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Legal Analysis of The Urgency of The Role of Amicus Curiae in Proving Criminal Acts at The Trial Stage

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Abstract. *The submission of amicus curiae can be said to be an informal recognition, because it does not yet have a legal basis that clearly recognizes the use of amicus curiae. When implementing his considerations, the judge exercises his authority by providing considerations that are implemented wisely. The judge is considered to always know everything about the law, when the judge does not know then the judge's job is to find out first. The interest of amicus curiae is limited to providing legal opinions or opinions. amicus curiae is not mentioned in the evidence in the Criminal Procedure Code. Because the power of proof lies in Article 183 of the Criminal Procedure Code. This thesis research aims to analyze and describe the role and position of amicus curiae legally in criminal justice regulations in Indonesia and this thesis aims to analyze and describe regulatory updates related to the role of amicus curiae in a criminal justice system that has legal certainty. The research design in this thesis uses a sociological or empirical legal research type. Based on the research conducted in this thesis, it can be seen that the role and position of amicus curiae legally in criminal justice regulations in Indonesia 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 dynamics of society that 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 procedure law system. Regulatory updates related to the role of amicus curiae in a criminal justice system with legal certainty need to be carried out, by regulating the matter of amicus curiae by adding the definition of amicus curiae in Article 1 of the Criminal Procedure Code and adding to Article 184 of the Criminal Procedure Code regarding amicus curiae statements as one of the evidence in criminal cases, creating a management and supervisory institution for amicus curiae so that the amicus curiae used in criminal trials can be accounted for in terms of quality and professionalism, it is necessary to provide information and announcements regarding the existence of amicus curiae.*

Keywords: *Amicus Curiae; Criminal; Evidence; Trial.*

1. Introduction

Technological advances brought by the era of globalization in every country have also brought progress in the world of crime. Crimes that were initially only committed physically, with the entry of communication and information technology have morphed into non-physical crimes based on digital. One of these crimes is the issue of cybercrime. According to Osman Goni, Md. Haidar Ali, Showrov, Md. Mahbub Alam, and Md. Abu Shameem, "cybercrime is defined as any criminal activity which takes place on or over the medium of computers or the internet or other technology recognized by the Information Technology Act".[1]Cybercrime is a crime related to activities that use computers and the internet. One of the cybercrimes that threatens Indonesia in this era of disruption is the darknet or darkweb. The darknet or darkweb is part of the World Wide Web that cannot be accessed using standard web browsers such as Internet Explorer, Firefox, Edge, or Chrome. This is because websites on the Darkweb operate within a special encrypted network that provides anonymity.[2]

Darknet This can be a place for data tapping including tapping visual surveillance data through a proxy server. Such crimes not only touch the lives of individuals but can also hack the government's order of life in a country. The modus operandi of such crimes clearly has an impact on the issue of evidence. The problem of crime is not only at the level of its modus operandi as has been narrated above about the proliferation of crime as a result of technological advances in the era of globalization, another problem is the problem of evidence in a case that is on every court table.

The issue of proving a crime often encounters a deadlock when during the trial the perpetrator of the crime can carry out a series of mature criminal plans, on the other hand the perpetrator is supported by other parties to be able to cover up the crime he committed. This can fatally result in the perpetrator being free from the clutches of criminal law. The issue of criminal evidence must basically look at the subject of the perpetrator including the perpetrator's honesty and expertise. The aspect of mental attitude is an important aspect in determining the chronology of the occurrence of a crime which also determines the severity of the criminal sanctions for the perpetrator. This aspect is where judges and legal experts are not always able to determine whether or not there is an evil mental attitude, this is because the issue of mental attitude is in the realm of psychology.[3]The problem on the other hand in the scope of evidence as mentioned above is the basis for the assessment and analysis of evidence. It is known that the evidence as regulated in Article 184 of the Criminal Procedure Code can be said to be lagging behind.

