

The Urgency of Amicus Curiae in Court as a Basis for Judges' Consideration in Making Fair Decisions

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Abstract

Judges play a crucial role in law enforcement, needing to understand and apply societal values in their decisions, as law serves humanity. The concept of Amicus Curiae, or "friends of the court," refers to contributions from those not directly involved in a case but who have a significant interest in its legal issues. This study examines the importance of implementing Amicus Curiae in Indonesia's legal system to optimize justice and its impact on formulating fair decisions. Using a normative juridical approach, the research analyzes legal documents, case studies, and relevant literature through qualitative techniques. The findings suggest that incorporating Amicus Curiae can enhance judicial transparency, provide broader legal perspectives, and lead to more balanced judgments. This integration could improve the quality of judicial decisions, bolster public confidence in the judiciary, expand access to justice, and ensure outcomes align more closely with societal values. Ultimately, fostering a more inclusive legal environment through Amicus Curiae can empower marginalized voices, contributing to a more equitable judicial process. As such, it is essential for legal stakeholders to recognize and support the integration of Amicus Curiae in Indonesia's legal framework.

Keywords: Amicus curiae, justice, judges, legal application, judges' considerations, law enforcement.

Introduction

Regulations that merely interpret and lack normative provisions are challenging to implement in practice. Justice is not only realized through the formation of legal norms or laws, but real justice can only be felt through the knock of the judge's hammer in court. Departing from the issue of justice, it cannot be denied that the problem of law enforcement in Indonesia is still a major problem that has not been resolved properly (Butt, 2021). Plato once suggested that legal imperfections can be seen by predicting the possibility of the emergence of law enforcement practices that, although in line with the law, are contrary to human rights or a sense of justice. In the practice of law enforcement in Indonesia, many people are dissatisfied, even distrustful of law enforcement carried out by law enforcers, one of which is not fulfilling the value of justice. Therefore, judges should not only be the mouthpiece of the law (*les bouches, qui prononcent les paroles de la loi*) in looking at the law to decide a case, but consider three important components in the establishment of law, namely justice, certainty, and expediency (Huroiroh & Sushanty, 2022).

In law enforcement, ideally the main guidance is the basic values of the law itself as mentioned earlier. Judges are the main actors in the implementation of law

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enforcement functions. In the hands of a judge there is a great power and power to determine justice for justice seekers (Hartoyo & Sulistyowati, 2023). Related to this, the main issue is the justice of the community towards the judge's decision because in essence the court helps justice seekers to achieve a fair, clean, objective and professional judiciary. A judge will not be influenced by *prejudice* if he/she is objective and impartial (Žibaitė-Neliubšienė, 2019). *Prejudice* is usually influenced by the social and political background of the judge's own life in deciding each case and is also influenced by the way the judge understands or views his/her position and function (Dingake, 2020). This is because in deciding a case, there must be happy and unhappy parties. Therefore, justice must be prioritized. This is as Satjipto Rahardjo once said that talking about human relations means talking about justice issues (Harun, 2019).

The facts that occur today are inversely proportional to the ideals of law enforcement. In the micro sphere, there are many cases of injustice that reflect legal imbalances. An example of this is the case involving Grandma Minah, who was sentenced to prison for stealing three cocoa pods. This small incident turned out to have long-term consequences, with the legal process continuing until Grandma Minah was declared a defendant in the Purwokerto District Court (Detik News, 2023). This case illustrates how law enforcement in Indonesia is often blunt at the top and sharp at the bottom. In Grandma Minah's case, the offense committed was very minor, yet the law applied was extremely harsh, while high-profile criminals or those with strong connections often do not feel the law's sharpness. This case raises significant questions about justice in law enforcement in Indonesia. Law enforcement should not solely focus on formal legality but also on three main pillars: justice, certainty, and expediency (Irawati & Wijaya, 2023). As Satjipto Rahardjo has stated, the law exists for people, not people for the law. Therefore, in every ruling, judges should consider the social context and the conditions of the offender, rather than rigidly adhering to the text of the law (Kaplan et al., 2021).

