

Transforming Amicus Curiae Through an Experimental Jurisprudence Framework in Judicial Decision-Making

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Abstract

This study examines the contemporary role of amicus curiae in strengthening judicial reasoning through the integration of the Experimental Jurisprudence (X-Jur) framework within the Indonesian legal system. The research addresses the absence of explicit regulations governing amicus curiae despite its increasing use in high-profile cases, creating inconsistencies in judicial treatment and undermining normative clarity. Using a normative legal method complemented by statutory, conceptual, comparative, and case approaches, this study analyzes the doctrinal position of amicus curiae and evaluates its potential as an epistemic instrument that enriches judicial deliberations with empirical, psychological, and social perspectives. The findings demonstrate that amicus curiae provides valuable epistemic input that enhances judicial reflection; however, its current acceptance remains discretionary and fragmented due to the lack of procedural guidelines. The integration of X-Jur reveals a strong empirical connection between public perceptions of justice and judicial reasoning, offering a data-driven foundation for improving the legitimacy and social responsiveness of court decisions. The novelty of this research lies in conceptualizing amicus curiae as a methodological bridge between normative doctrine and empirical cognition, and in proposing a regulatory model—through a Supreme Court Regulation—that institutionalizes amicus curiae as a formal mechanism within Indonesia’s civil law tradition. This framework is essential for strengthening transparency, judicial reflectiveness, and the pursuit of substantive justice in modern adjudication.

Keywords: Amicus Curiae; Experimental Jurisprudence (X-Jur); Judge; Justice

1. INTRODUCTION

Amicus curiae refers to a party not directly involved in a case but having an interest in the issues being discussed and providing legal opinions to the court for the judge's consideration. In the Indonesian legal system, amicus curiae is not yet explicitly regulated in legislation, so aspects such as who can submit it, the form of submission, and the procedures for its use still lack legal clarity. The practice of amicus curiae first appeared in criminal proceedings in Indonesia around 2008 in the case of Prita Mulyasari, which was filed in the Tangerang District Court. This practice continues to this day, and by 2024, over 60 amicus curiae briefs had been filed in criminal cases in Indonesia. The amicus curiae was submitted by various parties, ranging from academics to non-governmental organizations (NGOs) such as ICJR, PAHAM, YLBHI, KontraS, ELSAM, Komnas HAM, IMDLN, and several other organizations.¹ This practice is generally carried out in cases that receive widespread public

¹ Fadil Aulia, “Menyoal Praktik Amicus Curiae Dan Kebijakan Mahkamah Agung,” Dandapala, 2025, <https://dandapala.com/article/detail/menyoal-praktik-amicus-curiae-dan-kebijakan-mahkamah-agung#:~:text=Eksistensi Amicus Curiae,terdapat pengajuan amicus curiae didalamnya.>

attention, so recently, almost every case that attracts public interest is accompanied by the filing of an amicus curiae.

However, the lack of a clear legal basis leads to inconsistent treatment of amicus curiae documents by judges and creates inconsistencies in their weight of influence on court decisions. From an academic perspective, this condition highlights the urgency for a systematic legal and empirical study to clarify the legal status of amicus curiae in the Indonesian judicial system. From a practical standpoint, the absence of regulation also impacts the quality of judicial consideration because it limits judges' access to broader, data-driven perspectives in assessing substantive justice. Therefore, this research is important for formulating a normative and institutional framework that can formally recognize and regulate the role of amicus curiae in strengthening the integrity, reflectiveness, and quality of judicial deliberations, as mandated in Article 5 paragraph (1) of Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.

Legal phenomenology reveals that human understanding of law is inseparable from individual experiences formed within a limited and cultural lifeworld. The awareness of a legal subject is not objective or absolute but is always influenced by the social and cultural context in which the subject exists. Therefore, legal understanding cannot be separated from experience and subjective interpretation of the norms prevailing in society.³ Within these human limitations, judges need external support in the form of epistemic input such as amicus curiae, which can enrich legal reflection and assessment. Without this support, the judge's task of exploring the legal values and sense of justice that live within society will be less than optimal. Although originating from the common law tradition, the adaptation of amicus curiae in Indonesia aligns with the civil law principle of judicial independence, as long as it functions as a complementary instrument to enrich judicial reasoning rather than as an external intervention.

In line with the Experimental Jurisprudence (X-Jur) approach, which uses empirical and cognitive methods to understand public perceptions of justice,⁴ amicus curiae can make a significant contribution to strengthening judges' decisions based on data and social experience. The X-Jur approach emphasizes that perceptions of justice cannot be measured solely by the subjectivity of judges but must be supplemented with empirical perspectives from other parties. Thus, the existence of amicus curiae becomes an academic and practical necessity to ensure that the judicial process in Indonesia becomes increasingly responsive to the legal awareness that exists within society.

Studies on amicus curiae in Indonesia have been conducted by various researchers using different approaches. Sukinta highlights the practice of amicus curiae as a common law legal

³ Maria Gołębiewska, "The Concept of Cultural Normativity in the Context of Phenomenology of Law," *Eidos: A Journal for Philosophy of Culture* 6, no. 3 (2022), <https://doi.org/10.14394/eidos.jpc.2022.0026>.

⁴ Joshua Knobe and Scott Shapiro, "Proximate Cause Explained: An Essay in Experimental Jurisprudence," *University of Chicago Law Review* 88, no. 1 (2021), <https://doi.org/10.2139/ssrn.3544982>.

tradition adopted in the Indonesian criminal justice system through an empirical and case approach but has not yet elaborated on its influence on the quality of judicial considerations.⁵ Fadil Aulia and Muchlas Rastra Samara Muksin researched its status as documentary evidence based on Article 187 of the Criminal Procedure Code (KUHP) using a normative method but limited to legal analysis without empirical evaluation.⁶ Komang Marga Triani and Ni Nyoman Juwita Arsawati examined the role of amicus curiae in child cases using a normative legal method, emphasizing the philosophical value and child protection, but without a comparative study or analysis of its practice.⁷ Dwi Herman Sucipta and I Made Wirya Darma examined the aspects of ius constitutum and ius constituendum using a normative approach, but they have not yet formulated a concrete regulatory model.⁸ Ni Putu Widyaningsih emphasized the function of amicus curiae as a form of judicial law-finding in cases involving children who use narcotics, although the mechanism for its acceptance in court has not yet been discussed.⁹ Abdul Kholiq highlights the philosophical aspects of the judge's role in achieving substantive justice, but it remains conceptual without a framework for implementation.¹⁰ Agus Suntoro emphasized the urgency of formulating Supreme Court Regulations on amicus curiae through a normative approach. All of these studies still focus on normative and descriptive aspects without an interdisciplinary approach.¹¹ Therefore, this research presents novelty by using the X-Jur perspective to assess how amicus curiae can enrich judges' reflection in finding the law based on empirical data and social perceptions and by offering a conceptual model for the Supreme Court to formulate regulations that are in accordance with the character of the Indonesian legal system.

