supported by Article 14 of Constitutional Court Regulation Number 06/PMK/2005 which states that indirectly interested parties are "parties whose statements need to be heard because of their position, main duties, and functions" or "parties whose statements need to be heard as ad informandum, namely parties whose rights and/or authorities are not directly affected by the subject of the petition but because of their concern for the petition in question." Thus, it can be said that the concept of amicus curiae has been partially adopted by the Constitutional Court in its Regulations. Another law that provides an opportunity for the use of Amicus Curiae in the criminal justice system in Indonesia is Law Number 8 of 1981 concerning the Criminal Procedure Code, which is contained in Article 180 paragraph (1) of the Criminal Procedure Code. This article states that "if it is necessary to clarify the situation of the issues that arise in the court session, the presiding judge may request expert testimony and may also request that new material be submitted by the interested party." This article indirectly provides an opportunity for amicus curiae to enter the criminal trial process in Indonesia.²

²Linda Ayu Pralampita, "The Position of Amicus Curiae in the Indonesian Judicial System", Lex Renaissance, No. 3, Vol. 5, p. 566. Accessed through:[file:///C:/Users/windows%2010%20Pro/Downloads/17677-Article%20Text-45003-49386-10-20210420%20\(1\).pdf](file:///C:/Users/windows%2010%20Pro/Downloads/17677-Article%20Text-45003-49386-10-20210420%20(1).pdf), on May 12, 2023.

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Based on several rules that can be used as a basis for the use of *amicus curiae*, it can be said that the concept of *amicus curiae* has been adopted in several parts of existing legislation in Indonesia, although its existence is not stated concretely. Submission of *amicus curiae* can be said to be an informal acknowledgement, because there is no legal basis that clearly recognizes the use of *amicus curiae*. When carrying out his considerations, the judge exercises his authority by providing considerations that are implemented wisely. Judges are assumed to always know everything about the law, when the judge does not know, the judge's duty is to find out first. The interest of *amicus curiae* is limited to providing an opinion or legal opinion. *Amicus curiae* is not mentioned in the evidence available in the Criminal Procedure Code. Because the power of proof lies in Article 183 of the Criminal Procedure Code. According to this article, a judge who decides a case is prohibited from imposing a sentence without a basis based on at least two valid pieces of evidence plus conviction based on that evidence.³ The absence of mentioning *amicus curiae* statements as evidence in the Criminal Procedure Code clearly indicates the absence of legal recognition of the *amicus curiae*'s position. This is clear from a *das sein* or law in action perspective, which can lead to the emergence of problems regarding the legal recognition of *amicus curiae* statements as evidence, which then also has implications for the legal position of *amicus curiae* as a party that has a stake in the examination of a criminal case in court.

2. Research Methods

The type of research in this paper uses a sociological or empirical type of legal research which includes legal identification and legal effectiveness. Empirical legal research is legal research where data is obtained through primary legal data or data obtained directly in society.⁴ The approach in designing this thesis is: *qualitative method, namely a method that* focusing on the general principles underlying the manifestation of units of symptoms that exist in human life, or the patterns analyzed are socio-cultural symptoms with the culture of the society concerned to obtain an overview of the prevailing patterns.⁵

3. Results and Discussion

³*Ibid*, p. 567.

⁴Mukti Fajar and Yulianto Achmad, *Dualism in Legal Research: Normative and Empirical*, Pustaka Pelajar, Yogyakarta, 2010, pp. 153-154.

⁵Burhan Ashshofa, *Legal Research Methods*, PT. Rineka Cipta, Jakarta, 1996, pp. 20-21.

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3.1. The Role of Amicus Curiae in Protecting Women in Criminal Justice in Indonesia

Amicus curiae (friend of the court) was first known in court practice since the early 9th century in the ancient Roman legal system and developed in countries with a common law tradition. *Amicus curiae* is a person or a professional organization, as a third party who is not a party to a case, but has an interest or concern in the case, then provides information either orally or in writing, to assist the court that examines and decides the case, because it is voluntary and on its own initiative, or because the court requests it.⁶ *Amicus curiae* is a concept born from the concept of collaborative governance. Collaborative governance is a binding activity between related parties. These parties are partners and partners working together to achieve a goal in accordance with mutually beneficial provisions and agreements to produce goods and services.⁷ *Amicus curiae* play a crucial role as parties capable of providing expertise in criminal evidence, ensuring clarity and clarity in the trial process. This is particularly important in protecting women. One role *amicus curiae* played in protecting women was in the Prita Mulyasari case.