Grandma Minah's case reflects one of the implications of implementing the civil law system in Indonesia, where written law becomes the primary source of law and influences judges' thinking styles. In this system, judges often feel bound by written rules without providing sufficient space to explore substantive justice values. Ejan Mackaay (2021) highlights that in the process of legal discovery (*rechtsvinding*), judges' mindsets are still shackled by formal legality or formal justice. This leads to rigid law enforcement that does not consider the living aspects of justice within society. In Grandma Minah's case, the application of law should also consider the principle of proportionality. Justice is not only about strictly applying the law but also about considering the social impact and the utility of the law for society. The law should serve to protect the community, not to oppress those at the lower levels. If law enforcement is sharp only against the lower classes while being blunt toward the upper classes, this indicates that the legal system has failed to achieve true justice (Clair, 2020).

Judges, when deciding a case, must explore, follow, and understand the values present in society, as mandated by Article 5 paragraph (1) of Law Number

48 of 2009 on Judicial Power, which underscores that the law exists to serve humanity, not the reverse. Thus, when the development of society continues to change, judges in law enforcement must also follow the changes that occur to meet the expectations of justice seekers by conducting legal discovery (*rechtsvinding*) to be able to apply it in concrete events submitted to them. This relates to evidence in the judicial process. In the Indonesian Criminal Procedure Code, proof is one of the important stages in the criminal justice system. Proving the guilt of a defendant should not be done arbitrarily because it has an impact on the sentencing of the defendant. Evidentiary activities in criminal law basically aim to obtain truth within juridical limits, not within absolute limits, because absolute truth is difficult to obtain (Karagiannis & Vergidis, 2021). In the development of evidentiary mechanisms in the judiciary, there is a concept that is commonly heard but should be taken into account, namely *Amicus Curiae*. *Amicus Curiae*, or "friends of the court," refers to contributions from individuals or organizations that are not directly involved in a case but hold a vested interest in its outcome (Farber, 2019). The concept of *Amicus Curiae* is a solution to the difficulty of realizing judges' decisions based on justice, certainty and expediency.

The concept of *amicus curiae*, or "friend of the court," originates from Roman law. In ancient Rome, the term referred to someone, usually a legal expert or public official, who voluntarily provided information or advice to a judge to help clarify legal issues or offer an impartial opinion. The practice later spread through English common law, where it became more formalized as a method for third parties to aid the court in achieving fair judgments, particularly in intricate cases. In the United States, the use of *amicus curiae* became a prominent feature of the legal system, particularly through the rise of public interest litigation in the 20th century (Izarova et al., 2019). The role of *amicus curiae* was significantly expanded by the U.S. Supreme Court, allowing not only legal experts but also advocacy groups, industry organizations, and governmental entities to submit briefs to influence the outcome of major legal decisions. This practice has had a notable impact on landmark cases involving civil rights, environmental law, and constitutional interpretation.

In Indonesia, the notion of *amicus curiae* is fairly new but has been progressively acknowledged and utilized in the judicial system (Suntoro, 2022). Although not explicitly regulated in Indonesian law, the role of *amicus curiae* has gained attention in high-profile legal cases, such as the Prita Mulyasari case and the Upi Asmaradana case, where third-party interventions sought to provide judges with broader perspectives on matters of public interest. Legal scholars and practitioners in Indonesia have advocated for more structured guidelines regarding the use of *amicus curiae* to enhance judicial decision-making and promote justice (Thomas & Liman, 2024). This development reflects the growing recognition of *amicus curiae* as a valuable tool in addressing complex legal issues and ensuring that courts are informed by diverse perspectives.

Amicus Curiae has been used by judges in Indonesia as a consideration before deciding cases. One of them was in the case of the premeditated murder of Brigadier Yosua in 2022. In that case, the superior, namely the Head of the Police's Profession

and Security Division (Kadiv Propam), Ferdy Sambo, was the brain of the murder who ordered his subordinate Richard Eliezer to commit the murder. Then in the trial process of this case, Richard Eliezer has become the key to uncovering the previous murder has been designated as a "*Justice Collaborator (JC)*". *Justice Collaborator* is a concept to utilize information from criminals, the concept of collaboration between law enforcement officials and criminal offenders (Bambang Sugiri et al., 2021). It all started with the prosecutor's sentence against the defendants, which the public felt was very unfair. As is known in this case the prosecutor actually demanded a sentence for him with 12 years in prison while other 'co-conspirators' were prosecuted less, which led to 122 academics consisting of professors and lecturers from various universities declaring themselves as friends of the court or "*amicus curiae*" for the defendant Richard Eliezer. The academics, who are members of the Indonesian Academics Alliance, submitted their support to the South Jakarta District Court on Monday, February 6, 2023. They supported Bharada E with the consideration that he was a JC. Richard Eliezer received JC status from the Witness and Victim Protection Agency (LPSK) because he had exposed the murder scenario made by his former superior, to cover up the murder of Brigadier Yosua. Then, the sentence imposed on Richard Eliezer was lighter than the prosecutor's demands. This is considered thanks to the 'legal concern' of the previous *amicus curiae* (H. Asmu'i Syarkowi, 2023).