This research aims to explain X-Jur as an interdisciplinary approach that integrates legal philosophy, psychology, and cognitive science to understand how society interprets legal concepts empirically. Additionally, it examines the legitimacy and role of amicus curiae in judicial decisions through the X-Jur framework, demonstrating how societal empirical views and social values can enhance judges' legal considerations for achieving humane and contextual justice.

⁵ Sukinta, "Konsep Dan Praktik Pelaksanaan Amicus Curiae Dalam Sistem Peradilan Pidana Indonesia," *Online Administrative Law & Governance Journal*, vol. 4, 2021.

⁶ Fadil Aulia and Muchlas Rastra Samara Muksin, "The Position of Amicus Curiae under the Indonesian Law of Evidence," *Jurnal Media Hukum* 27, no. 2 (2020), <https://doi.org/10.18196/jmh.20200152>.

⁷ Ni Komang Marga Triani, "Tinjauan Yuridis Kedudukan Amicus Curiae Terhadap Anak Pelaku Pelecehan Seksual," *Jurnal Analisis Hukum*, 2021.

⁸ Dwi Herman Sucipta and I Made Wirya Darma, "Amicus Curiae as the Development of Evidence in Criminal Procedure Code," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022), <https://doi.org/10.23920/jbmh.v7i1.576>.

⁹ Ni Putu Widyaningsih, "Amicus Curiae Dalam Proses Peradilan Pidana Anak Sebagai Pengguna Narkotika," *Jurnal Kertha Semaya* 8, no. 7 (2020).

¹⁰ Abdul Kholiq, "Amicus Curiae: Position and Role in Issuing Decisions by Judges as an Effort to Achieve Substantive Justice," *Veteran Law Review* 6, no. 2 (2023), <https://doi.org/10.35586/velrev.v6i2.6713>.

¹¹ Agus Suntoro, "Urgence and Challenges of Regulation of Amicus Curiae in the Judicial System," *Jurnal Hukum Dan Peradilan* 11, no. 3 (2022), <https://doi.org/10.25216/jhp.11.3.2022.523-544>.

2. METHOD

This research uses a normative juridical method because it aims to examine the legal concept of amicus curiae, which is not explicitly regulated in the Indonesian legal system, through analysis of legislation, comparison of practices in various countries, and the development of an X-Jur-based conceptual approach.¹² This approach is considered the most appropriate because the issues being studied are conceptual and normative, not empirical, thus requiring analysis of existing legal doctrines, principles, and rules and their relevance to the reform of the Indonesian judicial system. The statutory approach is used to examine the normative provisions related to judicial power and public participation in the judicial process, particularly Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, in order to identify gaps and the need for formal regulation of amicus curiae. The comparative approach is used to compare amicus curiae arrangements and practices in various countries, such as the United States, Brazil, India, and France. Through this approach, the research gains a comparative overview of the amicus curiae model of acceptance, roles, and legitimacy across various legal systems, allowing for its proportional adaptation into the Indonesian legal system, which is characterized by civil law. The case approach is used to analyze the practice of amicus curiae in court decisions in Indonesia, at both the general court level and the Constitutional Court, to assess the extent to which the existence of amicus curiae has been considered as part of the judge's legal reasoning (*ratio decidendi*) despite not being normatively regulated. A conceptual approach is used to build a framework that integrates the concept of amicus curiae with the principles of experimental jurisprudence. This approach serves to explain the relationship between the normative, psychological, and empirical dimensions in the judge's decision-making process, as well as provide a theoretical foundation for developing a regulation model for amicus curiae that is appropriate for the Indonesian social context and legal system. Thus, the combination of these four approaches provides a comprehensive scientific justification for examining amicus curiae not only as a practical phenomenon but also as a legal concept that requires a strong normative and methodological foundation within the framework of reforming the Indonesian judicial system.

3. RESULTS AND DISCUSSION

3.1 Experimental Jurisprudence: An Interdisciplinary Approach to Understanding Law

3.1.1 Definition and Scope of Experimental Jurisprudence

Until now, the role of psychology in law has usually been limited to things that are directly considered "psychological," such as cases involving trademark confusion or a witness's ability to remember an event. This approach tends to support the traditional legal perspective without truly addressing how society understands legal concepts more deeply. However, recently, a new approach called X-Jur has emerged, which is beginning to change

¹² Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, 2022.

this perspective. This approach strengthens existing legal analysis by systematically investigating how laypeople understand fundamental legal concepts such as causation, consent, ownership, and contract.¹³

X-Jur emerged as a critique of the traditional approach to legal philosophy, which has relied too heavily on the intuition of experts and thought experiments, without incorporating empirical data from the general public. Although normative reflection and reasoning remain important, this old approach is considered inadequate because it does not test whether legal philosophers' intuitions truly align with how society views the law.¹⁴ X-Jur is here to fill that void by using empirical methods such as surveys and cognitive experiments. This method involves the general public, law students, and even judges to understand how legal concepts are widely understood by society.

In response to the speculative approach in legal philosophy, X-Jur offers an alternative, data-driven method. For example, in the classic debate about the concept of "reasonableness," the traditional approach tends to rely solely on theoretical arguments without considering how society views what is reasonable in a specific social context.¹⁵ By utilizing tools from psychology and cognitive science, this approach attempts to bridge that gap by examining how laypeople make legal judgments in real life.

This approach is considered radical because it is methodologically very different from classical legal philosophy. While traditional legal philosophers use "armchair methods" of reflection, X-Jur emphasizes the importance of empirical testing of legal intuitions from both the general public and professionals. The main goal is to understand the psychological mechanisms that shape the concept of law.¹⁶ This approach fundamentally challenges the assumption that questions like "What is law?" can only be answered normatively or metaphysically and instead encourages more open and data-driven discussions in legal philosophy.

X-Jur fundamentally differs from traditional legal approaches because it uses controlled experiments to investigate the meaning of legal concepts based on societal perspectives. Law is not only seen as a system of rules understood through normative logic but also as a social and psychological phenomenon that can be studied empirically. X-Jur researches how the

¹³ Roseanna Sommers, "Experimental Jurisprudence: Psychologists Probe Lay Understandings of Legal Constructs," *Science*, 2021, <https://doi.org/10.1126/science.abf0711>.

¹⁴ Kevin Tobia, "Experimental Jurisprudence," *The University of Chicago Law Review* 89, no. 3 (2022): 735–802, <https://ssrn.com/abstract=3680107>.

¹⁵ Christopher Brett Jaeger, "Reasonableness from an Experimental Jurisprudence Perspective," *The Published Version Is Forthcoming in Cambridge Handbook of Experimental Jurisprudence* (Kevin Tobia, Ed.), 2023, 1–15, https://www.researchgate.net/profile/Christopher-Jaeger/publication/371504040_Reasonableness_from_an_Experimental_Jurisprudence_Perspective/links/66378c2d08aa54017adca7e1/Reasonableness-from-an-Experimental-Jurisprudence-Perspective.pdf.

