**LEGAL POSITION DESCRIPTION AMICUS CURIAE**

**AS AN EQUIPMENT OF LETTER IN THE CONCEPT OF CRIMINAL PROOF**

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**ABSTRACT**

Amicus Curiae is widely practiced in courts in Indonesia, especially in criminal cases. Basically, this legal concept does not yet have clear legal rules in Indonesia, but in practice there have been approximately 24 (twenty four) times submission of opinions made by Amicus Curiae and there are even judges who use them as documentary evidence in consideration of their decisions. This legal research aims to identify and examine the legal standing and strength of Amicus Curiae as documentary evidence in Evidence of a Criminal Act according to Criminal Procedure Law in Indonesia. This legal research uses normative legal research methods. The results showed that the letter made by Amicus Curiae can be used as documentary evidence in the process of proving a criminal case using the basis of Article 187 letter d of the Criminal Procedure Code. Meanwhile, the legal strength of the letter that Amicus Curiae wrote as proof of a letter to prove a criminal act, from a formal aspect, is not a means of evidence that has perfect legal force. Meanwhile, in terms of material, the letter that Amicus Curiae wrote has no binding legal force. This means that the judge has the freedom to consider it.

**Keywords :** *Amicus Curiae*, Evidence, Criminal Procedure Law

1. **INTRODUCTION**

Proof is one of the stages in the criminal justice system which is regulated in the Criminal Procedure Code in Indonesia. Proving the guilt of a defendant must not be done arbitrarily or at will because it has an impact on the conviction of the accused. Proving activities in criminal procedural law are basically aimed at obtaining or obtaining the truth which is within juridical boundaries not in absolute limits, this is because absolute truth is difficult to obtain.[[1]](#footnote-1) Article 184 of the Criminal Procedure Code (KUHAP) explains that the evidence used in criminal cases in Indonesia consists of five things. The first is witness testimony, expert testimony, letters, instructions and statements of defendants.

In the last few years, the name Amicus Curiae has appeared in the Indonesian Court. Amicus Curiae is a legal concept that is not well known in Indonesia which tends to adhere to the Civil Law legal system. Because the concept of Amicus Curiae law is only practiced in the traditions of countries that adhere to the cammon law system. This concept originated from the Roman legal tradition. Amicus Curiae or Friends of Court or known as court friends is an input from a person, group of people or organizations that do not act as parties in a case but pay attention or have an interest in a case.[[2]](#footnote-2)

*Amicus Curiae* In practice, this is given in the form of a letter or in writing or so-called Amicus Brief or it can be orally in court, however in practice so far many have been given in the form of a letter (Amicus Brief).*[[3]](#footnote-3)* In 2009, there were five non-governmental organizations engaged in the field of law consisting of the Indonesian Legal Aid and Human Rights Association (PBHI), the Indonesian Legal Aid Foundation (YLBHI), the Institute for Studies and Community Advocacy (ELSAM), the Institute for Criminal Justice Reform (ICJR) , and the Indonesia Media Defense Litigation Network (IMDLN) filed Amicus Curiae in the case of Prita Mulyasari, who is a housewife who has been accused of committing a criminal act of defamation against the Omni International Hospital.[[4]](#footnote-4) In the quote, the Amicus Curiae given is in the form of a letter.

Another Amicus Curiae submission was in 2017, namely in the case of Basuki Tjahaja Purnama or Ahok in which Women Care for the City of Jakarta (PPKJ) and the Legal Aid Institute (LBH) Jakarata as Amicus Curiae in the case of religious blasphemy committed by Ahok.[[5]](#footnote-5)Amicus Curiae in this case was also given in the form of a letter. Another Amicus Curiae submission was in the case of religious blasphemy committed by the defendant Meliana. In this case, there were several institutions that submitted Amicus Curiae documents to the Court, such as the Indonesian Judiciary Monitoring Society (MaPPI), the Institute for Criminal Justice Reform (ICJR), the Indonesian Women's Coalition (KPI), the Indonesian Legal Aid Center (PBHI) and several non-governmental organizations. Communities (NGOs) in North Sumatra.[[6]](#footnote-6)Here Amicus Curiae is also given in letter / written form, not in oral form. Another Amicus Curiae submission is in a case that was quite shocking to the Indonesian people recently, in the case of the persecution of one of the KPK investigators, Novel Baswedan.[[7]](#footnote-7)

The Amicus Curiae submissions that have been mentioned above are just a few examples of the many Amicus Curiae submissions that have occurred within the criminal justice system in Indonesia. The use of the Amicus Curiae which is essentially not regulated in the Criminal Procedure Code but is allowed by the judge to be filed in an ongoing case. In fact, a judge made Amicus Curiae his consideration in making a decision on the case he is currently handling.