Five non-governmental organizations (NGOs) working in the legal field filed an *amicus curiae* in the Prita Mulyasari case in October 2009. The five NGOs are the Indonesian Legal Aid Foundation (YLBHI), the Indonesian Legal Aid and Human Rights Association (PBHI), the Institute for Community Studies and Advocacy (ELSAM), the Institute for Criminal Justice Reform (ICJR), and the Indonesia Media Defense Litigation Network (IMDLN). Through the *amicus curiae*, they provide views on how the crime of defamation can be categorized as a flexible article that can ensnare anyone without paying attention to the context of the statement and is not in accordance with the provisions of human rights that have been recognized and ratified by the Indonesian state. In this case, a housewife named Prita Mulyasari was accused of defamation against Omni International Hospital. Mother of three children Society (ELSAM), Institute for Criminal Justice Reform (ICJR), and the Indonesia Media Defense Litigation Network (IMDLN). Through the *amicus curiae*, they provided their views on how the crime of defamation can be categorized as a flexible article that can ensnare anyone without considering the context of the statement and is not in accordance with the provisions of human rights that have been recognized and ratified by the Indonesian state. In this case, a housewife named Prita Mulyasari was accused of defamation against Omni International Hospital. This mother of three was sued after complaining about the

⁶Muhamad Ilham Hasannudin and Amy Yayuk Sri Rahayu, op., cit., p. 5.

⁷Ni Luh Yulyana Dewi, "Dynamics of Collaborative Governance in Public Policy Studies", Scientific Journal of Social Dynamics, Vol 3, No. 2, 2019, p. 205.

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service she experienced at Omni International Hospital Serpong, which was then spread on the internet in 2008. In the civil case, Prita was found guilty and required to pay compensation. However, on September 29, 2010, the Supreme Court granted Prita's cassation request so that she was released from all compensation worth Rp 204 million. Meanwhile, in the criminal case, Prita's case was again rolling at the Tangerang District Court. Amicus curiae was submitted by five NGOs in the legal field as supplementary information for the panel of judges examining Prita's case at the Tangerang District Court. Prita was then acquitted by the Tangerang District Court on June 25, 2009. However, the appeal filed by the Public Prosecutor (JPU) was granted by the Supreme Court on June 30, 2011, so that Prita was found guilty of the Omni International Serpong Hospital incident she experienced, which was then spread on the internet in 2008. In the civil case, Prita was found guilty and required to pay compensation. However, on September 29, 2010, the Supreme Court granted Prita's appeal so that she was released from all compensation worth Rp 204 million. Meanwhile, in the criminal case, Prita's case was again rolling in the Tangerang District Court. Amicus curiae was submitted by five NGOs in the legal field as supplementary information for the panel of judges examining Prita's case at the Tangerang District Court. Prita was then acquitted by the Tangerang District Court on June 25, 2009. However, The Supreme Court granted the Public Prosecutor's appeal on June 30, 2011, declaring Prita criminally guilty and sentencing her to six months in prison with a one-year probationary period. Undeterred, Prita filed another judicial review. The Supreme Court ultimately granted Prita's judicial review and overturned the Tangerang District Court's criminal decision and the Supreme Court's appeal on September 17, 2012. Prita was finally freed.⁸

Based on the case above, it is clear that in terms of *das sein*, namely *amicus curiae*, it has an important role in terms of breakthroughs in the midst of the need for evidence in court, philosophically or *das sollen*, namely *amicus curiae* is a way to guarantee justice in criminal evidence rooms.