[1]Osman Goni, Md. Haidar Ali, Showrov, Md. Mahbub Alam, and Md. Abu Shameem, "The Basic Concept of Cyber Crime", Journal of Technology Innovations and Energy, 2022, p. 29. Accessed via:https://doi.org/10.5281/zenodo.6499991, on August 8, 2023.

[2]United Nations Office on Drugs and Crime (UNODC), Darknet Cybercrime Threat in Southeast Asia, UNODC, Vienna, 2020, p. 7.

[3]Maulida Fathia Azhar and Taun Taun, "Legal Aspects of the Role of Forensic Psychology in Handling Criminal Offenders Reviewed in Indonesian Positive Law". Meta-Juridical Journal, Vol. 5, No. 2, 2022, pp. 162-163. Accessed via:https://doi.org/10.26877/my.v5i2.13527, May 12, 2023.

This is because Article 184 of the Criminal Procedure Code has not included digital evidence and evidence that is in the psychological realm of the perpetrator.[4]

Based on the fact of the development of the modus operandi of cybercrime which has an impact on criminal evidence and the inability of criminal evidence to touch on the humanitarian aspects of the perpetrators of the crime, it clearly shows that in criminal evidence it can be said that it is still far behind the dynamics in the world of criminal law enforcement in a dynamic society. This fact shows the need for an alternative development of evidence media in every criminal case that is increasingly complex following a complex social life.

Amicus curiae is one of the alternatives in the effort to prove criminal law in court. amicus curiae or friends of court or friends of the court is basically a legal concept that allows third parties, namely those who feel interested in a case, to provide their legal opinions to the court. The involvement of interested parties in a case is limited to providing opinions, not to resisting.[5]Amicus curiae has an important position as a party that is able to help provide expertise in criminal evidence so that criminal evidence becomes clearer and clearer in the examination process at trial.

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 the laws and regulations in Indonesia, although its existence is not stated concretely. The submission of amicus curiae can be said to be an informal recognition, because it does not yet have a legal basis that clearly recognizes the use of amicus curiae. When implementing his considerations, the judge exercises his authority by providing considerations that are implemented wisely. The judge is considered to always know everything about the law, when the judge does not know, it is the judge's job 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 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 a belief based on the evidence.[6]The absence of mentioning amicus curiae statements as one of the evidence in the Criminal Procedure Code clearly indicates the absence of legal recognition of the position of amicus curiae. This is clear in das sein or law in action can result in the emergence of problems of legal recognition of amicus curiae statements as evidence and then also has implications for the legal position of amicus curiae as a party that has a stake in the examination of criminal cases in court.

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[4]Natanael Israel Kumendong, Wempie Jh. Kumendong, and Roy Ronny Lembong, "Implications of the Development of Evidence in Proving Criminal Acts in the Criminal Procedure Code", Lex Crimen, Vol. X, No. 2, pp. 130-134. Accessed through:file:///C:/Users/windows%2010%20Pro/Downloads/jm_lexcrimen,+13.+Natanael+Israel+Kumendong_crimen.doc.pdf, on May 12, 2023.

[5]Sukinta, "The Concept and Practice of Implementing Amicus Curiae in the Indonesian Criminal Justice System", Administrative Law & Governance Journal, Volume 4, Issue 1, p. 90. Accessed through:file:///C:/Users/windows%2010%20Pro/Downloads/11256-36874-1-SM%20(1).pdf, on May 12, 2023.

[6]*Ibid,* p. 567.

Based on the existing explanation, there is a legal gap, namely the inconsistency between the legal idea regarding the importance of the position of amicus curiae as a breakthrough in the deadlock in proving criminal cases (das sollen), with the legal certainty regarding the legal recognition of amicus curiae in criminal procedure law in Indonesia (das sein). In relation to the issue of the position of amicus curiae in proving criminal cases legally, it is necessary to discuss in more depth regarding "JUDICAL ANALYSIS OF THE URGENCY OF THE ROLE OF AMICUS CURIAE IN PROVING CRIMINAL ACTS AT THE TRIAL STAGE".