One example of a judge who included Amicus Curiae in his judgment was a judge at the Muaro District Court, Sijunjung, West Sumatra. Amicus Curiae is used when handling Criminal Cases knowingly and without the right to disseminate information aimed at causing hatred or hostility to certain individuals and / or community groups based on ethnicity, religion, race and inter-group (SARA) as regulated in Article 28 paragraph (2) Law No. 11 of 2008 concerning Electronic Information and Transactions with the defendant named Alexander An Pgl Aan. Judges in their deliberations stated "Considering,[[8]](#footnote-8) From the judge's consideration, the statement given by Amicus Curiae was stated as proof of a letter.

The number of submissions for Amicus Curiae in Indonesia in the last few years and a judge who used it as documentary evidence in the consideration of his decision shows that Amicus Curiae has begun to exist in Indonesia. However, Amicus Curiae, which already exists in criminal justice in Indonesia, to provide an explanation of legal facts about a crime committed by a person, basically the enforcement of Amicus Curiae does not yet have clear rules in its use.

Based on the background described aboveThen the problems that arise in this paper are: 1. Can the letter written by Amicus Curiae be used as documentary evidence as regulated in the Criminal Procedure Code? and 2. What is the legal strength of Amicus Curiae's statement as documentary evidence in proving a crime according to the Criminal Procedure Code in Indonesia?

1. **RESEARCH METHODS**

This research is normative legal research or research that uses literature study, namely legal research that places law as a norm system building, the norm system in question is regarding the principles, norms, rules of statutory regulations, court decisions and doctrine (teachings). .[[9]](#footnote-9) The technique of analyzing legal materials in this research is that the legal materials and non-legal materials obtained will be analyzed in a perscriptive manner using deductive methods, namely general data about the conception of law in the form of legal principles, as well as the teachings (doctrines) and opinions of experts compiled systematically as a composition of legal facts to examine the legal position of Amicus Curiae's statement as documentary evidence in proving a criminal act according to the criminal procedure law in Indonesia.

1. **RESULTS AND DISCUSSION**
2. **Legal Position of Letters Made by Amicus Curiae as Evidence of Letters According to the Criminal Procedure Code**

*Amicus Curiae* basically it is not something new in the world of law because the term Amicus Curiae has existed since ancient Roman times.[[10]](#footnote-10)As time goes by, Amicus Curiae's existence is well known in the court world, especially in criminal cases in Indonesia. In recent years, Amicus Curiae has been practiced everywhere. There are even countries that pay special attention to the Amicus Curiae, such as the UK and Canada.[[11]](#footnote-11)At this time there are no specific rules governing the participation of Amicus Curiae in the world of justice, especially criminal cases in Indonesia, even though there have been 24 (twenty four) times the Amicus Curiae has submitted it to various courts in Indonesia. As a result of the absence of clear rules regarding the Amicus Curiae itself, especially regarding how this Amicus Curiae is included in a case that is currently being examined by the court to give its opinion, it has an impact on the ability to make all efforts by Amicus Curiae to give its opinion to the court. As long as the efforts or methods made by Amicus Curiae to give their opinion to the court regarding a case being examined do not conflict with the applicable criminal procedural law, this can be done.

Some of the Amicus Curiae practices that have occurred in Indonesia in recent years, the inclusion of Amicus Curiae to give his opinion into a case that is currently being investigated by the court is through the defendant's legal adviser. However, even so, it does not mean that it closes the possibility of Amicus Curiae being involved in giving his opinion through other means. Amicus Curiae can also give his opinion on a case that is currently being examined by the court through the Public Prosecutor. In addition, the opinion given by Amicus Curiae can also be directly given to the Chairman of the Court and the Case Examining Council. Amicus Curiae or court friend,[[12]](#footnote-12)However, in practice in Indonesia itself, most of the Amicus Curiae gave their opinions in writing or letters.