¹⁶ Raff Donelson, "Experimental Approaches to General Jurisprudence," in *Advances in Experimental Philosophy of Law*, 2023, <https://doi.org/10.5040/9781350278301.0008>.

public understands legal terms, responds to policies, or reacts to specific legal language.¹⁷ So, X-Jur provides external criticism of the legal system and often challenges dogmatic assumptions within the legalistic tradition.

This approach makes a significant contribution to enriching contemporary legal studies by examining law through data and social perceptions. X-Jur opens up new avenues for reflection on the validity of legal concepts that have long been considered certain, and it fosters collaboration between legal philosophy and the social sciences. Amidst the challenges of the times to the legitimacy of law, understanding how law is perceived and experienced by society becomes crucial for law to remain relevant and meaningful.

Regarding legal philosophy, X-Jur offers a different approach compared to the law and psychology tradition. While law and psychology focuses on applying psychological findings to existing judicial cases—such as assessing a defendant's capacity or a witness's credibility—X-Jur starts from questions of legal philosophy and attempts to test normative assumptions through empirical methods. This approach does not seek a formalistic definition of the concept of law as in classical analysis, nor is it merely a survey of public opinion like some purely descriptive X-Jur studies.¹⁸ Conversely, X-Jur attempts to explore how society interprets normative principles such as the rule of law, especially when dealing with law violations laden with moral values.¹⁹

For example, research by Ubertone and Rocchè shows that emotions can unconsciously influence judges' decisions, even though normatively these decisions are supposed to be free from emotional influence.²⁰ By connecting normative legal theory and psychological reality, X-Jur opens up opportunities for legal reform that is more sensitive to the affective and cognitive aspects of legal actors. This strengthens X-Jur's position as an interdisciplinary approach that not only questions the validity of classical legal intuition but also provides an empirical basis for legal reforms that are more adaptable to how society understands and responds to law in everyday practice.

From this perspective, X-Jur can be directly linked to the role of amicus curiae as a bridge between empirical public perception and judicial reasoning. An amicus curiae, which presents social, moral, and contextual arguments in court, can serve as a form of "legal experiment" in practice—reflecting how society interprets justice, fairness, and responsibility. In this sense, X-Jur provides a methodological foundation for understanding

¹⁷ Doron Dorfman, "Experimental Jurisprudence of Health and Disability Law," *SSRN Electronic Journal*, 2022, <https://doi.org/10.2139/ssrn.4246118>.

¹⁸ Corrado Roversi et al., "Alice in Wonderland: Experimental Jurisprudence on the Internal Point of View," *Jurisprudence* 14, no. 2 (2023), <https://doi.org/10.1080/20403313.2022.2109884>.

¹⁹ Neele Engelmann et al., "Apply the Laws, If They Are Good: Moral Evaluations Linearly Predict Whether Judges Should Enforce the Law," *Cognitive Science* 48, no. 10 (2024): 1–33, <https://doi.org/10.1111/cogs.70001>.

²⁰ Michele Ubertone and Giuseppe Rocchè, "Can Disgust Predict Legal Decision-Making?: An Experimental Jurisprudence Perspective on Gut Feelings and the Rule of Law," *Isonomía* 61 (2024): 279–313, <https://www.isonomia.itam.mx/index.php/revista-cientifica/article/download/758/2728>.

and evaluating the extent to which the views presented by the amicus curiae resonate with the collective sense of justice that exists within society.

This relevance is particularly pertinent to the Indonesian legal context, especially as stipulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which mandates judges to "explore, follow, and understand the legal values and sense of justice that exist within society." By integrating X-Jur with this principle, Indonesian judges can empirically and reflectively test whether the values presented—through mechanisms like amicus curiae—truly represent living law and societal moral expectations.

Conceptually, the novelty of this research lies in the effort to position X-Jur not only as an analytical philosophy of law but also as an empirical basis for designing public participation mechanisms in the judicial process. X-Jur's emphasis on empirical data regarding public perceptions of justice can serve as a foundation for developing a model of public participation through amicus curiae that is suitable for Indonesia's civil law system. This conceptual innovation strengthens the judge's framework for integrating social cognition and moral experience into judicial reasoning, thus realizing a form of justice that is not only normatively correct but also socially meaningful.

X-Jur developed as a bridge between legal philosophy and cognitive science. This approach aims to empirically evaluate how society in general assigns meaning or purpose to a legal rule. In essence, this approach aims to determine whether the public's assessment of the rule of law's goals is more influenced by the initial intentions of the lawmakers (intentionalism), by the best moral principles that can be derived from the rule (objective purposivism), or by the actual practices occurring in current law enforcement (current practice purposivism).²¹ In this regard, there are two main perspectives. The empirical view states that humans tend to use the same way of thinking when determining the purpose of something, whether it's a physical object or a legal rule (domain-general reasoning). Meanwhile, the normative perspective emphasizes that the way laypeople understand and assign purpose to the law can be the basis for choosing legal interpretation methods that align with the public perspective, in accordance with the principle of publicity in law.²²

The development of X-Jur was also driven by the presence of more structured empirical methods. Recently, X-Jur has become known for studying fundamental questions in legal philosophy using an empirical approach. In practice, surveys are conducted with the general public to understand how they perceive concepts such as cause and effect (causality) or intention in hypothetical scenarios.²³ The aim is to see if the general understanding of these concepts is influenced by certain factors.

²¹ Guilherme Da Franca Couto Fernandes De Almeida et al., "Purposes in Law and in Life: An Experimental Investigation of Purpose Attribution," *Canadian Journal of Law and Jurisprudence* 36, no. 1 (2023), <https://doi.org/10.1017/cjlj.2022.20>.

²² Da Franca Couto Fernandes De Almeida et al.

²³ Tarunabh Khaitan and Sandy Steel, "Theorizing Areas of Law: A Taxonomy of Special Jurisprudence," *Legal Theory* 28, no. 4 (2022), <https://doi.org/10.1017/S1352325222000192>.

The X-Jur approach becomes relevant when the law claims to use "commonly understood concepts" in society to determine the meaning or scope of a legal norm. In this case, X-Jur can be used to test the truth of that claim—whether the concept truly aligns with the general understanding of society.

Conceptually, X-Jur aims to answer key questions in legal philosophy with the help of empirical methods from cognitive science. The focus is not only on mapping the legal intuitions of laypeople (folk concepts) but also on understanding how legal and moral concepts are formed within the structure of human thinking. By analyzing the differences between naturalistic and positivistic tendencies towards things like legal validity, procedures, and interpretation, X-Jur attempts to explain the reasons behind the emergence and persistence of these perspectives within the human cultural and psychological context.²⁴

By combining proximate approaches (studying how psychological mechanisms work) and ultimate approaches (analyzing the biological or cultural reasons why those mechanisms emerged and persist), X-Jur aims to form a more comprehensive understanding of the legal mind, which is the cognitive structure that influences how societies and legal actors make decisions.²⁵ In short, X-Jur is an attempt to connect how the human mind works with how the law is understood and applied. It bridges the gap between legal theory and the psychological reality of society and offers a methodological basis for more humane, open, and human experience-based legal reform.