2. Research Methods

The research design of this thesis 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.[7]The approach in designing this thesis is: qualitative method, namely the method *Which* 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 a picture of the prevailing patterns.[8]

3. Results and Discussion

3.1. The Role and Legal Position of Amicus Curiae in Criminal Justice Regulation in Indonesia

1. Difference between Amicus Curiae and Expert Witness

a. Expert Witness

Article 1 number 28 merely mentions people who have special expertise, but the criteria are not explained. Indeed, there are several articles that in their formulation mention the qualifications of special expertise, such as: experts who have expertise in forged letters and writings (Article 132); forensic medicine experts or doctors (Article 133 paragraph 1, Article 179 paragraph 1), but the mention does not contain the requirements of an expert, but rather mentions certain fields of expertise. Regarding this type of expertise, it is clear that there are many fields of expertise, even an unlimited number of expertise outside the fields of expertise that have been mentioned in the articles. From the perspective of the nature of the content of the information provided by the expert, experts can be distinguished between:

1) An expert who explains the results of an examination of something that has been done based on special expertise for that purpose. For example, a forensic doctor who provides expert testimony in court about the cause of death after the doctor has performed an autopsy.

Or an accountant gives evidence in court about the results of an audit he conducted on the finances of a government agency.

2) Experts who explain solely about special expertise regarding something closely related to the criminal case being examined without conducting an examination first. For example, an

[7]Mukti Fajar and Yulianto Achmad, Dualism in Legal Research: Normative and Empirical, Pustaka Pelajar, Yogyakarta, 2010, pp. 153-154.
[8]Burhan Ashshofa, Legal Research Methods, PT. Rineka Cipta, Jakarta, 1996, pp. 20-21.

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expert in the field of bomb assembly who explains in court about how to assemble a bomb. Even in practice, a legal expert in a special field of expertise/concentration is often used and they are also called an expert.

An expert is not always determined by having a special formal education for his/her field of expertise such as forensic medicine, but by the experience and/or specific field of work that he/she has been engaged in for a long time, which according to reason is very reasonable to be an expert in that specific field. For example, expertise in the field of keys, carpentry and other expertise. Regarding the position of an expert, it is the judge who determines whether a person is an expert or not through his/her legal considerations. In practice, the public prosecutor or legal advisor often brings the person he/she calls an expert to court. It is not uncommon for there to be a debate between the prosecutor and the legal advisor about the status of the person in question. In dealing with the debate about whether or not an expert is an expert, it is the judge who ultimately determines whether or not the person is an expert. Based on Article 160 paragraph (1c), it is reasonable for the judge to only examine the person being brought before, later considering in the decision whether or not a person is an expert. It is reasonable not to always look at diplomas or formal education. In reality, formal education or formal education degrees are not always sufficient to be used as a measure of a person's knowledge or expertise, but must be added that the field of formal education has been studied as a field of work for a long time. Sometimes that is not enough. Therefore, judges should not base their considerations solely on degrees or formal education to determine an expert, but judges need to examine whether the person's competence is in fact recognized by the wider community or not. Or at least receive an appointment from a legitimate official institution related to the person's field of expertise, for example from the relevant agency.