Amicus Curiae has already been recognized in Indonesia although it has only been applied in a few cases. The existence of *Amicus Curiae* brings fresh air to the reform of the judicial system in Indonesia (Wijaya & Nasran, 2021). The concept of *Amicus Curiae* allows third parties with an interest in a case to convey their legal perspective to the court. The provision that states "the interested party may also request that new materials be submitted" indirectly leads to the concept of *Amicus Curiae* as a form of community involvement in the criminal justice process. Although there is no specific regulation on *Amicus Curiae* in Indonesian criminal law, the function of *Amicus Curiae* as a source of information that can clarify facts and legal concepts makes it relevant in the context of evidence. In the trial process, the evidentiary stage is very important because it is part of the search for truth regarding whether the defendant has committed a criminal act.

Amicus Curiae can serve as a consideration for judges in imposing punishment, although its status as official evidence cannot be recognized. Judges can only impose a sentence if there are at least two valid pieces of evidence under the law, coupled with the judge's conviction. In this context, *Amicus Curiae* plays a role in providing relevant information to support the judge's consideration before the final decision is made. The existence of *Amicus Curiae* shows the potential to increase transparency and accountability in the Indonesian justice system, and reflects public participation in law enforcement (Sukinta, 2021).

Research Methods

The research method employed is a scientific approach aimed at obtaining valid data, with the objective of discovering, proving, and advancing knowledge

that can be used to understand, address, and anticipate legal issues. This study utilizes a normative juridical research method, focusing on primary legal materials through an examination of theories, legal concepts, principles, and relevant laws and regulations. Normative juridical research involves analyzing library materials or secondary data as the primary source, tracing legal regulations and literature pertinent to the issues under investigation. It includes a statutory analysis of laws governing *Amicus Curiae* to assess its role in judicial decision-making, examines legal cases where *Amicus Curiae* has influenced court rulings to understand its impact on fairness, compares its application across various legal systems to identify best practices for Indonesia, and explores the fundamental concepts and implications of *Amicus Curiae* in the judicial process through relevant legal literature.

Research Design

The research follows a normative juridical design, focusing on the analysis of legal materials such as laws, regulations, legal cases, and doctrines for comprehending the function of *Amicus Curiae* in the justice system.

Data Collection

The data in this study are collected through library research, focusing on the review of primary legal materials (laws, regulations, court decisions) and secondary materials (legal literature, journals, and scholarly publications). These sources are chosen for their relevance to the research topic of *Amicus Curiae* in legal proceedings.

Data Analysis Method

The data obtained from the secondary sources are analyzed using qualitative analysis techniques. This method allows for an in-depth understanding of the legal principles and theories underpinning the use of *Amicus Curiae* and its implications for judicial fairness. The analysis will synthesize findings from statutes, case law, comparative legal studies, and conceptual insights to draw conclusions about the role of *Amicus Curiae* in supporting judicial decision-making.

Results and Discussion

Amicus Curiae In Court As A Basis For Judges' Consideration In Making Fair Decisions

1. The Urgency of *Amicus Curiae* in the Indonesian Legal System to Optimize and Realize Legal Justice

Black's Law Dictionary describes *Amicus Curiae* as a party that is not involved in a case but submits, or is asked by the court to provide, a written opinion (known as an *Amicus Brief*) in the ongoing proceedings due to their interest in the matter. *Amicus Curiae* aims to shed light on the case being examined by the court (Shah et al., 2024). *Amicus Curiae* does not intervene in the matter being reviewed by the panel of judges, but is only limited to sharing opinions relating to facts and

legal issues with related problems. *Amicus Curiae* is used to clarify factual issues, explain the legal issues that are involved and represent certain groups (Born & Forrest, 2019). Therefore, *Amicus Curiae* can be used by judges as material to examine, consider and decide cases.