3.2. The Urgency of the Role of Amicus Curiae in Criminal Justice in Indonesia

In developing countries that have recognized and accommodated *amicus curiae* or international courts dealing with human rights violations, judges always consider and evaluate *amicus curiae* in making their decisions. *Amicus curiae* is typically used for cases under appeal and issues of public interest, such as social issues or civil liberties that are currently being debated. Therefore, the judge's

⁸Issha Harruma, Examples of Amicus Curiae in Various Cases in Indonesia, Kompas, accessed via: <https://nasional.kompas.com/read/2023/02/14/01000001/contoh-amicus-curiae-dalam-berbagai-kasus-di-indonesia>, on August 1, 2023.

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decision will have a broad impact on the rights of the community. There are three categories of *amicus curiae*:⁹

- a. Submitting permission/application to become an interested party in the trial,
- b. Providing an opinion at the judge's request, or
- c. Providing information or opinions on one's own case.

Basically, the evidentiary system is a regulation regarding the types of evidence that can be used, the description of the evidence, and the ways in which the evidence is used, as well as how the judge must form beliefs before the court.¹⁰ The sources of legal evidence are:¹¹

- a. Constitution;
- b. Doctrine or teaching;
- c. Jurisprudence.

Proving whether the accused committed the alleged act is a crucial aspect of criminal proceedings. Human rights are at stake in this context. This is because criminal procedural law aims to establish material truth, unlike civil law, which is satisfied with formal truth. The history of the development of criminal procedural law shows that several systems and theories exist for proving the alleged act. Below, the author will outline the four systems or theories of proof mentioned above:¹²

- a. A positive legal system or theory of proof (*Positif Wettelijke Bewijs Theorie*) means that if an act has been proven based on the evidence stipulated in the law, then the judge's conviction is not required at all. This system is also called formal proof theory (*formale bewijstheorie*). This system emphasizes the existence of legally valid evidence. If the judge is not convinced of the

⁹Loc, cit.

¹⁰Fachrul Rozi, "Evidence System in the Trial Process of Criminal Cases", *Unaja Juridical Journal*, Vol. 1, No. 2, 2018, pp. 21-24.

¹¹Susanti Ante, "Evidence and Court Decisions in Criminal Procedure", *Lex Crimen*, Vol. II, No. 2, 2013, pp. 99-101.

¹²Hans C. Tangkau, *Criminal Evidence Law*, Scientific Paper, Faculty of Law, Sam Ratulangi University, Manado, 2012.

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defendant's guilt, but if there is legally valid evidence, then he can sentence the defendant.

- b. The system or theory of proof is based solely on the judge's belief (Conviction In Time). This system or theory gives the judge freedom so that the judge is difficult to supervise. The judge's belief does not have to arise from or be based on existing evidence. Even if the evidence is sufficient, if the judge is not sure, the judge may not impose a crime. But on the other hand, if there is no evidence but if the judge is sure, then the defendant can be declared guilty. As a result, in deciding cases the judge becomes very subjective.
- c. System or Theory of Proof Based on Judge's Belief on Logical Reasons (Conviction In Raisone) This system of proof prioritizes the judge's belief assessment as the sole basis for convicting the defendant, but the judge's belief here must be accompanied by real and logical considerations of the judge. According to this theory, the judge can decide someone is guilty based on his belief, which belief is based on the grounds of evidence accompanied by a conclusion based on certain rules of proof. The judge's belief does not need to be supported by valid evidence because it is not required, even though the evidence has been determined by law, the judge can use evidence outside the provisions of the law.
- d. Negative theory of proof based on law (Negatief Wettelijk) According to this theory, the judge can only impose a sentence if at least the evidence that has been determined by law, plus the judge's belief obtained from the existence of the evidence. This is in accordance with the provisions of Article 183 of the Criminal Procedure Code. Based on the provisions of Article 183 of the Criminal Procedure Code, it can be concluded that the Criminal Procedure Code uses a negative system of proof according to law. This means that in terms of proof, research must be carried out, whether the defendant has sufficient reasons supported by the evidence determined by law (at least two pieces of evidence).