Regarding when the Amicus Curiae gave his opinion in court, basically there are no rules governing this matter. However, Nuryanto, as the Judge at the Yogyakarta District Court, stated that in giving his opinion in court, Nuryanto could be at the time of examining the evidence that relieved the defendant and it could also be at the time of Pledoi, depending on the form of opinion given by Amicus Curiae. When Amicus Curiae gives his opinion verbally, Amicus Curiae's opinion can be conveyed when examining the evidence that defends the defendant. However, when Amicus Curiae gave his opinion in writing (letter), the letter made by Amicus Curiae was delivered during the Pledoi process through the defendant's Legal Counsel.[[13]](#footnote-13)

Regarding the application of the letter written by Amicus Curiae as documentary evidence in a criminal case that is currently being examined in court, in Indonesia until now it is still a problem. The problem is that there are no rules in the Criminal Procedure Code in Indonesia that concretely regulate the enforcement of the letter made by Amicus Curiae as documentary evidence in a case that is being examined in court. This issue is very important,

As a result of the absence of a concrete regulation regulating the enforcement of the letter made by Amicus Curiae, Amicus Curiae, which has been practiced so much in Indonesia, has given his opinion in the form of a letter in recent years, has not been able to convince judges to use it as evidence. Indonesia itself, in its development, there have been approximately 24 (twenty four) criminal cases filed by Amicus Curiae in the form of letters. Of the 24 (twenty four) criminal cases submitted by Amicus Curiae, there were 3 (three) criminal cases in which the Panel of Judges made Amicus Curiae as evidence in their consideration. Of the 3 (three) cases in which the Panel of Judges used Amicus Curiae as evidence, 1 (one) case of the Panel of Judges used it as evidence for expert testimony[[14]](#footnote-14)and 2 (two) cases including the Panel of Judges making it a documentary evidence in its consideration. Then there were 21 (twenty) cases, the letter made by Amicus Curiae was not considered by the Panel of Judges at all.

The 2 (two) criminal cases in which the Panel of Judges enforced the letter made by Amicus Curiae in the consideration of his decision as documentary evidence were the criminal case at the Muaro Sijunjung District Court with Number: 45 / Pid.B / 2012 / PN.MR on behalf of the defendant Alexander An. Call Aan. (Article 28 paragraph (2) in conjunction with Article 45 of Law No. 11 of 2008) which at that time became Amicus Curiae was the Asian Human Rights Commission (Hong Kong) and the Case of embezzlement in Denpasar District Court Number: 780 / PID.B / 2014 / PN.DPS on behalf of the Defendant March Vini Handoko Putra who became Amicus Curiae at that time was the Human Rights Commission (KOMNASHAM).

The existence of evidence has a very important and crucial role in the process of proving a criminal act, of course it cannot just be determined.[[15]](#footnote-15)Likewise with letter evidence, which is a form of evidence as mentioned in Article 184 paragraph (1) of the Criminal Procedure Code, also cannot be simply stipulated. Not all letters can be used as documentary evidence to prove someone's wrong or not. However, one thing that must be known is that a written statement or "letter" can only be used as documentary evidence legally must refer to or refer to existing regulations. In the Criminal Procedure Code in Indonesia, the rules governing documentary evidence in proving criminal cases are only found in Article 187 of the Criminal Procedure Code.[[16]](#footnote-16)

The letters referred to in Article 187 of the Criminal Procedure Code are as follows:

1. Minutes and other letters in official form prepared by the authorized public official or before him, which contain information about events or conditions he has heard, seen or experienced, accompanied by clear and emphatic reasons for the statement.
2. Letters made in accordance with the provisions of statutory regulations or letters made by officials regarding matters which are included in the management which are their responsibility and which are intended for proving something or something.
3. A certificate from an expert which contains an opinion based on his expertise regarding a matter or situation which is formally requested from him.
4. Another letter which can only be valid if it has something to do with the contents of other means of proof.