Every person who is asked for his opinion as a forensic medicine expert or doctor or other expert is required to provide expert testimony for the sake of justice. All of the above provisions for witnesses also apply to those who provide expert testimony, with the provision that expert witnesses take an oath or promise to provide the best and most truthful testimony according to their knowledge in their field of expertise (Article 179 of the Criminal Procedure Code). If it is necessary to clarify the facts of the issues that arise in court, the presiding judge may request expert testimony and may also request that new material be submitted by the interested party (Article 180 of the Criminal Procedure Code). For example, according to expert testimony (deskundige verk/amjg) submitted by the public prosecutor as evidence, it is stated that the writing and signature listed in the written evidence are the true writing and signature of the defendant, however, the defendant and legal counsel object to the expert testimony. In such a case, if according to the consideration of the presiding judge, the objections submitted by the defendant and/or legal counsel are reasonable, then the presiding judge may order the public prosecutor to submit expert testimony with new material as a comparison with the expert testimony that has been submitted in court. Meanwhile, the new material can be submitted/obtained from interested parties, namely witnesses, victims, and public prosecutors or from the accused and/or legal counsel. This is intended to find the real truth or material truth. In the event that objections still arise which are considered to have sufficient grounds from the accused and/or legal counsel against the results of the expert testimony as explained above (Article 180 paragraph (1) of the Criminal Procedure Code), the presiding judge of the trial can order

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that a re-examination be carried out regarding this matter. In addition, the judge because of his position can also order a re-examination to be carried out as referred to in Article 180 paragraph (2) of the Criminal Procedure Code. And the re-examination is carried out by the original agency with a different composition of personnel (experts) and added personnel from other agencies that have the authority to do so.

In principle, in substance, regarding expert testimony or in the Dutch legal group according to Article 339 Sv. called verklaringen van een deskundige, then in the Criminal Procedure Code it is spread across several articles, namely Article 1 number 28, Article 120, Article 133, Article 160 paragraph (4), Article 161, Article 179, Article 180, Article 184 paragraph (1) letter b, Article 186, and Article 187 letter c of the Criminal Procedure Code. In essence, expert testimony is information provided by a person who has special expertise regarding matters needed to clarify a criminal case for the purposes of examination (Article 1 number 28 of the Criminal Procedure Code). Starting from that, according to the author, the function and/or benefits of an expert's testimony in providing information in the criminal trial process are:

1) As evidence to clarify the facts of a problem that arises in a court hearing.

2) As a useful tool to provide clear information regarding a criminal case that has occurred by using his expertise or based on what he understands or knows about a criminal case.

3) As evidence by using his expertise to provide information to defend or benefit the suspect or defendant.

4) And it can also serve to increase the judge's confidence in giving a verdict or decision in a trial.

b. *Amicus Curiae*

Amicus Curiae This comes from Latin which in English is friend of court which when translated into Indonesian becomes "friend of the court". Amicus Curiae in practice can be submitted by a person, a group of people or an organization. When the Amicus Curiae is more than one person or is done by a group of people, then it is called Amici Curiae while the submitter is called Amici(s).[9]

According to the types of evidence, Amicus Curiae is not included in the evidence regulated in the criminal procedure law in Indonesia, but its practice has been carried out in various cases. When an organization submits Amicus Curiae in court and gets the judge's approval, then Amicus Curiae is allowed to express his opinion but not to oppose. This Amicus Curiae does not have to be a lawyer, but may be a person who has knowledge related to a case that makes his statement valuable to the court. Amicus Curiae can provide written or oral information in court, and files submitted in writing are usually referred to as Amicus Briefs. In providing information, Amicus Curiae can provide information in court at his own request or requested by the court, but must have the permission of the chief justice. Because the purpose of Amicus Curiae in providing information is to assist the examination, and as a form of participation. The information provided can also be in the form of a statement of facts, or legal or scientific opinions.

c. Difference between Expert Witness and Amicus Curiae

[9]Rusli Muhammad, op., cit.

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Based on the explanation regarding expert witnesses and amicus curiae above, the differences between expert witnesses and amicus curiae can be seen. The differences between expert witnesses and amicus curiae are:

1) Expert witnesses are clearly regulated in Article 1 number 28, Article 120, Article 133, Article 160 paragraph (4), Article 161, Article 179, Article 180, Article 184 paragraph (1) letter b, Article 186, and Article 187 letter c of the Criminal Procedure Code, while the term amicus curiae is not found in the Criminal Procedure Code.