The criminal procedure law in force in Indonesia enforces a system of proof based on the Criminal Procedure Code (KUHP). The defendant's guilt must be based on proven guilt and at least two valid pieces of evidence, and the judge must be convinced that the crime actually occurred and that the defendant committed it. As stated in Article 184 paragraph (1) of the Criminal Procedure Code, which has determined in a "limitative" manner the valid evidence according to the law. Outside of this evidence is not permitted to be used to prove the defendant's guilt. What is considered evidence, and what is permitted to have "evidential force" is

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limited to the evidence itself in accordance with the provisions of Article 184 paragraph (1). The evidence in criminal procedure law in Indonesia is contained in Article 184 of the Criminal Procedure Code, which includes:¹³

- a. Witness testimony;
- b. Expert testimony;
- c. Letter;
- d. Instruction;
- e. Defendant's statement.

Based on these types of evidence, Amicus Curiae is not included in the evidence regulated in Indonesian criminal procedure law, but it has been used in practice in various cases. When an organization submits an Amicus Curiae in court and receives the judge's approval, the Amicus Curiae is allowed to express its opinion but not to oppose it. This Amicus Curiae does not have to be a lawyer, but can be a person who has knowledge related to a case that makes their statement valuable to the court. Amicus Curiae can provide written or oral testimony in court, and the file submitted in writing is usually called an Amicus Brief. In providing testimony, Amicus Curiae can provide testimony in court at their own request or requested by the court, but must have the permission of the chief justice. Because the purpose of Amicus Curiae in providing testimony is to assist the examination, and as a form of participation.¹⁴

The information provided can also be in the form of factual statements, legal opinions, or scientific opinions. The use of Amicus Curiae, when viewed from the theory of decision-making by judges, is actually justified. This is because in decision-making theory, judges must consider the balance between what is stipulated in applicable law and the interests of the parties involved in the case. For example, the balance directly related to the community, the interests of the defendant, and so on. The reason for submitting Amicus Curiae is for the benefit of the wider community. From the theory of decision-making viewed through a scientific approach, judges often ask expert witnesses to express their opinions. This expert testimony allows the judge to consider and determine the decision

¹³Syaiful Bakhri, *Criminal Justice System in Indonesia*, Pustaka Pelajar, Yogyakarta, 2014, p. 109.

¹⁴*Loc. cit.*

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that should be rendered in accordance with the sense of justice expected by the parties in the trial and the public at large.¹⁵

Meanwhile, in Indonesia, Amicus Curiae is not yet widely known and used, both by academics and practitioners. The Indonesian judiciary under the Supreme Court does not have a regulation on Amicus Curiae, but Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society." This is also supported by Article 14 of Constitutional Court Regulation Number 06/PMK/2005 which states that related parties with indirect interests are "parties whose statements need to be heard because of their position, main duties, and functions" or "parties whose statements need to be heard as ad informandum, namely parties whose rights and/or authorities are not directly affected by the subject of the petition but because of their concern for the petition in question." Thus, it can be said that the concept of Amicus Curiae has been partially adopted by the Constitutional Court in its Regulations.¹⁶

Another law that provides an opportunity for the use of Amicus Curiae in the criminal justice system in Indonesia is Law Number 8 of 1981 concerning the Criminal Procedure Code, which is contained in Article 180 paragraph (1) of the Criminal Procedure Code. This article states that "if it is necessary to clarify the situation of the issues that arise in court, the presiding judge may request expert information and may also request the submission of new material by interested parties." This article indirectly provides an opportunity for the entry of Amicus Curiae into the criminal trial process in Indonesia.¹⁷

Looking at several rules that can be used as a basis for the use of Amicus Curiae, it can be said that the concept of Amicus Curiae has been adopted in several parts of the existing laws and regulations in Indonesia, even though its existence is not stated concretely. The submission of Amicus Curiae can be said to be an informal acknowledgement, because there is no legal basis that clearly recognizes the use of Amicus Curiae. When carrying out his considerations, the judge exercises his authority by providing considerations that are carried out wisely. The judge is considered to always know everything about the law, when the judge does not know then the judge's duty is to find out first. The interest of Amicus Curiae is limited to providing an opinion or legal opinion. Amicus Curiae is not mentioned

¹⁵Ahmad Rifa'i, *Legal Discovery by Judges in the Perspective of Progressive Law*, Sinar Grafika, Jakarta, 2011, pp. 105-108.