If we look at the explanation of article 187 of the Criminal Procedure Code, the founders of the Criminal Procedure Code themselves only provide an explanation of the provisions stipulated in letter b. In connection with the aforementioned matters, Sudikno Mertokusumo argues that in case of unclear explanations of statutory regulations, then there is an interpretation method or interpretation method.[[17]](#footnote-17)Sudikno Mertokusumo's opinion was also supported by Mechteld Boot, Van Bemmelen and Van Hattum. According to Machteld Boot in Eddy OS Hiariej, every legal norm requires interpretation. In line with Machteld Boot are Van Bemmelen and Van Hattum in Eddy OS Hiariej who say that every written statutory rule requires interpretation.[[18]](#footnote-18)Considering that the Criminal Procedure Code is also a written statutory regulation which contains legal norms, then when the KUHAP does not provide a complete explanation, the KUHAP may be interpreted or interpreted. So even though Article 187 letters a, c, and d of the Criminal Procedure Code by the creators of the Criminal Procedure Code themselves do not provide an explanation or consider it clear, but when law enforcers find something that is unclear and there must be further explanation of the article, then the provisions in the article still requires interpretation or interpretation.

Regarding the letter written by Amicus Curiae, basically, the Criminal Procedure Code itself does not provide any concrete provisions regarding its enforcement as documentary evidence. However, whether or not a letter written by Amicus Curiae can be used as documentary evidence, it is necessary to look back to Article 187 of the Criminal Procedure Code which regulates which letters can be used as documentary evidence by the judge. Basically, the Criminal Procedure Code itself only provides an explanation of Article 187 letter b of the Criminal Procedure Code, while Articles 187 letters a, c, and d of the Criminal Procedure Code do not provide any explanation at all. In this case because the Criminal Procedure Code does not provide a complete explanation of the provisions of Article 187 of the Criminal Procedure Code in full, as the author previously mentioned according to Sudikno Mertokusumo, in the case of unclear legislation,[[19]](#footnote-19)Therefore, to find out whether the letter written by Amicus Curiae can be used as documentary evidence as referred to in Article 187 of the Criminal Procedure Code, an interpretation method must be used by reviewing the letter referred to in Article 187 of the Criminal Procedure Code.

According to Hari Sasangka the letter as referred to in Article 187 letters a, b, and c of the Criminal Procedure Code is a letter in official form. This means that the letter was made by an authorized official, was made based on the provisions of laws and regulations, and was made by an expert and the letter was used to prove an incident from the start. Meanwhile, the letter written by Amicus Curiae itself is a letter in the form of an ordinary letter which is made the same as a letter in general. The letter made by Amicus Curiae was not made by an authorized official nor was it made based on statutory regulations. Referring to Article 187 letters a, b, and c of the Criminal Procedure Code, after the author of the analysis, the article does not provide an opportunity for the letter written by Amicus Curiae to be used as evidence for the letter by the judge.

Furthermore, the letter as referred to in Article 187 letter d of the Criminal Procedure Code explains that a letter which can be used as documentary evidence is "another letter which can only be valid if there is a connection with the content of other evidence". According to Hari Sasangka, the letter referred to in Article 187 letter d of the Criminal Procedure Code is an ordinary letter. This means that the letter is not a letter made by an authorized official, and is not made based on statutory regulations. After the author of the analysis of Article 187 letter d of the Criminal Procedure Code provides an opportunity for the letter written by Amicus Curiae to be used as proof of the letter. Referring to Article 187 letter d KUHAP as mentioned above,

According to the author himself, a letter which can be used as documentary evidence as referred to in Article 187 letter d of the Criminal Procedure Code does not pay attention to a letter from a formal perspective. However, seeing a letter in terms of material. If the letter B written by Amicus Curiae, the content / substance is in accordance with the facts that have occurred and is related to the testimony of witnesses and expert testimony, the judge will make the letter written by Amicus Curiae as evidence of the letter in his consideration on the basis of Article 187 letter d of the Criminal Procedure Code. So from that, although in essence the letter written by Amicus Curiae does not have a standard form in the criminal case proof system in Indonesia, but using the method of interpretation / interpretation of Article 187 letters a, b, c,