The concept of *Amicus Curiae* within the Indonesian legal system is rooted in Article 5, paragraph (1) of Law Number 48 of 2009 regarding Judicial Power, which states that "judges and constitutional judges are required to investigate, observe, and comprehend the legal values and sense of justice that exist in society." Then, in Constitutional Court Regulation Number 6 of 2005 concerning Procedural Guidelines in Law Review Cases Article 14, paragraph (4) also states that parties with indirect interests are: a. parties whose position, main duties, and functions need to be heard; or b. It can be said that the concept of *Amicus Curiae* has been partially adopted by the Constitutional Court in its regulations for parties who need to be heard as *ad informandum*, specifically those whose rights and/or authorities are not directly impacted by the subject matter of the petition but are highly concerned about it (Widiyantoro, 2022).

Another country that has implemented *Amicus Curiae* is South Africa. In South Africa, *Amicus Curiae* is officially recognized through judicial practice and legislative measures, with provisions outlined in the Constitutional Court Rules of 1994 and later in the High Court procedural rules in 2000. These rules allow individuals with an interest in a case to participate as *Amicus Curiae*, given they have consent from all parties and adhere to specific conditions. The application of *Amicus Curiae* is primarily limited to constitutional matters, enabling judges to consider additional evidence to ensure fair decisions. Its significant role is particularly evident in human rights litigation, including landmark cases like the Grootboom case, where *Amicus Curiae* has contributed to protecting economic, social, and cultural rights (Bagashka et al., 2024). The involvement of NGOs in submitting briefs further enhances the quality of court decisions, demonstrating *Amicus Curiae*'s positive impact on the South African legal system (Bagashka et al., 2024).

The concept of *Amicus Curiae* has considerable potential in the Indonesian legal system to optimize and realize legal justice. By integrating *Amicus Curiae*, the legal process can better reflect the values of justice, ensuring litigants get legal certainty and tangible benefits (Setiawan et al., 2024). This mechanism assists judges in their duty to explore and uphold community values, enhancing the overall integrity of court decisions. In addition, *Amicus Curiae* can be used not only during trials but also to support investigators at an early stage of the legal process (Whittaker, 2022). *Amicus Curiae* has been successfully applied in law enforcement, as seen in the premeditated murder case against Bripka Yosua. In this case, Richard Eliezer, a Justice Collaborator (JC), revealed important facts at trial. When the prosecutor's charges were deemed unfair, a group of academics took on the role of *amicus curiae* to support Eliezer. This participation contributed to the judge's judgment, who ultimately handed down a lighter sentence. This situation highlights how *Amicus Curiae* can influence legal decisions, as well as

demonstrating the importance of community involvement in promoting fair law enforcement in Indonesia. Thus, the urgency of *Amicus Curiae* in Indonesia's legal system is crucial to optimize and realize legal justice, give a voice to the community, and ensure that the judicial process can better reflect the expected values of justice.

2. Judges' Consideration of *Amicus Curiae* in Making Just Decisions

In criminal justice, Judges can take *Amicus Curiae* into account because in the Criminal Procedure Code the evidentiary system adopted is a negative statutory evidentiary system whose provisions show that in proof two valid pieces of evidence are required and the judge's confidence. While *Amicus Curiae* may not qualify as formal evidence, it can still serve as a consideration for the judge, because in the theory of proof the law negatively not only requires a minimum of two credible pieces of evidence, along with the judge's conviction (Linda Ayu Pralampita, 2020). This means that *Amicus Curiae* can help judges to be fair and wise in deciding a case. This provision requires judges to gather as much information and opinions as possible from diverse segments of society, including litigants and feedback from parties not involved in the case. In other words, *Amicus Curiae* can also be a means of rechtsvinding for judges to optimize and realize legal justice. *Amicus Curiae* provides alternatives to a case in the form of factual information, knowledge of a problem, and an analysis of the policy impacts resulting from a judge's decision (Aida Mardatillah, 2023).