3.1.2 Methodology in Experimental Jurisprudence

X-Jur is a new approach to legal studies that uses empirical methods—such as experiments and surveys—to understand how people actually perceive and understand legal concepts. This approach differs from traditional legal philosophy, which tends to be reflective and speculative, because X-Jur relies on real data about how people think and respond to the law in everyday life.

Initially, the experimental method was widely used in the natural sciences. However, over time, this approach has also become increasingly common in the social sciences and humanities. In the field of psychology, for example, experiments are a commonly used method. In economics, experimental research continues to evolve. Even in fields like linguistics, philosophy, political science, and law, experiments are now being used to study moral intuitions and societal views on the law.²⁶

In legal research, approaches from psychology such as embodied cognition are also used. This approach argues that the concept of law is not only understood rationally but is also influenced by a person's bodily and emotional experiences. Meanwhile, X-Jur in legal

²⁴ Ivar Rodríguez Hannikainen, Brian Flanagan, and Karolina Prochownik, "The Natural Law Thesis Under Empirical Scrutiny," in *Experiments in Moral and Political Philosophy*, 2023, <https://doi.org/10.4324/9781003301424-3>.

²⁵ Hannikainen, Flanagan, and Prochownik.

²⁶ Gabriel Doménech-Pascual, "Thought Experiments in Law," *Law and Method*, 2021, <https://doi.org/10.5553/rem/.000053>.

philosophy aims to explain how legal concepts such as justice, intention, or responsibility are understood by society based on their direct experiences, not just from abstract theories.²⁷

Besides experiments and surveys, some researchers also suggest using corpus linguistics as a supplementary method. This method analyzes word usage in real texts to understand how legal terms are understood in a general context. When combined with surveys, this method can provide a more complete picture of the ordinary meaning of a legal or philosophical term.²⁸

Application using the X-Jur methodological approach, for example, is implemented through various techniques such as short story (vignette)-based experiments, psychological surveys using Likert scales, and testing moral intuition and public understanding of legal concepts. This method is designed to isolate and test the influence of various factors—such as the rulemaker's intent, evolving legal customs, and moral considerations—in shaping a person's view of the meaning and purpose of a legal norm.²⁹ This approach also allows for a comparison between the views of the general public and those of legal professionals, thus providing a more comprehensive picture of how legal concepts are intuitively understood in social life.

The X-Jur method is also used to investigate public intuition regarding the validity of laws and the normative meaning of a rule. This approach is conducted cross-culturally using structured experiments and surveys. The aim is to see whether the relationship between law and morality naturally influences how society assesses a legal rule.³⁰ Thus, X-Jur complements traditional conceptual analysis and opens up new standards for understanding how law is intuitively perceived by society.

According to Kevin Tobia, this approach is not intended to replace traditional legal philosophy but to complement it. He proposed that empirical methods like X-Jur be integrated into Julie Dickson's two-stage framework: the first stage to identify the essential features of a legal concept based on societal views, and the second stage to assess the moral value of those features.³¹ In this way, X-Jur makes legal studies more accurate, open to various perspectives, and more relevant to social reality. Thus, X-Jur offers a fresh new approach to the study of law. It combines empirical and experimental data to understand how the concept of law is actually perceived by society. This approach does not replace traditional legal philosophy.

²⁷ Roversi et al., "Alice in Wonderland: Experimental Jurisprudence on the Internal Point of View."

²⁸ Justin Sytsma, "Ordinary Meaning and Consilience of Evidence," in *Advances in Experimental Philosophy of Law*, 2023, <https://doi.org/10.5040/9781350278301.0016>.

²⁹ Da Franca Couto Fernandes De Almeida et al., "Purposes in Law and in Life: An Experimental Investigation of Purpose Attribution."

³⁰ Brian Flanagan, "The Burning Armchair: Can Jurisprudence Be Advanced by Experiment?," *Jurisprudence* 15, no. 3 (2024), <https://doi.org/10.1080/20403313.2023.2290954>.

³¹ Kevin Tobia, "Methodology and Innovation in Jurisprudence," *Columbia Law Review* 123 (2023): 2483–2516, <https://ssrn.com/abstract=4595493>.

In the context of this study, X-Jur serves as a bridge between Indonesia's normative legal structure and the dynamic social reality that judges must interpret. By introducing empirical reasoning into judicial reflection, X-Jur provides a framework for integrating societal experiences and perceptions—often presented through mechanisms such as *amicus curiae*—into formal legal reasoning. In this way, X-Jur helps overcome the gap between legal text and lived justice, ensuring that judicial decisions are not only normatively valid but also socially resonant.

However, implementing X-Jur in a civil law system like Indonesia poses epistemological challenges. The formal evidentiary framework (KUHAP and HIR/RBg) limits the acceptance of empirical data as a source of legal reasoning. Therefore, X-Jur's application must be adapted institutionally—through mechanisms such as judicial training or the recognition of *amicus curiae* submissions as reflective evidence—to ensure that empirical insights can complement, not contradict, the principle of legality and judicial independence.

3.2 Legitimacy of the Amicus Curiae Role in Judicial Decisions: A Review through the Experimental Jurisprudence Approach

3.2.1 The Concept and Function of Amicus Curiae in the Modern Justice System

An *amicus curiae* is an outside party that does not have direct involvement in a case but is provided the opportunity by the court to submit a written legal opinion. The aim is to provide additional perspectives that can enrich the judge's considerations in deciding cases.³² Literally, *amicus curiae* means "friend of the court" and originates from ancient Roman legal practice.³³ This concept then developed significantly, especially in common law jurisdictions like the United States.

Initially, an *amicus curiae* only served as an external party providing legal opinions to the court, not a litigant. However, since the 1960s, this role has begun to evolve. Many civil society organizations—such as religious institutions, academics, and non-governmental organizations—participated in the legal process. They want to help the court understand broader legal issues, especially in cases involving constitutional rights or public interests.³⁴ This expansion makes the role of *amicus curiae* an important means of contributing to how courts interpret the law and the constitution.

In practice, the United States Supreme Court receives hundreds of *amicus* briefs each year that present legal arguments as well as historical, social, empirical, and moral perspectives to enrich legal discussions. In this case, *amicus curiae* serves as an advocacy tool and a medium for specific groups to express their moral and historical perspectives within

³² Dian Ratu Ayu Uswatun Khasanah and Anggita Doramia Lumbanraja, "Perkembangan Interpretasi Hukum Oleh Hakim Di Indonesia Dalam Dominasi Tradisi Civil Law System," *Jurnal Ius Constituendum* 7, no. 2 (2022), <https://doi.org/10.26623/jic.v7i2.4799>.

³³ Uliana Vorobel, "An Institute of «amicus Curiae» in the the Anglo-Saxon Legal Family," *Slovo of the National School of Judges of Ukraine*, no. 3(28) (2019), [https://doi.org/10.37566/2707-6849-2019-3\(28\)-13](https://doi.org/10.37566/2707-6849-2019-3(28)-13).