On the other hand, if you look at the definition of Article 187 letter d of the Criminal Procedure Code, which is a letter that must depend on other evidence, according to M. Yahya Harahap, the letter cannot be categorized as letter evidence. Because if a piece of evidence still has to be hung on other evidence, the other letter does not have a value for the evidence. because of that, the other form of letter cannot be categorized as documentary evidence. The law should have referred to it as evidence of guidance.[[20]](#footnote-20)Based on Article 188 paragraph (1) of the Criminal Procedure Code that what is meant by an indication is "an act, event or situation, which because of its compatibility, either between one another or with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is." . As evidence, an indication does not stand alone, meaning that an indication is obtained from other evidence, such as witness testimony, letters and statements from the defendant. Referring to the above matter, the information given by Amicus Curiae in the form of a letter is actually more likely to be used as evidence of guidance. Because the letter written by Amicus Curiae can only be valid if there is relevance to the content of other evidence and the letter written by Amicus Curiae is not a letter that can stand alone. As Eddy OS Hiariej also said, in the event that the letters do not meet the requirements to be declared as documentary evidence, the letters can be used as evidence of guidance. however, whether or not a letter can be used as evidence of guidance, everything is left to the judge's consideration.[[21]](#footnote-21)

1. **Legal Strength of Letters Made by Amicus Curiae as Evidence of Letters on Proof of Criminal Actions according to Criminal Procedure Law in Indonesia.**

Judges in deciding that someone is guilty of committing a criminal act or not, must refer to the negative theory of evidence (negatief wettelijke bewijstheorie), in which in determining a person guilty of committing a criminal act, the judge needs two valid evidence and is equipped with elements of the judge's conviction that states someone is guilty of a criminal act.[[22]](#footnote-22)Therefore, to determine whether a person is guilty or not, the judge needs valid evidence. Article 184 paragraph (1) of the Criminal Procedure Code has determined legal evidence according to the law in a limitative manner, including, among other things, witness statements, expert statements, letters, instructions, and statements of defendants. Besides the evidence mentioned in Article 184 paragraph (1) of the Criminal Procedure Code, it is not justified to be used to prove the guilt of the accused.[[23]](#footnote-23) To be able to prove the guilt or innocence of a defendant as charged by the Public Prosecutor, the strength of the evidence strongly supports the judge's decision in deciding cases in court.[[24]](#footnote-24)

According to Eddy OS Hiariej, basically the power of proof of each piece of evidence in evaluating the evidence of an indictment is the judge's authority. The judge has the authority to assess and determine the suitability of one evidence tool with another. The strength of the evidence itself lies in the evidence presented, whether the evidence submitted is relevant or not with the case being tried. In criminal procedural law, essentially the strength of all evidence is the same. This means that no one piece of evidence exceeds another, because evidence in a criminal case does not recognize hierarchy. However, there are provisions that require a link between one piece of evidence and another.[[25]](#footnote-25)

Letter evidence is one of several valid evidence in a criminal case. Letters that can be used as evidence are documents as mentioned in Article 187 of the Criminal Procedure Code. Regarding the letter written by Amicus Curiae, as discussed earlier by the author, it can be used as documentary evidence based on Article 187 letter d of the Criminal Procedure Code which, as long as the letter written by Amicus Curiae has links with other evidence such as witness testimony, expert testimony as well as the defendant's statement, so the letter made by Amicus Curiae can be used as documentary evidence. However,

According to M. Yahya Harahap, to assess the legal strength of evidence attached to documentary evidence, it can be viewed from a theoretical perspective and relates it to several evidentiary principles regulated in the Criminal Procedure Code.[[26]](#footnote-26) Therefore, to determine the legal strength of the letter made by Amicus Curiae, it must also be viewed from a theoretical point of view and connected with the principle of proof regulated in the Criminal Procedure Code.

1. From a formal perspective

From a formal perspective, the documentary evidence referred to in Article 187 letters a, b, and c of the Criminal Procedure Code are “perfect” evidence. This is because the forms of letters as mentioned in Article 187 letters a, b, and c of the Criminal Procedure Code are formally made according to the formality determined by statutory regulations. With the fulfillment of the formal provisions in its manufacture and made and containing official information from an authorized official and the preparation and information contained therein is made on an oath of office, therefore it is reviewed from a formal perspective of documentary evidence as referred to in Article 187 letters a, b, and c Criminal Procedure Code is evidence that has perfect value.[[27]](#footnote-27)

