



Juridical Review Of The Position Of Justice Collaborator And Amicus Curiae In Judge's Decision Number : 798/Pid.B/2022/Pn.Jkt.Sel

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ABSTRACT

Decision No. 798/Pid. B/2022/PN. Jkt.Sel is one of the decisions in Indonesia that is interesting to analyze. The decision is questionable, because it will bring good precedents or bad precedents in law enforcement in Indonesia in the future. The decision fulfills the three objectives of law enforcement, namely legal certainty, legal benefit, and a sense of justice in Indonesia. The verdict states that Bharada E has been proven legally and convincingly to have participated in premeditated murder. In the prosecutor's indictment, Bharada E was charged with 12 years in prison, but the judge decided with a much lighter verdict of 1.5 years. The consideration of the judge was that the defendant was a justice collaborator who dared to reveal a major case involving the police institution so that the case became clear and revealed. In addition, the submission of amicus curiae in the verdict was also a consideration that alleviated the defendant because many supported the judge to impose a lighter sentence on Bharada E. This research uses normative research methods with the aim of knowing the position of the defendant as a justice collaborator and the influence of amicus curiae in relation to the independence of judges in Decision No.789/Pid B/2022/PN.Jkt. Sel. The results showed that the position of the defendant as a Justice Collaborator could be a bad precedent, but on the other hand it was very necessary to reveal a case that was considered quite large because it involved the POLRI institution. While the position of Amicus Curiae has not been clearly regulated in Indonesian legislation, as long as the independence of judges is maintained from outside parties, in this case Amicus Curaie may be used as a judge's consideration. This study suggests the need for judges' consideration in accepting justice collaborators by considering the facts of the trial and the need for confirmation of the rules related to amicus curiae in Indonesia.

Keywords: justice collaborator, amicus curiae, premeditated murder

1. INTRODUCTION

The disclosure of a criminal event requires sufficient evidence, as regulated in Article 184 (Paragraph 1) of the Criminal Procedure Code. One of the evidence that has an important role in the criminal justice process is witnesses. Indonesian criminal procedure law adheres to the theory of proof based on negative legislation (negative wettelijk), where the judge in making a decision against the defendant must be based on valid evidence in the law, proof based on these evidences, the judge then obtains a conviction. [1] Witnesses are people who can provide information for the benefit of investigation, prosecution and justice about a criminal case that he himself heard, he himself saw, and he himself experienced. A witness is considered to have the ability to influence and determine the tendency of the judge's decision. This has the effect that every witness statement always gets enormous attention by the legal actors involved in the trial as well as by the legal observing community, therefore it is fitting that witnesses are given legal protection because they are considered to be at risk in revealing the material truth of criminal acts.

The case of the murder of Brigadier Yosua Hutabarat (Brigadier J) has been tried and decided by a panel of judges at the South Jakarta District Court (PN). The judges' decision on the perpetrators, masterminds as well as perpetrators, and those who participated in the murder of Brigadier J. However, there is something that needs to be questioned because it will bring good precedents or bad precedents in law enforcement in Indonesia in the future. The judges sentenced FS (Ferdy Sambo) to death and his wife PC (Putri Candrawati) to 20 years in prison. The decision received a lot of attention from the public that it was in accordance with the criminal offense committed. The decision fulfills the three objectives of law enforcement, namely legal certainty, legal benefit, and a sense of justice. The judge sentenced Kuat Ma'ruf, Sambo's family driver, to 15 years in prison and Riky Rizal Wibowo, one of his aides, to 13 years in prison. However, when the

panel of judges sentenced in Court Decision No.789/Pid B/2022/PN.Jkt.Sel, in which the judge found Bharada E or Richard Eliezer guilty of participating in the premeditated murder by sentencing Bharada E to 18 months or 1.5 years. This decision is far from the prosecutor's demand of 12 years in prison.

The interesting thing in the decision is that Bharada E was considered as a Justice Collaborator by the judge at the request of Bharada E's legal team, whereas usually this Justice Collaborator is usually given in cases of Narcotics Crimes or Corruption Crimes and almost never given in ordinary cases such as murder. However, in this case Bharada E was considered to be very helpful in the disclosure process involving many parties in the police institution who in this case were considered to have made a big conspiracy in the Joshua murder case.