2) Expert witnesses are often submitted by the parties with a professional mechanism based on the criteria regulated in Article 1 number 28, Article 120, Article 133, Article 160 paragraph (4), Article 161, Article 179, Article 180, Article 184 paragraph (1) letter b, Article 186, and Article 187 letter c of the Criminal Procedure Code, while amicus curiae are often not parties chosen by the parties but are parties who voluntarily submit themselves to assist in the examination of criminal cases or other legal cases, in other words Amicus Curiae can provide information in court at their own request or at the request of the court.

3) The judge cannot disregard the expert's testimony because the testimony of the expert witness is clearly recognized by the Criminal Procedure Code as regulated in Article 179, Article 180, Article 184 paragraph (1) letter b, Article 186, and Article 187 letter c of the Criminal Procedure Code. The amicus curiae testimony, because it is not regulated clearly in the Criminal Procedure Code, means that the judge has a great opportunity to disregard it.

4) Expert witnesses are clearly regulated in Article 1 number 28, namely an expert who has certain expertise, amicus curiae cannot be said to be an expert witness, because expert witnesses cannot be just anyone, but the information provided by someone who has special expertise. While Amicus Curiae does not have to be someone who has special expertise like an expert witness, but ordinary people can also be Amicus Curiae as long as the person follows the existing case. Amicus Curiae can be a judge's consideration.

2. The Legal Position of Amicus Curiae in Criminal Justice Regulation in Indonesia

Judges in their development in countries that have recognized and accommodated Amicus Curiae or international courts related to Human Rights violations in making their decisions always consider and assess Amicus Curiae. The implementation of Amicus Curiae is usually used for cases in the appeal process and issues of public interest, such as social issues or civil liberties that are being debated. So that the judge's decision will have a broad impact on the rights of the community. There are three categories of Amicus Curiae, namely:[10]

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 matters.

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.[11]The sources of legal evidence are:[12]

[10]Location, cit.

[11]Fachrul Rozi, "Evidence System in the Trial Process in Criminal Cases", Jurnal Yuridis Unaja, Vol. 1, No. 2, 2018, pp. 21-24.

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a. Constitution;

b. Doctrine or teaching;

c. Jurisprudence.

Proving whether or not the defendant committed the alleged act is the most important part of criminal procedure. In this case, human rights are at stake. Because criminal procedural law aims to find material truth, and is different from civil law which is quite satisfied with formal truth. The history of the development of criminal procedural law shows that there are several systems and theories to prove the alleged act. The following author will describe the four systems or theories of proof above as follows:[13]

a. Positive legal proof system or theory (Positief Wettelijke Bewijs Theorie) This means that an act has been proven in accordance with the evidence referred to in the law, so the judge's conviction is not needed at all. This system is also called formal proof theory (formale bewijstheorie). This system emphasizes the existence of valid evidence according to the law. If the judge is not sure about the defendant's guilt, but if there is valid evidence according to the law, 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 Evidence Based on Judge's Belief for Logical Reasons (Conviction In Raisone) This system of evidence prioritizes the assessment of the judge's belief as the sole basis for convicting the defendant, but the judge's belief here must be accompanied by real and logical considerations from the judge. According to this theory, the judge can decide someone is guilty based on his belief, which belief is based on the basis of evidence accompanied by a conclusion based on certain rules of evidence. The judge's belief does not need to be supported by valid evidence because it is not required, although the evidence has been determined by law, the judge can use evidence outside the provisions of the law.

3.2. Regulatory Updates Regarding the Role of Amicus Curiae in a Legally Certain Criminal Justice System

Based on the various problems above, it can be concluded that there are several problems in implementing the role of Amicus Curiae in the criminal justice system in Indonesia, these problems include:

1. Legal Substance Issues

The absence of regulations regarding amicus curiae in criminal procedural law Indonesia which makes the position and role of amicus curiae have no legal certainty;

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

[13]Hans C. Tangkau, Criminal Evidence Law, Scientific Paper, Faculty of Law, Sam Ratulangi University, Manado, 2012.