¹⁶*Loc, cit.*

¹⁷*Loc, cit.*

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in the evidence contained in the Criminal Procedure Code. Because the power of proof lies in Article 183 of the Criminal Procedure Code. According to this article, a judge who decides on a case is prohibited from imposing a sentence without a basis based on at least two valid pieces of evidence plus conviction based on the evidence. Valid evidence is regulated in Article 184 paragraph (1) of the Criminal Procedure Code, namely:¹⁸

a. Witness Statement

Witness testimony is the most important piece of evidence in criminal proceedings. Nearly all criminal evidence is based on witness examination.¹⁹ Article 1 point 27 of the Criminal Procedure Code explains that witness testimony is one of the pieces of evidence in a criminal case in the form of a witness's statement regarding a criminal event that he heard, saw, or experienced himself, stating the reasons for his knowledge (*testimonium de auditu*). Regarding who is referred to as a witness, Article 1 point 26 of the Criminal Procedure Code states that it is a person who can provide information for the purposes of investigation, prosecution, and trial regarding a criminal case that he heard, saw, or experienced himself. In order for a witness's statement to be considered as evidence, the statement must be stated in court. This is in accordance with Article 185 paragraph (1). Statements stated outside of the court are not evidence and are not used to prove the defendant's guilt. Article 185 paragraph (2) states that a witness's statement alone is not sufficient to prove the defendant's guilt (*unus testis nullus testis*).

The assessment of witness testimony depends on the judge, where the judge is independent, but is responsible for assessing the evidentiary power of the witness's testimony to establish the ultimate truth. Witness testimony has independent evidentiary power. Therefore, testimonial evidence does not have perfect evidentiary power and also does not determine or bind the value of the evidentiary power of the witness's testimony depending on the judge's assessment as evidence that has independent evidentiary power can be paralyzed by the defendant with other evidence in the form of a *de charge* witness or expert testimony.²⁰ A witness *a de charge* is the testimony of a witness who overheard

¹⁸Tolib Effendi, *Criminal Justice System; Comparison of Components and Processes of Justice Systems in Several Countries*, Pustaka Yustisia, Yogyakarta, 2013, p. 173.

¹⁹Rusli Muhammad, *Contemporary Criminal Procedure Law*, Citra Aditya Bakti, Bandung, 2007, p. 192.

²⁰Jur Andi Hamzah, *Indonesian Criminal Procedure Law, Second Edition*, Sinar Grafika, Jakarta, 2014, p. 194.

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someone else say or relate something. Therefore, testimony obtained from another person is not valid evidence.

b. Expert Statement

According to Article 1 point 28 of the Criminal Procedure Code, expert testimony is information provided by a person who has special expertise on matters required to clarify a criminal case, for the purposes of examination. According to Karim A. Nasution, the definition of an expert does not necessarily refer to someone who has received special education or someone who has a certain diploma, but anyone who according to criminal procedure law can be appointed as an expert, as long as they are considered to have special knowledge and experience on a matter, or have a lot of knowledge and experience on that matter.²¹

Expert testimony is general in nature, providing an opinion on the subject matter of the case being tried or related to it. Experts are not permitted to provide judgments on the specific case being tried. Therefore, questions to experts are usually hypothetical or general statements, and experts are not permitted to provide judgments regarding the guilt or innocence of the defendant based on the trial facts presented to them.²²

c. Letter

As stipulated in Article 186 of the Criminal Procedure Code, namely a letter made under oath of office, or a letter made under oath. Considered as a letter that has value as evidence, namely, a report that contains information about events or circumstances heard, seen or experienced, accompanied by clear and firm reasons for the statement. Letters in the form of statutory provisions made by authorized officials. Expert statements, and/or other letters of an official nature.²³

From a formal perspective, the evidentiary value of a letter is perfect evidence, from a material aspect it has binding force and the judge is free to make an assessment of the substance of the letter, based on the principle of the judge's belief and the principle of minimum evidentiary limits.