Another interesting point in Court Decision No.789 /Pid B/2022/PN.Jkt.Sel, that in the consideration of the decision there is the influence of *amicus curiae*, the submission of *amicus curiae* by a group of civil society to the panel of judges handling the case of Bharada Richard Eliezer (Bharada E), related to the premeditated murder of Brigadier Joshua Hutabarat. The *amicus curiae* submission by a group of civil society consisting of the Institute for Criminal Justice Reform (ICJR), PILNET and ELSAM, was carried out as a form of protection for Bharada E who was recommended as a justice collaborator (JC).

Judges as law enforcers in solving a problem have free authority, meaning that no other institution can interfere or influence Law Number 48 of 2009 concerning Judicial Power. Article 1 of Law Number 48 of 2009 states that judicial power is an independent state power to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the rule of law of the Republic of Indonesia.

Based on the above reasoning, this research will examine in detail how the Defendant's Position as a Justice Collaborator in Decision No.789/Pid B/2022/PN.Jkt.Sel and how the Influence of *Amicus Curae* in relation to the Independence of Judges in handing down decision No.789/Pid B/2022/PN.Jkt.Sel.

2. LITERATURE REVIEW

I. *Overview of Justice Collaborator*

Basically, the birth of a law that facilitates the cooperation of witnesses who cooperate (justice collaborators) with law enforcement was first introduced in the United States in the 1970s. This facilitation is none other than to deal with the mafia, which has long applied *omerta* (an oath of silence as well as the oldest law in the world of Sicilian Mafioso).[2] Mas Achmad Santosa provides an understanding of justice collaborators, namely: "a justice collaborator is someone who helps law enforcement officials by providing reports, information, or testimony that can reveal a criminal offense in which the person is involved in the crime or other criminal acts. The things revealed by the cooperating perpetrators include the main perpetrators of criminal acts, assets from criminal acts, criminal modes, and criminal networks".

Law Number 7 of 2006 concerning the United Nations Convention Against Corruption. In the law, the provisions of justice collaborators are regulated in:

- a. Paragraph (2), each state party shall consider, provide the possibility in certain cases to reduce the sentence of a perpetrator who provides substantial cooperation from the investigation or prosecution of a crime applied in this convention.
- b. Paragraph (3), each state party shall consider the possibility, in accordance with the fundamental principles of its national law, of granting immunity from prosecution to persons who provide substantial cooperation in the investigation or prosecution of a criminal offense to which this convention applies.

Justice collaborators themselves in Indonesian law are still not clearly and in detail regulated, legislation that implicitly covers justice collaborators can be seen in Law Number 31 of 1999 concerning Eradication of Corruption which has been updated with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 which regulates the provision of awards or rewards to parties who cooperate or provide assistance in combating criminal acts of corruption contained in Article 42 paragraph (1). Article 42 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption, which has been updated with Law Number 20 of 2001, states as follows; "The government gives awards to members of the public who have contributed to helping efforts to prevent, eradicate, or disclose corruption.

Another regulation is contained in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, which includes regulations regarding the protection of witnesses (justice collaborators) contained in Article 10 and Article 10A, Article 10 paragraph (1) states as follows: "Witnesses, Victims, Witness Actors, and / or Reporters cannot be prosecuted legally, either criminal or civil for testimony and / or reports that will, are being, or have been given, unless the testimony or report is given not in good faith." Article 10 paragraph (2) states: "In the event that there are lawsuits against Witnesses, Victims, Witness Actors, and/or Whistleblowers for

testimony and/or reports that will be or have been given, the lawsuits must be postponed until the case he/she reported or gave testimony about has been decided by the court and obtained permanent legal force”.