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2. Legal Structure Issues

Inimplementation law enforcement in criminal justice institutions rarely uses amicus briefs or amicus analysis, this is a form of the absence of regulations regarding amicus curiae in Indonesian criminal procedure law;

3. Legal Culture Issues

Because amicus curiae is not regulated in Indonesian legislation, amicus curiae is rarely known and recognized by the general public.

Based on the various problems above, several legal reforms can be found related to the issue of the uncertainty of the position of amicus curiae which have an impact on various aspects of the role of amicus curiae in Indonesian judicial practice. This reform is a criminal law reform that is oriented towards the values of Pancasila. Conceptually, the values of Pancasila are the basic values of the source of law, especially the law of criminal law evidence which is also where amicus curiae is needed, operationally the values of Pancasila are a philosophy in carrying out reforms regarding the urgency of the position and role of amicus curiae in the criminal justice system.

1. Pancasila as a Source of Law

In relation to the position of Pancasila as a Philosofische Grondslag and also as the source of all sources of law, A. Hamid S. Attamimi, using Nawiasky's die theorie vom stufenordnung der rechts normen, stated that the hierarchical structure of law in Indonesia consists of:[14]

a. Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia as staats fundamental norm;[15]

b. The body of the 1945 Constitution of the Republic of Indonesia, the MPR Decrees and the Constitutional Convention constitute the staats grund gesetz;

c. Statutory regulations are formal legal provisions;

d. Hierarchically, starting from Government Regulations to Provincial Regional Regulations and Regency/City Regional Regulations, they constitute verordnung en autonomous satuzung.

The position of Pancasila as a Philosophical Foundation or as Nawiasky calls it *with* Staats fundamental norm, which also functions as recht sidee or legal ideals, has the consequence that the creation of all legal regulations and their implementation must be in accordance with all the values contained in each principle of Pancasila as explained above.

Based on the various explanations that exist, it can also be concluded that Pancasila also is source of all sources of legal politics in Indonesia. This statement is in accordance with the view of Mahfud MD who stated that:[16]

[14]Location, cit.

[15]Although Nawiasky with his theory does not explicitly state that Pancasila which is the Staatsfundamentalnorm is related to the Indonesian constitution, the relationship between Pancasila and the constitution to the various rules under the constitution can be explained using Kelsen's validity theory. Based on Kelsen's theory, it can be stated that the Indonesian constitution is a valid document because Pancasila is the final postulate that is final. The postulate then becomes a place to depend on for every norm below it so that it forms a presupposition called by Kelsen as transcendental logical presupposition. See: Ibid, p. 172.

[16]Moh. Mahfud MD, Building Legal Politics, Upholding the Constitution, LP3ES Library, Jakarta, 2006, pp. 15-16.

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From the various definitions of legal politics, a simple formulation can be made that legal politics is an official direction or line that is used as a basis and a way to create and implement laws in order to achieve the goals of the nation and state. It can also be said that legal politics is an effort to make law a process of achieving state goals the main foundation of national legal politics is the goal of the state which then gives birth to a national legal system that must be built with a choice of content and certain methods.