²¹Hari Sasangka and Lily Rosita, *Law of Evidence in Criminal Cases*, Mandar Maju, Bandung, 2003, p. 56.

²²Eddy OS Hiariej, *Theory and Law of Proof*, Erlangga, Jakarta, 2012, p. 107.

²³Syaiful Bakhri, *The Indonesian Criminal Justice System from the Perspective of Justice Reform, Theory, and Practice*, Pustaka Pelajar, Yogyakarta, 2014, p. 129

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d. Evidence Instructions

A clue is a different kind of evidence from other kinds of evidence. Clue evidence is not examined in court, because it does not have a concrete form or can be said to be abstract. As referred to in Article 188 paragraph (1) of the Criminal Procedure Code, indicative evidence is an act, event or condition which, due to its correspondence, either between one and the other, or with the crime itself, indicates that a crime has occurred and who the perpetrator is. Defendant's Statement The defendant's statement is the last order of evidence in Article 184 paragraph (1). This last placement is the reason used to place the process of examining the defendant's statement later after the examination of the witness's statement.

e. Defendant's statement

What the defendant stated in court about the actions he committed or that he knew about himself or experienced himself.

The position of *Amicus Curiae* cannot be categorized as evidence listed in the Criminal Procedure Code. Because *Amicus Curiae* is a new evidence that does not have a standard form and has not been clearly or formally regulated in existing laws and regulations. The evidentiary power of *Amicus Curiae* lies in the judge's confidence in assessing the content and relevance of the *Amicus Curiae* submitted in the case. *Amicus Curiae* also cannot be said to be a witness or expert witness, because *Amicus Curiae* is something new in criminal justice, but in practice it has been applied in several cases in Indonesian courts. *Amicus Curiae* cannot be said to be a witness because in Article 1 point 26 of the Criminal Procedure Code, a witness is a person who can provide information for the purposes of investigation, prosecution, and trial regarding a criminal case that he himself heard, he himself saw, he himself experienced. whereas *Amicus Curiae* is a person who feels interested in clarifying factual issues, explaining existing legal issues and representing certain groups, it is not explained that *Amicus Curiae* must be a person who has seen, heard or experienced it himself.

Amicus curiae cannot be considered an expert witness, because an expert witness cannot be just anyone, but rather the testimony provided by someone with special expertise. Meanwhile, an *amicus curiae* does not have to be someone with special expertise like an expert witness; ordinary citizens can also be an *amicus curiae* as long as the person follows the existing case. *Amicus curiae* can be considered by the judge.

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The provisions in the Criminal Procedure Code indicate that the system of evidence adopted is a negative legal system of evidence, which can be seen from the explanation of Article 183 of the Criminal Procedure Code, the provisions of which show that in proof, two valid pieces of evidence and the judge's conviction are required. Because *Amicus Curiae* cannot yet be said to be a valid piece of evidence, *Amicus Curiae* can be used as a judge's consideration, because in the theory of negative legal evidence, not only are at least two valid pieces of evidence required but the judge's conviction is also required. This is done to help the judge to be fair and wise in deciding a case. This is in accordance with Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states that it is the judge's obligation to "explore, follow, and understand the legal values and sense of justice that exist in society." So this provision requires the judge to open up as widely as possible information and opinions from various groups of society, both those who are parties to the case and through input from parties outside the parties to the case.

When a judge is open-minded and has access to a wide range of information, they can produce a just decision based on wise consideration. In making a decision, the judge must always consider three elements: legal certainty, legal expediency, and legal justice. These three elements must be balanced, and no one should prioritize one over the other.

4. Conclusion

The legal role and position of *amicus curiae* in criminal justice regulations in Indonesia regarding the protection of women in conflict with the law do not yet have legal certainty. The role of *amicus curiae* is very important in supporting the relevance of the world of justice as a place to realize justice for people who are in litigation amidst the social dynamics of society which continue to develop in a complex manner, however, this has not been balanced with clear regulations regarding the position and role of *amicus curiae*, such a situation clearly results in legal uncertainty for the position and role of *amicus curiae* in the national criminal procedural law system.

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