Article 10A paragraphs (1) to (5) state as follows:

- 1) Witnesses may be given special treatment in the examination process and rewarded for their testimony.
- 2) Special handling as referred to in paragraph (1) in the form of:
 - a. separation of the place of detention or place of undergoing punishment between the Witness Actors and suspects, defendants, and / or convicts whose criminal acts are revealed;
 - b. separation of filing between the file of the Witness Actors and the files of suspects and defendants in the process of investigation, and prosecution of the criminal offense disclosed; and/or
 - c. giving testimony before the court without directly confronting the defendant whose criminal offense is disclosed.
- 3) Rewards for testimony as referred to in paragraph (1) shall be in the form of
 - a. leniency in the imposition of punishment; or
 - b. parole, additional remission, and other prisoners' rights in accordance with the provisions of laws and regulations for Witnesses who are prisoners.
- 4) To obtain an award in the form of leniency in sentencing as referred to in paragraph (3) letter a, LPSK provides a written recommendation to the public prosecutor to be included in his/her charges to the judge.
- 5) To obtain an award in the form of parole, additional remission, and other inmate rights as referred to in paragraph (3) letter b, LPSK provides a written recommendation to the organizing minister.

Furthermore, there is Supreme Court Circular Letter No. 4/2011 on the Treatment of Whistleblowers and Witnesses of Witnesses (justice collaborators) in Certain Criminal Cases. This Circular Letter issued by the Supreme Court is a guideline for a judge to determine a person as a justice collaborator. The Circular Letter covers serious criminal offenses and/or organized criminal offenses in which a perpetrator can propose himself to be a justice collaborator and guidelines for judges to determine a person as a justice collaborator.

To be called a justice collaborator, based on Number 9 letter (a) and (b), SEMA provides guidelines to determine the criteria for justice collaborators. First, the person concerned is one of the perpetrators of a certain criminal offense, admits the crime committed, is not the main perpetrator in the crime, and provides information as a witness in the judicial process. Second, the public prosecutor in his/her indictment states that the person concerned has provided very significant information and evidence, so that the investigator and/or public prosecutor can effectively uncover the criminal offense in question, reveal other perpetrators who have a greater role and/or return assets / proceeds of a criminal offense.[3]

II. Overview of *Amicus Curiae*

Amicus curiae has not been clearly regulated in Indonesia, but the legal basis for the acceptance of the concept of *amicus curiae* in Indonesia refers to Article 5 paragraph (1) of Law Number 4 of 2009 concerning Judicial Power. This article is a reason for judges to know the strength of evidence. In Constitutional Court Regulation No. 06/PMK/2005 concerning Procedural Guidelines in Law Review Cases Article 14 paragraph (4) states that indirectly interested parties are: 3 a. parties whose position, main duties, and functions need to be heard; or b. parties who need to be heard as *ad informandum*, namely parties whose rights and/or authorities are not directly affected by the subject matter of the petition but because of their high concern for the petition. The practice of *amicus curiae* is actually commonly used in countries that use the common law system and not the civil law system adopted by the State of Indonesia, but that does not mean that this practice has never been applied or practiced in Indonesia. Thus, in the Indonesian judiciary, *amicus curiae* has not been clearly regulated, but the legal basis for the acceptance of the concept of *amicus curiae* in Indonesia is Article 5 paragraph (1) of Law Number 4 of 2009 concerning Judicial Power.[4]

Amicus curiae, which is unknown in the Indonesian legal system, especially in the law of criminal activities, has recently been widely used in practice by institutions engaged in social and humanitarian activities to defend, provide explanations regarding the legal facts in a case. The explanation given by *amicus curiae* is in practice given in the form of a letter or in writing or commonly called an *amicus curiae* Brief or it can also be orally in court, but in practice what has happened so far is that it is mostly given in the form of a letter / writing (*Amicus curiae* Brief). Certain amici strategically choose to use certain types of evidence over others. Lawyers may need to work with the amici they represent and other policy actors to identify the range of available sources they can cite, sources that may not yet be known or available through their legal context.[5]

Amicus curiae or friends of court is input from individuals or organizations that are not parties to the case, but have an interest in the case. Judges can use *amicus curiae* as material to examine, consider and decide cases. Judges can open the widest possible information and opportunities for parties who feel they have an interest in a case. *Amicus curiae* differs

from parties in intervention because the friends of the court do not act as parties to the case, but are concerned about a particular case.[6]