Based on the explanation from Mahfud MD above, it can be stated that legal policy is basically the direction of legal development based on the national legal system to achieve state goals or the ideals of the state and nation.[17]The objectives of the state that are based on the ideals of the nation's people have been concluded in the five principles of Pancasila. So in other words, the implementation of legal politics is based on the five principles of Pancasila, namely Belief in the One Almighty God, Just and Civilized Humanity, Unity of Indonesia, Democracy led by the wisdom of deliberation/representation, and Social Justice for All Indonesian People. Legal politics that are based on the values of Belief in the One Almighty God means that legal politics must be based on the moral values of Divinity. Legal politics that are based on the values of Just and Civilized Humanity means that existing legal politics must be able to guarantee respect and protection for human rights in a non-discriminatory manner. Legal politics must be based on the values of the Unity of Indonesia, meaning that legal politics must be able to unite all elements of the nation with all their respective primordial ties. Legal politics based on the values of the people led by the wisdom of deliberation/representation means that legal politics must be able to create state power that is under the power of the people or in other words, legal politics must be able to create a democratic state where the greatest power is in the hands of the people (people's democracy). Then the last is that legal politics must be based on the values of Social Justice for All Indonesian People, meaning that legal politics must be able to create a society with social justice that is able to create justice for the weak in society both in the social sector and in the economic sector, so that there is no oppression between the powerful and marginalized communities.[18]

The various values contained in the five principles of Pancasila are then concretized in the goals of the state as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. The Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia states that:

a. Protecting the entire nation and all of Indonesia's territory;

b. Advancing the general welfare;

c. Enlightening the life of the nation;

d. Participate in implementing world order, based on freedom, eternal peace and social justice.

[17]Basically there is almost no difference between the ideals of the state and the goals of the state, but in the context of legal politics Mahfud MD distinguishes the two, according to Mahfud MD ideals are the spirit that resides in the hearts of the people, while the goals of the state are constitutive statements that must be used as the direction or orientation of the organization of the state. See: Moh. Mahfud MD, op, cit, p. 17.
[18]Ibid, p. 16.

So it is also clear that legal policy must be based on the four principles contained in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. In relation to this, Mahfud MD stated that:[19]

In the context of legal politics, it is clear that law is a "tool" that works in a certain "legal system" to achieve the "goals" of the state or the "ideals" of the Indonesian people. Therefore, the discussion of national legal politics must be preceded by an affirmation of the goals of the state.

Based on the opinion of Mahfud MD, it is clear that Pancasila is the foundation and source of all sources for national legal politics. This is because Pancasila and the Opening of the 1945 Constitution of the Republic of Indonesia contain various ideals of the Indonesian nation which are rechtsidee, namely creating a country that is able to create social justice based on the moral values of God, humanity, unity through mutual cooperation democracy, not through western democracy.

If we look at the explanation above, it is clear that legal policy is basically also aimed at realizing the nation's ideals and state goals as formulated in the Pancasila and the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia and in this case also related to Article 28A of the 1945 Constitution of the Republic of Indonesia which states that "everyone has the right to live and the right to defend their life and existence".

Meanwhile, according to Yudi Latif, based on various speeches by Soekarno related to Pancasila, the value of mutual cooperation is the basis of all the principles in Pancasila. Furthermore, Yudi Latif links the value of mutual cooperation with the values contained in the five principles in Pancasila. Namely as follows:[20]

a. The Principle of God

The principle of divinity that must be based on mutual cooperation means that the value of divinity is also cultured, open and tolerant. So that the diversity of beliefs and faith in a religion can run harmoniously without attacking and isolating one group from another. This principle is in line with the fifth principle of Soekarno's Pancasila concept which was named by Soekarno as Cultured Divinity.

b. Principles of Internationalism

The principle of internationalism with a spirit of mutual cooperation according to Yudi Latif is the principle of internationalism that is humanitarian and just. So that the principle of internationalism that exists will always uphold peace and respect for Human Rights. This principle is in accordance with the second principle of Pancasila by Soekarno which was named by Soekarno as the Principle of Internationalism and Humanity.

c. Principle of Nationality

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[19]Ibid, p. 17.

[20]Loc, cit. The view regarding the mutual cooperation values contained in Pancasila is in line with the opinion of Magnis-Suseno who stated:
Pancasila is so high and absolute in its value for the sustainability of the Indonesian nation and state because it is a vehicle where various tribes, groups, religions, cultural groups, and races can live and work together in an effort to build a life together, without alienation and their own identity. See: Jazumi in Anik Kunantiyorini, Pancasila as the Source of All Sources of Law, Accessed viaportalgaruda.org/article.php?...PANCASILA%20AS%20A%20SOURCE%...,On February 18, 2018.