If the letters as referred to in Article 187 letters a, b, and c of the Criminal Procedure Code are viewed from a formal perspective, constitute perfect evidence, this is different from the letters referred to in Article 187 letter d of the Criminal Procedure Code. The letter mentioned in the article is only valid as documentary evidence, if the letter has relevance / connection with other evidence such as witness testimony, expert testimony, and statement of the defendant. When the letter has no relevance to other evidence, the letter cannot be used as documentary evidence. The above also applies to letters written by Amicus Curiae. Can the letter written by Amicus Curiae be used as evidence for the basic letter is Article 187 letter d of the Criminal Procedure Code. therefore, when viewed from a formal perspective,

1. In terms of material

From a material perspective, all forms of documentary evidence as stated in Article 187 of the Criminal Procedure Code, are not evidence that have binding legal force. The documentary evidence does not attach any binding legal force of evidence. The value of the legal strength of documentary evidence is basically the same as the legal strength of witness testimony and expert testimony. Namely, both have legal force as independent evidence.[[28]](#footnote-28) This means that the judge has the freedom to judge rather than the strength of the evidence.

Judging from this material point of view, the legal strength of letters does not see the perfection of evidence from a formal perspective. Even though the letters referred to in Article 187 letters a, b, and c of the Criminal Procedure Code are perfect evidence from a formal perspective, it does not mean that the letters mentioned in the article by themselves have binding legal force.[[29]](#footnote-29)It is the same with the letter written by Amicus Curiae. The letter written by Amicus Curiae basically does not have binding legal force. The judge is free to judge the letter that Amicus Curiae wrote. There is no obligation for the judge to accept the truth of the letter written by Amicus Curiae. However, the judge in exercising the power of freedom in the judicial review must be truly responsible.

After seeing the explanation of the legal power of letter proof, both from a formal and material perspective, it can be seen that the letter that Amicus Curiae wrote, from a formal perspective, is not a documentary evidence that has legal force as a perfect evidence. Meanwhile, from a material perspective, the letter made by Amicus Curiae is basically not a documentary evidence which has binding legal force. This means that the judge has the freedom to use the letter in his consideration or not. there is no obligation for the judge to be bound by the letter made by Amicus Curiae.

The main focus point in assessing the legal strength of letters made by Amicus Curiae as documentary evidence in proving a criminal case lies in the extent to which the letter written by Amicus Curiae has relevance / connection with other evidence and also the extent of the content / substance of the letter. what Amicus Curiae made convinced the judge. Therefore, basically the letter written by Amicus Curiae has a legal force which is free and non-binding. The assessment of the legal strength of the letter written by Amicus Curiae really depends on the judge. The judge can judge according to his conscience whether the letter made by Amicus Curiae is strong enough or not to be used as a basis for judge's consideration in deciding a case.

**CONCLUSION**

1. The legal position of the letter written by Amicus Curiae on proving a criminal act in Indonesia basically does not have a standard legal position. There is no regulation in criminal procedural law in Indonesia that states concretely the legal position of the letter Amicus Curiae wrote to serve as evidence. Either to be used as evidence for witness testimony, expert testimony, letters, instructions or statements of the accused.

However, although there are no concrete rules that regulate the legal position of the letter that Amicus Curiae made as evidence in proving criminal acts in Indonesia, in practice there were 3 (three) cases which the Panel of Judges made into the letter made by Amicus Curiae in their consideration as evidence. namely 1 (one) case by the Panel of Judges used the letter made by Amicus Curiae as evidence for expert testimony, namely by a judge at the Central Jakarta District Court and 2 (two) other cases by the Panel of Judges used as documentary evidence, namely judges at the District Court. Muaro Sijunjung, West Sumatra and Judge at the Denpasar District Court. On the other hand,

1. Regarding the legal power of the letter written by Amicus Curiae, it can be seen from 2 (two) points of view. First, from a formal perspective, the letter written by Amicus Curiae is not perfect evidence because the letter written by Amicus Curiae is only valid as evidence if the letter has relevance to other evidence. Second, from a material perspective, the letter written by Amicus Curiae basically does not have binding legal force. The judge is free to judge the letter that Amicus Curiae wrote. There is no obligation for the judge to accept the truth of the letter written by Amicus Curiae.

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