³⁴ Maria E. Doerfler, "Bishops and Friends: History and Legal Interpretation in Recent Amicus Curiae Briefs before the Supreme Court," *Journal of Law and Religion* 38, no. 1 (2023), <https://doi.org/10.1017/jlr.2022.47>.

constitutional discourse.³⁵ The general purpose of an amicus curiae brief is to provide the court with relevant legal information and perspectives. *First*, it offers input in the form of relevant and useful legal information, analysis, or perspectives that can assist the court in examining the case. *Second*, it helps judges gain a more comprehensive and in-depth understanding of the disputed legal issues, ensuring that their reasoning is not limited to the arguments of the litigating parties alone. *Third*, it presents a neutral and impartial perspective, with the aim of supporting the achievement of a balanced and objective decision. *Fourth*, it highlights important aspects that may be overlooked or not disclosed by the parties involved in the case, thereby preventing any gaps in the judicial consideration. *Finally*, it plays a broader role in protecting the public interest and ensuring the safeguarding of fundamental rights through a fair and transparent legal process.³⁶

Thus, the primary function of an amicus curiae lies in providing additional information, perspectives, or expertise that can help the court understand the issue more comprehensively, even though it does not have the status of an official party in the case.³⁷ This role is becoming increasingly important in modern legal systems that are becoming more complex and open to civil society participation.

3.2.2 Amicus Curiae Briefs in Various Countries

In the United States legal system, the existence of amicus curiae has gained formal legitimacy through Rule 37 of the Rules of the Supreme Court and Rule 29 of the Federal Rules of Appellate Procedure. These two rules technically govern the substance, form, and procedure for submitting legal opinions from third parties who are not part of the case but have information or interests that can help the court understand the issue being examined. The presence of amicus curiae is most prominent at the appellate and Supreme Court levels, particularly in cases with broad public interest dimensions.³⁸

Through this mechanism, actors such as academics, government agencies, professional associations, and civil society organizations are given the opportunity to present legal perspectives, empirical data, and technical expertise that might not be revealed in the parties' arguments. Since *Green v. Biddle* (1821), the function of amicus curiae has developed rapidly. It is recorded that between 1986 and 1995, over 85% of cases decided by the Supreme Court were accompanied by amicus briefs, indicating an increasing role for public participation in contemporary judicial decision-making.³⁹

In practice, amicus curiae has become a strategic instrument for interest groups to participate in the formation of legal precedents, especially in cases with multidisciplinary

³⁵ Doerfler.

³⁶ GA Whittaker, "The Actuary as Amicus Curiae," *South African Actuarial Journal* 22, no. 1 (2022), <https://doi.org/10.4314/saaj.v22i1.3>.

³⁷ Tania Groppi and Anna Maria Lecis Cocco Ortu, "Openness and Transparency in Constitutional Adjudication: Amici Curiae, Third-Party Intervention, and Fact-Finding Powers," in *Dialogues on Italian Constitutional Justice: A Comparative Perspective*, 2021, <https://doi.org/10.4324/9781003051121-6>.

³⁸ Suntoro, "Urgence and Challenges of Regulation of Amicus Curiae in the Judicial System."

³⁹ Suntoro.

complexity. A prominent example is the regular contributions of the American Medical Association (AMA), which submits amicus briefs in support of decision-making based on scientific data and medical ethics. Statistically speaking, over 98% of amicus briefs are filed at the appellate court level, both federal and state. Although not always explicitly stating the legal basis, this submission is generally subject to Rule 37, which governs the substantive provisions, format, deadlines, and submission mechanisms that can be done with the consent of the parties or with direct permission from the court.⁴⁰

Thematically, amicus briefs reflect social changes in society, as seen in the involvement of the Muslim-American community in three significant cases before the Supreme Court: *Masterpiece Cakeshop v. Colorado* (2018), *Bostock v. Clayton County* (2020), and *Fulton v. City of Philadelphia* (2021). These three cases tackle conscience-based objections, also known as complexity-based conscience claims, which challenge the line between religious freedom and anti-discrimination laws. In addressing this issue, the Muslim-American community is divided into two approaches: some choose the *modus vivendi* approach, which supports coexistence and the protection of minority groups, while others choose the *vivre ensemble* approach, which emphasizes the importance of togetherness and the equal application of the law for all.⁴¹ Through these amicus briefs, it is evident that the Muslim community plays a role in shaping the direction of legal and constitutional debates in the United States.

Thus, amicus curiae in the United States legal system enriches legal arguments and, equally importantly, serves as a way for community groups to convey their values, identities, and aspirations in court. In a diverse democratic country, the presence of amicus curiae serves as a bridge between the law and the ever-evolving socio-political reality, while also helping to strengthen public trust in the judiciary.

Brazil was the first country in Latin America to explicitly regulate the amicus curiae mechanism in its national legal system. This official recognition has been in effect since 1999, when the Constitutional Court formally opened access for third parties to participate in cases of public interest. Previously, although not explicitly regulated, the Court had accepted input from state officials in a form resembling quasi-friends of the court.⁴²

This mechanism was then regulated in the Civil Procedure Code, which grants courts the authority to accept amicus curiae based on two main considerations: the relevance of the issue in question and the specific competence of the party submitting. Additionally, the

⁴⁰ Tyler J. Benning et al., "Judicial Advocacy and Use of Amicus Curiae Briefs by the Litigation Center of the American Medical Association and State Medical Societies, 1995–2021," *Journal of General Internal Medicine* 37, no. 13 (2022), <https://doi.org/10.1007/s11606-022-07569-3>.

⁴¹ Kamran S. Bajwa and Samuel E. Miller, "Liberalism versus Liberalism: An Analysis of Muslim-American Amicus Curiae Arguments Concerning Complicity-Based Conscience Claims," *Journal of Law and Religion* 38, no. 2 (2023), <https://doi.org/10.1017/jlr.2023.12>.

⁴² Shai Farber, "The Amicus Curiae Phenomenon in Civil Law," *Ius Gentium: Comparative Perspectives on Law and Justice* 119 (2024): 189–216, https://doi.org/https://doi.org/10.1007/978-3-031-67225-5_7#DOI.

request must be made during the initial stages of the trial.⁴³ This reform serves as an indicator of the change in Brazil's legal system, which is rooted in civil law tradition, towards a more open and participatory model. This improvement is achieved by adopting deliberative elements from the common law system in order to enrich the judicial process.

In India, the amicus curiae arrangement is more jurisprudential than codificatory. The Supreme Court of India, particularly in Public Interest Litigation (PIL) cases, developed this practice as part of its progressive judicial function. According to Order XLVII Rule 5(b) of the Supreme Court Rules 2013, the Court has full discretion to seek the opinion of a third party if it is deemed beneficial to clarify the case.⁴⁴

Jurisprudence shows that the Court is very open to the participation of non-formal parties in human rights and social justice cases. For example, in *Hussainara Khatoon v. State of Bihar* (1979) and *S.P. Gupta v. Union of India* (1981), the court accepted a petition from ordinary citizens filed through a letter, recognizing the importance of the substance of the rights violation alleged.⁴⁵

The most representative example of the amicus curiae role is in the T.N. environmental case. In the case of *Godavarman Thirumulpad v. Union of India*, the Court designated senior advocates like Mr. K. Parameshwar to offer an impartial viewpoint on technical and ecological matters. Their role is not only as legal advisors but also as a link between court decisions and policy implementation in the field, including coordination between the central and state governments.⁴⁶ Thus, the amicus curiae in the Indian legal system serves as a bridge between formal law and the intricate nature of social reality.