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The principle of nationality that is inspired by the value of mutual cooperation according to Yudi Latif is a nation that is able to realize unity from various differences in Indonesia or in other words is able to realize Bhineka Tunggal Ika. This view is in accordance with the Principle of Internationalism or Humanity.

d. Principles of Democracy

The principle of democracy with the spirit of mutual cooperation according to Yudi Latif is a democracy based on deliberation for consensus. Not Western democracy that prioritizes the interests of the majority or mayocracy and the interests of the ruling elite-capitalists or minocracy. This principle is in accordance with the principle of Consensus or Democracy in Soekarno's Pancasila concept.

e. Principle of Welfare

The principle of welfare based on the value of mutual cooperation according to Yudi Latif is welfare that is realized through the development of participation and emancipation in the economic sector based on the spirit of economy. So that the welfare in question is not welfare based on the understanding of individualism-capitalism and etatism. This principle is in accordance with the Fourth Principle in Soekarno's Pancasila concept.

Legal reform related to the position and role of amicus curiae in the criminal justice system is urgently needed to realize justice for the parties in the case so that the judge's decision is enriched with studies from the amicus curiae's perspective. This is also called justice that can be realized through a multidimensional study of criminal law, or it can also be called a study of criminal law reform that is oriented towards a biomijuridical approach.

Biomijuridika is a legal thought from Barda Nawawi Arief which is based on the fact that national criminal law must refer to and explore the science of divinity, both in various religious teachings and from verses, signs, and examples of God's creation in nature. National criminal law, thus, is a criminal law that is based on God. In a country that is based on God and whose justice is carried out "For the Sake of Justice Based on the Almighty God", then the development and enforcement of law must not only be based on "the guidance of the Law", but must also be based on "the guidance of the Divine Robbi".[21]

This Biomijuridika Barda Nawawi thought fundamentally seeks to realize a just criminal policy with an approach to social and religious moral values, and in the dimension of the embodiment of Pancasila in the concept of criminal law policy. In order to realize this, legal reform related to the position and role of amicus curiae in criminal justice policy can be done by:

1. Making regulations regarding amicus curiae by adding the definition of amicus curiae in Article 1 of the Criminal Procedure Code and adding to Article 184 of the Criminal Procedure Code regarding amicus curiae statements as one of the means of evidence in criminal cases;

2. Establish a management and supervisory body for amicus curiae so that the amicus curiae used in criminal trials can be held accountable for their quality and professionalism;

[21]Muhammad Rustamaji, "Biomijuridika: Thoughts on Godly Criminal Law from Barda Nawawi Arief", Undang: Jurnal Hukum, Vol. 2 No. 1 (2019), pp. 199-200.

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3. It is necessary to provide information and announcements both digitally and physically regarding the position and role of amicus curiae in society;

4. Making a clear list of the amicus curiae's identity and an assessment of the qualifications and abilities of the amicus curiae in the case in which the amicus curiae is involved; and

5. Create a body of review of amicus briefs prepared before they are filed in court.

4. Conclusion

1. The role and legal position of amicus curiae in criminal justice regulations in Indonesia does 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 dynamics of society that 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 procedure law system. 2. Regulatory updates related to the role of amicus curiae in a criminal justice system with legal certainty need to be carried out, by regulating the matter of amicus curiae by adding the definition of amicus curiae in Article 1 of the Criminal Procedure Code and adding to Article 184 of the Criminal Procedure Code regarding amicus curiae statements as one of the evidence in criminal cases, creating a management and supervisory institution for amicus curiae so that the amicus curiae used in criminal trials can be accounted for in terms of quality and professionalism, it is necessary to provide information and announcements regarding the existence of amicus curiae.

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