The presence of *Amicus Curiae* represents a legal innovation aimed at providing judges with supplementary materials or information to support their legal reasoning and decisions, as well as assisting judges in carrying out their the duty to uncover societal values of justice by presenting testimony both verbally in court and through written statements (Sukinta, 2021). This shows that *Amicus Curiae* makes judges more confident in determining their decisions, because *Amicus Curiae* not only examine and decide cases that are case-based, but also resolve social issues that may arise. Within the judicial context, *Amicus Curiae* helps balance the interests of the parties involved and the public, while enhancing the quality of court decisions by providing valuable empirical information. *Amicus Curiae* in this case is a form of community participation in a case, as well as a form of supervision carried out by the community towards ongoing law enforcement (Susanti & Saintio, 2023). This is in accordance with the principle of the rule of law adopted by Indonesia that every state decision must guarantee the participation of the community in the decision-making process because *Amicus Curiae* can be used as a forum for the community to participate in the judicial process by providing information related to existing facts so that it will encourage the realization of the values of legal justice (Almeida, 2019).

In several cases that occurred in Indonesia, judges have used *Amicus Curiae* as a consideration before deciding cases, one of which was in the Prita Mulyasari case. Prita Mulyasari was accused of committing criminal defamation against Omni International Hospital in verdict number 1269/Pid.B/2009/PN.Tng on charges of violating Article 27 paragraph (3) of Law Number 11/2008 on

Electronic Information and Transactions, Article 310 and Article 311 of the Criminal Code (KUHP). The party who filed the *Amicus Curiae* was Anggara, a representative of five NGOs working in the field of law, to defend Prita Mulyasari's right to freedom of speech. The participation of ELSAM, ICJR, PBHI, IMDLN, and YLBHI in the Prita Mulyasari case was to bring an *Amicus Curiae* to provide views to the panel of judges regarding the criminal offense of insult which is categorized as an article that can ensnare anyone without considering the discrepancy between the offense and the provisions of human rights that have been recognized by the State of Indonesia. The five institutions provided recommendations to the panel of judges examining case number 1269/Pid.B/2009/Pn.Tng between Prita Mulyasari and the Republic of Indonesia (Fadil Aulia & Muchlas Rastra Samara Muksin, 2020).

In decision number 1269/Pid.B/2009/PN.Tng, it is not stated that the judge can consider *Amicus Curiae*, but according to the opinion of several judges, *Amicus Curiae* can be taken into consideration by the judge, when it contains three values or elements, namely legal certainty, usefulness, and justice. There are other cases that also lead to the use of *Amicus Curiae*, such as the Upi Asmaradana case. This case began with Upi being named a suspect by the South and West Sulawesi police because he filed a complaint with the National Police Headquarters and the Press God, and was charged with defamation, namely Article 310 and Article 317 of the Criminal Code (KUHP) with the accusation that he was slandering in writing. In this case, it is interesting to note how LBH Press was able to bring new changes to the development of positive law in Indonesia by introducing *Amicus Curiae* in the Upi Asmaradana trial. The *Amicus Curiae* filed in this case added information for the panel of judges examining the case. This can be said to be the same as the Prita Mulyasari case which was also used to add information for the judge in examining the case, or as another material to increase the judge's confidence in making a decision.

Based on this description, the concept of *Amicus Curiae* can be used as a means of *rechtsvinding* (legal discovery) for judges in issuing fair decisions. The existence of *Amicus Curiae* aims to shed light on the case being examined by the court and does not intervene in the issues being examined by the panel of judges, but is only limited to expressing opinions relating to facts and legal issues with related problems. In several cases in Indonesia, judges have used *Amicus Curiae* as a consideration before deciding cases, such as the cases of Prita Mulyasari and Upi Asmaradana. The *Amicus Curiae* submitted in these cases added information to the panel of judges examining the case as another material to increase the judge's confidence in making a decision. In other words, *Amicus Curiae* can be a *rechtsvinding* tool for judges to issue fair decisions.

Summary of the Study

Based on the formulation of the problem and the entire description previously stated, conclusions can be drawn as well as answers to the problems in this study, namely: The use of the Amicus Curiae concept in the legal system in Indonesia can optimize and realize legal justice by providing a sense of justice, ensuring legal certainty, and offering legal benefits for the litigants. Amicus Curiae aids judges in examining the values of justice found within society and can be utilized not only during the trial phase but also at the investigation stage. In South Africa, Amicus Curiae is formally recognized, significantly impacting jurisprudence and becoming a key element in law enforcement. Moreover, Amicus Curiae serves as a means of rechtsvinding (legal discovery) for judges in issuing fair decisions, aiming to clarify the case without intervening in the issues examined by the panel of judges, limiting itself to expressing opinions on facts and legal issues.