France adopted the amicus curiae practice at the highest level of its judicial system. Despite originating from a civil law system that is generally more closed to third-party participation, France has opened up space for substantive intervention through the informal and later formal recognition of the existence of amicus curiae. Even before official recognition, various non-governmental organizations were given the opportunity to express their legal opinions, effectively making them function as amicus curiae.⁴⁷

This practice began in 1988 when the Court of Appeal invited the President of the Paris Bar Association to provide a written opinion in a case concerning the legal profession. In 1991, the Cour de Cassation officially recognized the role of amicus in important cases such

⁴³ Teresa Arruda Alvim, "Prospective Overruling and the Non-Retroactivity of the Law," *International Journal of Procedural Law* 14, no. 2 (2024): 370–90, <https://chambers.com/articles/prospective-overruling-and-the-non-retroactivity-of-the-law-10>.

⁴⁴ Kalyan Singhal, "Public Amicus Curiae to the Supreme Court on Abortion," *SSRN Electronic Journal*, 2022, <https://doi.org/10.2139/ssrn.4132781>.

⁴⁵ PS Munawar Hussain, "Constitutional Rights in India An Assessment of Judgments of Justice PN Bhagwati," *Journal of Constitutional Law and Jurisprudence* 4, no. 1 (2021): 9–24, <http://lawjournals.celnet.in/index.php/Jolj/index>.

⁴⁶ Supreme Court of India, "T.N. Godavarman Thirumulpad v. Union of India and Others," July 2023, <https://www.sci.gov.in>.

⁴⁷ Alberto Alemanno, "Public Participation before the Court of Justice of the EU: Enhancing Outside Judicial Participation via Amicus Curiae Briefs," *Erasmus Law Review*, 2025, <https://ssrn.com/abstract=5150277>.

as surrogacy contracts, HIV compensation, and other criminal cases.⁴⁸ Since then, other judicial bodies have also begun accepting amicus briefs, including from international and regional organizations that emphasize the protection of public interests.

Although not fully codified in procedural law institutionally, French courts recognize that an amicus is neither a witness nor an expert but an independent party providing additional perspective to help the court understand the context of the case. Pressure from civil society and international legal impetus, including from Europe, also contributed to accelerating the acceptance of this practice.⁴⁹

It should be noted that the practice of amicus curiae in the French legal system and other civil law countries is not unrelated to the influence of Roman legal tradition. Through colonial expansion, this practice spread to various regions such as Africa, Quebec, Louisiana, and the Philippines and was adopted by countries like Japan, Turkey, and parts of China. International courts are also familiar with this mechanism, as international law developed based on the principles of Roman law, which accommodates third-party intervention in the adjudicative process.⁵⁰

Thus, the French experience shows that the practice of amicus curiae can be adaptively adopted even in legal systems that did not initially explicitly recognize it. This mechanism broadens the deliberative horizon within the judiciary and strengthens the link between law and public interest within the framework of an inclusive modern rule of law.

3.3.3 Amicus Curiae in Judicial Decisions: An Experimental Jurisprudence Perspective

As Edmund Husserl stated in the development of phenomenology, humans as legal subjects cannot be understood solely through rigid normative structures but rather through the experience of consciousness formed in the intentional relationship between the self and the world. In this case, judges do not automatically accept legal knowledge but internalize it through a reflective awareness of the meaning that emerges from concrete and historical experience. This view was reaffirmed by Martin Heidegger, who rejected the objectivistic approach to humans and placed humans (including judges) as Dasein—beings who "become" through their being thrown into the world and existential experiences.⁵¹ Therefore, the judge's attitude and decisions are not separate from the way he interprets and experiences reality in a world (Lebenswelt) that is not neutral and value-free.

The phenomenological approach facilitates the comprehension that judges' deliberations are influenced not only by legal texts but also by moral and social awareness,

⁴⁸ Shai Farber, "The Amicus Curiae Phenomenon – Theory, Causes and Meanings," *Transnational Law and Contemporary Problems* 29, no. 1 (2019): 1–61, <https://heinonline.org/HOL/Page?handle=hein.journals/tlcp29&collection=journals&id=9&startid=&end=69>.

⁴⁹ Macy Mirsane, "The Roles of Amicus Curiae (Friend of the Court) in Judicial Systems with Emphasis on Canada and Alberta," *Alberta Law Review* 59, no. 3 (2022): 2022, <https://journals.library.ualberta.ca/www.albertalawreview.com/index.php/ALR/article/download/2690/2638>.

⁵⁰ S. Chandra Mohan, "The Amicus Curiae: Friends No More?," *Singapore Journal of Legal Studies*, 2010, 352–74, <https://ssrn.com/abstract=1802634>.

⁵¹ Dermot Moran, *Introduction to Phenomenology* (London and New York: Routledge, 2000).

which can be enhanced through amicus curiae contributions. In the context of judicial practice in Indonesia, this view emphasizes that judges' decisions should not be limited to merely applying positive rules but should also consider the life experiences of the community, which reflect the value of living justice. In this case, the amicus curiae serves as a bridge, helping judges grasp the social and moral dimensions of a case so that legal considerations are not dry and formalistic but rather touch upon the real public sense of justice. Consequently, phenomenology offers a theoretical framework for judges to incorporate the moral and social aspects of consciousness into legal reasoning via the reflective involvement of amicus curiae.

Judges, being human, naturally have limitations in understanding and knowing things. Therefore, this empiricism is very necessary, aligning with Husserl's thinking in *The Idea of Phenomenology*. Husserl emphasized the importance of shedding assumptions that are not directly present in consciousness to achieve knowledge that is truly self-given and free from doubt. He criticized the naturalistic and empirical approach that accepted knowledge as certain without philosophical reflection and instead proposed a phenomenological reduction to uncover "pure data" in consciousness.⁵² Regarding judges, acknowledging cognitive limitations highlights the importance of a reflective and directed empirical approach, as Husserl demanded: not just accepting facts, but understanding how facts are essentially present in consciousness.

Similarly, Duwell in *The Cambridge Handbook of the Philosophy of Law* (2023) emphasizes that the phenomenological approach to law opens up space for a more profound understanding of legal experience as something that is subjectively and historically lived, not merely a normative structure. In judicial practice, this means that a judge's decisions are not only determined by the legal text but also by how legal experience is present in their consciousness. Judges do not stand outside the legal world but are within it—involved in constructing meaning about legal events through the way they "experience" each case.⁵³ This approach is consistent with Husserl's principle of intentionality, that consciousness is always directed towards something, so the judge's understanding of legal facts is always related to the horizon of meaning formed by their own lived world (*Lebenswelt*).

Thus, the phenomenological approach expands understanding of the role of judges, no longer merely as mechanical enforcers of legal norms but as subjects who experience, interpret, and respond to the law reflectively within a living and meaningful social context. Judges are positioned as human beings working within a space of consciousness, who not only understand the law from the text but also from the concrete experiences that are developing in society. This understanding confirms that judges have limitations in fully grasping the complexity of dynamic and often inaccessible legal reality solely through formal

⁵² Edmund Husserl, *The Idea of Phenomenology* (The Hague: Martinus Nijhoff, 1973).

⁵³ Marcus Duwell, "Phenomenology and the Law," in *The Cambridge Handbook of the Philosophy of Law*, ed. Tomasz Gizbert-Studnicki and Andrei Marmor (Cambridge University Press, 2023), 293–313, <https://doi.org/10.1017/9781009209383.021>.

documents and arguments in court. Therefore, a complementary mechanism is needed that can enrich the perspective of judges in a participatory and reflective manner to capture the facts, values, and voices of justice that are often hidden behind the procedural framework of the law.

The role of amicus curiae becomes crucial within this phenomenological framework because it helps judges access social meaning and public moral consciousness beyond legal formalism. By presenting community experiences and empirical perspectives, amicus curiae serves as a phenomenological medium, enabling judges to understand justice as a "lived experience" rather than merely an abstract legal command.

As a friend of the court, an amicus curiae makes an important contribution by broadening the horizons of judicial consideration, particularly in cases involving the protection of vulnerable groups or social issues not explicitly addressed by the parties. This role corrects information gaps that emerge during trials and serves as a hermeneutic tool, helping judges interpret the law more humanely and in line with evolving societal values of justice.

In Indonesia, for example, the reception of amicus curiae in cases such as Decision Number 796/Pid.B/2022/PN Jkt.Sel and Constitutional Court Decision Number 90/PUU-XXI/2023 shows diverse tendencies in opening up space for public participation and academic perspectives in the judicial process. The Constitutional Court exemplifies a more inclusive approach by integrating the perspectives of civil society as a means of fostering transparency and participation. In contrast, first-instance courts restrict the role of amicus curiae, adhering to the principles of judicial caution and independence. This variation in approach illustrates that the practice of accepting amicus curiae in Indonesia is still in its developmental stage and requires a clearer normative basis so that its presence can contribute optimally to enriching legal considerations without disrupting judicial independence. These examples demonstrate that judicial consciousness in Indonesia is shaped not only by doctrinal reasoning but also by social narratives, academic discourse, and moral sentiments expressed through amicus briefs—precisely reflecting Husserl's and Heidegger's idea that legal meaning emerges from lived social experience.

To deepen the relationship between theory and practice, the X-Jur approach provides a scientific basis for the acceptance of amicus curiae views in judicial deliberations. Through empirical methods such as surveys of public perceptions of justice, behavioral experiments, or analysis of public responses to rulings, X-Jur is able to test the extent to which the opinions presented by amicus reflect the public's views on justice and legal legitimacy. So, amicus curiae is not just a moral or normative concept; it can also be scientifically justified as a reflection of society's value of justice. This approach helps judges assess amicus briefs based on empirical evidence, rather than mere subjective beliefs, thereby strengthening the rationality of decisions and public trust in them.

Integrating the X-Jur and amicus curiae approaches could give rise to a new deliberative model in the Indonesian justice system—where judicial decisions are not solely based on written norms, but also on empirical data regarding public perceptions of justice. This synthesis balances legal rationality and social legitimacy, ensuring that the court's authority rests on both legal foundations and the lived experiences of the public.

Furthermore, the amicus curiae can serve as a crucial instrument in promoting the implementation of the X-Jur approach while fulfilling its responsibilities to examine, adjudicate, and decide cases. X-Jur emphasizes the importance of exploring how society understands legal concepts such as justice, responsibility, and guilt through empirical approaches and experimental methods. This is because judges are often faced with limitations in formal proof that do not fully reflect social dynamics or public perceptions of justice. In this regard, an amicus curiae can be an important bridge by presenting contextual information and empirical data that reflect the real-life experiences of the community.

The synergy between amicus curiae and the X-Jur approach creates a complementary framework for reasoning: amicus curiae enriches the social and value dimensions of a case, while X-Jur provides a scientific basis for evaluating the validity of these perspectives based on societal perceptions and expectations. Thus, judges can build decisions that are not only legally valid but also sociologically and psychologically fair, in line with the reality of living law. This approach broadens the judge's thinking horizon from merely interpreting norms to understanding law as a social institution operating within a diverse society.

Normatively, this approach is legitimized by Article 5, paragraph (1) of Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, which requires judges and constitutional judges to "explore, follow, and understand the legal values and sense of justice that live in society." This provision is not sufficiently interpreted solely normatively-doctrinally but rather requires a methodological approach capable of transcending the boundaries of text and formality. This is where X-Jur comes in, presenting an empirical approach that tests and confirms whether the values presented in the judicial process, including through amicus curiae, truly reflect an authentic sense of public justice.

Amicus curiae, as a form of third-party participation in judicial proceedings, has developed into three main models: the permissive model, the consensual model, and the mixed model. The permissive model grants the court full discretion to accept input from third parties based on its relevance and contribution to the case, whether on its own initiative or at the request of external parties. The consensual model requires written consent from the parties for an amicus brief to be accepted, thus emphasizing respect for the litigant's will. Meanwhile, the mixed model is a synthesis of both: the court retains discretion to accept amicus curiae but considers the openness and objections of the parties.⁵⁴ Although differing in mechanism,

⁵⁴ Alexandru Tănase and George Papuashvili, "Amicus Curiae Concept in Modern Justice: Concept Paper for the Constitutional Court of Ukraine," 2022, <https://www.osce.org/project-coordinator-in-ukraine>.

all three are based on the same principle: opening up space for meaningful public participation in the justice system, especially in cases with a broad impact on public interest.

Indonesia can draw important lessons from the comparison of the previously detailed countries: the United States, Brazil, India, and France. Of the four countries, Indonesia should adopt a mixed model like the one implemented in France and India. This model maintains judicial independence while also opening up measured and directed space for public participation. This kind of approach allows the Indonesian legal system to continue to respect written positive legal traditions while strengthening the social legitimacy of the courts through community involvement in issues of public interest.

These models are beginning to appear in legal practice in Indonesia, although they are not yet supported by a clear normative framework. In case number 270/G/2018/PTUN-JKT, the Panel of Judges mentioned the existence of an amicus curiae from LeIP but rejected it as a legal consideration because it did not originate from the parties involved. Conversely, in Constitutional Court Decision Number 90/PUU-XXI/2023, the Court accepted input from civil society, such as Primastuti Purnamasari and Yovianko, as a form of public participation consistent with the principle of openness. Even more progressive, in Decision Number 796/Pid.B/2022/PN Jkt.Sel, the Panel of Judges included amicus curiae from Gadjah Mada University professors as part of the legal considerations, as long as they were academic, relevant, and did not interfere with the independence of the judges. This variation indicates that Indonesian practices are factually tending towards a mixed model, although explicit legal legitimacy is still needed to prevent its use from being ad hoc.