In Indonesia, the legal basis for Amicus Curiae, although not explicitly regulated in specific legislation, can be derived from the general principles of law, such as the principle of openness and fairness in the judicial process. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that every person has the right to recognition, guarantee, protection, and certainty before the law, as well as equal treatment in the face of the law. This implies that community participation in the judicial process, including through Amicus Curiae, can help achieve legal justice. Judges in Indonesia have used Amicus Curiae in notable cases such as the Prita Mulyasari case, Upi Asmaradana, and the Brigadier Yosua murder case, where it provided additional information to the panel of judges as supplementary material to enhance the judge's confidence in making decisions. Thus, Amicus Curiae can be a valuable rechtsvinding tool for judges in delivering fair judgments.

Implications and Contributions of the Study

This study on the role of Amicus Curiae in the Indonesian legal system highlights several critical implications and contributions to the field of law and jurisprudence. Firstly, the research underscores the potential of Amicus Curiae to enhance judicial processes by promoting legal justice, certainty, and benefits for litigants. The application of Amicus Curiae can serve as a vital tool for judges to explore societal values of justice, thus fostering a more equitable legal system.

The recognition of Amicus Curiae's role extends beyond the courtroom, as it can also assist during the investigation stage. This flexibility allows for a more comprehensive approach to justice, wherein legal insights and expert opinions can be integrated at multiple stages of the legal process. By drawing on the example of South Africa, where Amicus Curiae has been formally recognized and integrated into the jurisprudence, the study suggests potential pathways for Indonesia to enhance its legal system through similar recognition and application.

Furthermore, the study provides practical insights by examining cases in Indonesia, such as those involving Prita Mulyasari, Upi Asmaradana, and the Brigadier Yosua murder case. These examples illustrate how Amicus Curiae submissions have contributed additional information to the judicial process, reinforcing the judges' confidence and aiding in the delivery of fair decisions. This practical application demonstrates the concept's utility as a *rechtsvinding* tool, facilitating legal discovery and supporting judges in navigating complex legal and factual issues.

The research contributes to a broader understanding of how Amicus Curiae can be leveraged to improve judicial outcomes and strengthen the rule of law. It encourages policymakers and legal practitioners to consider formalizing the role of Amicus Curiae in the Indonesian legal framework, drawing lessons from international experiences to enhance legal practices and judicial fairness. Through this study, the potential for Amicus Curiae to be a transformative element in legal systems is further recognized, paving the way for future research and policy development in this area.

Limitations and Future Suggestions

This study on the role of Amicus Curiae in the Indonesian legal system faces several limitations, including a limited jurisdictional scope that primarily focuses on Indonesia, with only brief comparisons to South Africa, potentially overlooking insights from other jurisdictions. The reliance on specific high-profile cases, such as those involving Prita Mulyasari and Brigadier Yosua, may not fully represent the broader application of Amicus Curiae, especially in less-publicized or lower-court cases. Additionally, the lack of empirical data limits the ability to measure the actual impact of Amicus Curiae on judicial outcomes, while cultural and legal differences between countries are not thoroughly explored. The legal basis for Amicus Curiae in Indonesia, although not specifically regulated in legislation, can be traced from more general legal principles, such as the principles of transparency and fairness in the judicial process. Article 28D, paragraph (1) of the 1945 Constitution affirms that every individual is entitled to recognition, guarantees, protection, and legal certainty that is fair, along with equal treatment under the law. This suggests that public involvement in the judicial process, including through Amicus Curiae, can contribute to the attainment of legal justice.

To address these limitations, future research should include comparative studies across various jurisdictions to understand diverse practices and benefits, broader analyses of different types of cases, as well as empirical research to measure the influence of Amicus Curiae on judicial decision-making. Furthermore, researchers should also consider how the implementation of Amicus Curiae can be adapted to fit Indonesia's legal context and how this can contribute to existing positive legal principles, as regulated in the Criminal Procedure Code, as well as other relevant legal norms.

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