In the context of Indonesia's civil law system, it is important to explain how the concept of amicus curiae—which originates from the common law tradition—can be accommodated without disrupting the principle of legality and the hierarchy of laws and regulations. This accommodation must be done through a clear legal basis, for example, by establishing a Supreme Court Regulation (Perma) that regulates the procedures, qualifications, submission deadlines, and the limits of the amicus curiae's authority in cases. Thus, third-party participation remains within the framework of measured procedural law and does not obscure the principle of judicial independence or the codification system that is a key feature of civil law. This adaptation actually strengthens the legitimacy of national law through greater transparency and accountability in the courts.

The experience of other countries shows how these three models can be developed according to the characteristics of their legal systems. The United States, through Rule 37 in the Supreme Court and Rule 29 in federal courts, systematically accommodates the permissive model within its adaptive common law system. Brazil formally opened access for amicus curiae in the Civil Procedure Code, considering external expertise. India utilizes amicus curiae in public interest litigation as an independent advisor in strategic cases. Even France, which was initially restrictive in its civil law system, is now progressively adopting the amicus practice for important cases involving public interest and civil society

organizations. Thus, despite differing legal systems and judicial structures, the application of amicus curiae in various jurisdictions reflects a shared spirit: bridging the judicial forum with the social dynamics evolving outside the courtroom.

The X-Jur approach is a new way of understanding law by examining how society experiences, perceives, and evaluates justice in real life. Through the lens of X-Jur, law is not understood solely as a collection of written norms but also as a response to public perception and citizens' concrete experiences with justice. One element that can be studied in depth through this approach is the role of amicus curiae—external parties who voluntarily provide written opinions to the court in cases involving public interest, such as human rights, the environment, or the protection of vulnerable groups.

Because amicus curiae often present views laden with moral, social, and psychological values, the X-Jur approach is important for assessing whether these dimensions can resonate with the values of justice prevalent in society. This assessment is not meant to judge or undermine judges' independence in making decisions, but to see how much the amicus curiae's views reflect society's aspirations and can be part of the legal mechanism.

Thus, the X-Jur approach allows judges to see the role of amicus curiae as a channel for public expression that can enrich the legal and social aspects of a case. These opinions, if presented in a measured and procedural manner, can serve as considerations for the judge without interfering with the judge's independence or the process of proof.

Unfortunately, there are no clear regulations in Indonesia on how and when amicus curiae can be admitted to court. As a result, the role of amicus curiae depends entirely on the courage of the judge. Without written rules, public participation in the judiciary becomes uncertain, even though the public has an interest in justice.

Therefore, the Supreme Court needs to immediately create special regulations (Supreme Court Regulations or Perma) governing the matter of amicus curiae. These regulations should define who can serve as an amicus curiae, such as academics, non-governmental organizations, state institutions, or community leaders, particularly in cases involving the public interest. They must also regulate the form and content of the opinions submitted, ensuring that such opinions are concise, do not interfere with the evidence, and focus on legal or moral perspectives that may assist the judge. Also, opinions must be submitted at a time that does not disrupt the proceedings, such as before the final proof stage. Judges must either consider or reject the opinions and provide reasons for their decisions to ensure transparency and accountability. Finally, the court must ensure public access to this information by disclosing who acted as an amicus curiae and how their opinions were considered. From a conceptual standpoint, the establishment of a PERMA on amicus curiae represents not merely an administrative necessity but an epistemological integration of empirical jurisprudence into Indonesia's positive law. Through this regulation, the judiciary institutionalizes the dialogical relationship between legal norms and social cognition,

allowing empirical findings from X-Jur to inform judicial reasoning within a formal legal framework.

As a first step, the Supreme Court could try this system in several strategic courts, then evaluate it and expand it throughout Indonesia. In fact, in the future, an e-amicus system could be built where the public can and monitorably submit their opinions online. Finally, it is also important to establish a network of cooperation (Amicus Curiae Network) involving courts, universities, NGOs, and state institutions. The goal: to learn from each other, share experiences, and build a more open and just legal system.

In this way, the Indonesian legal system will become closer to the people—not just as a collection of rules, but as a means to bring about justice that is alive, real, and accessible to everyone. From a theoretical perspective, the institutional legitimacy of amicus curiae must rest on both normative and epistemic foundations. In the context of X-Jur, legitimacy is not only derived from procedural conformity or legal authorization but also from empirical acceptance by society. The data produced by X-Jur, including surveys assessing public perceptions of fairness, transparency, and judicial responsiveness, can be utilized to evaluate whether the opinions expressed by amici genuinely represent the community's moral expectations rather than the interests of specific groups. This epistemic testing is crucial to prevent amicus curiae from becoming a disguised advocacy tool that undermines judicial neutrality. Consequently, the incorporation of X-Jur in assessing amicus participation guarantees that the court's receptiveness to public input remains responsible, evidence-based, and aligned with the ethical objectives of law as a societal institution. Through this approach, amicus curiae gains philosophical legitimacy as an extension of society's reflective consciousness rather than as a mere procedural accessory. Nevertheless, the adoption of X-Jur in judicial reasoning is not without risk. Empirical data on public perceptions of justice can be influenced by temporary emotions, media framing, or majority bias, which may distort the substance of fairness. Therefore, we must complement, not replace, empirical insights with normative and constitutional principles. Judges should critically interpret data from X-Jur to ensure that justice remains both empirically grounded and normatively sound.

4. CONCLUSION

This research confirms that amicus curiae has significant potential to improve the quality of judicial deliberations through the application of Experimental Jurisprudence (X-Jur) methodology, which integrates empirical, psychological, and moral analysis within a normative legal framework. In the Indonesian judicial system, amicus curiae serves as an epistemic instrument that assists judges in reviewing, following, and understanding the legal values that exist in society, as stipulated in Article 5 paragraph (1) of the Judiciary Law. X-Jur integration changes the way judges make decisions, from initially being based solely on legal formalism to being based on society's perspective on justice in real life. Such an approach allows judges to build decisions based on social legitimacy as well as normative coherence. The X-Jur perspective asserts that the presence of amicus curiae enriches the

judicial process by fostering reflection, participation, and a focus on social justice, as it provides data-driven insights into public perceptions of law and justice. From a normative perspective, this research encourages the formulation of clear regulations through Supreme Court Regulations (Perma) to govern the mechanisms, procedures, and limitations of using amicus curiae in the judicial process. This rule is important to ensure uniformity of practice, increase transparency, and maintain a balance between public participation and judicial independence in upholding the law. This research makes a scientific contribution in two important ways: practical and theoretical. Practically, this research provides policy recommendations for the Supreme Court to institutionalize amicus curiae within the Indonesian civil law system. Theoretically, this research formulates an interdisciplinary legal methodology that integrates legal philosophy, social cognition, and judicial practice. The originality of this research lies in its attempt to position X-Jur as a revolutionary epistemological framework for legitimizing the role of amicus curiae and reconfiguring the judicial decision-making process to be more participatory, reflective, and based on an empirical understanding of justice.

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