III. Overview of Judge Independence

The essence of the freedom of judges or the independence of judicial power (judicial independence) is intended to prevent abuse of authority and power by state bodies. In connection with this, Frans Magnis Suseno argues that with the freedom and independence of judicial power from other branches of state power, it is hoped that the judicial body can exercise legal control over state power in addition to preventing and reducing the tendency to abuse authority or power. Not only the independence of judicial power, especially from the influence of government power, will open up opportunities for abuse of power and neglect of human rights by the authorities because judicial power which is constitutionally authorized to carry out the function of control over government power is difficult to do.[7]

Judges are State judicial officials authorized by law to adjudicate. What is meant by trial is a series of actions by judges to receive, examine and decide criminal cases based on free, honest and impartial principles at court hearings in the matters and in the manner regulated in this law (Article 1 numbers 8 and 9 of Law Number 8 of 1981 concerning the Law of Criminal Procedure). Judges in the criminal justice process have the right and obligation to carefully investigate everything that will clarify the case, both arising before and during the trial. To this end, the judge can ask the accused, as well as witnesses, for explanations that he deems necessary to obtain this clarity. The way in which the judge formulates questions to both the accused and the witnesses is bound by a number of provisions which are intended to limit his or her freedom to seek the truth. The purpose of these restrictions is to ensure that the desired answers are obtained honestly and not through trickery. To be able to carry out their noble but very demanding duties, (because they often have to face various challenges and temptations in society,) judges must be equipped with moral toughness, guiding rules and rules of behavior that should be upheld by a judge in carrying out their duties and obligations.[8]

A judge must act carefully and confidently when handing down a verdict, either a verdict of punishment (*veroordeling*), release from all charges (*onslag van alle rechtsvervolging*), or acquittal (*vrijspraak*) to a defendant. This is the stage where the morality and religiosity of a judge is tested in order to uphold law and justice. The existence of a judge's belief in the process of imposing punishment on a defendant is one of the logical consequences of the theory of the evidentiary system. Based on the theory of the evidentiary system, the Indonesian Criminal Procedure Law adheres to a negative statutory evidentiary system (*negatief wettelijke bewijs theorie*) which determines that the judge may only impose a sentence on the defendant if the evidence is limited by law and is also supported by the judge's belief in the existence of the evidence. This theory is implemented in Article 183 of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP), which states that the judge may not impose a penalty on a person unless based on 2 (two) valid evidence he is convinced that the criminal offense really happened and that the defendant is the one guilty of committing it.[9]

3. RESULTS AND DISCUSSION

I. The Defendant's Position as a Justice Collaborator in Decision No. 798/Pid. B/2022/PN. Jkt.Sel

In Criminal Procedure Law, the witness plays a very important role in revealing the substance of the case, starting from the investigation stage, investigation to the examination stage at trial, so the position of witnesses in procedural law is very decisive, namely as the main evidence as regulated in Article 184 of the Criminal Procedure Code (KUHP). In addition, the role of witnesses greatly influences the judge's confidence in issuing a verdict, because it is not uncommon for witnesses to be unwilling to provide actual testimony as expected in the principle of proof. [10]

In this decision there is a breakthrough made by a progressive judge, namely in the consideration of the judge, the judge included in the consideration of the Defendant's Legal Advisory Team at the trial had submitted a request that the Defendant be designated as a cooperating witness (Justice Collaborator), The application was attached with a recommendation from LPSK dated January 11, 2023 regarding Recommendations for Granting Rights and Special Handling as a cooperating perpetrator witness (Justice Collaborator), whereas in general cases this justice collaborator is usually carried out in cases where in SEMA number 4 of 2011, the Supreme Court has provided guidelines for criminal acts whose perpetrators can obtain the status of a cooperating perpetrator witness with the conditions stipulated that number 9 letter a of SEMA no 4 of 2011, determines a person as a cooperating perpetrator witness (Justice Collaborator) as follows: The person concerned is one of the perpetrators of certain criminal acts as referred to in this SEMA, admits the crime he

committed and is not the main perpetrator in the crime and provides information as a witness in the judicial process, that what is meant by certain criminal acts in SEMA No. 4 of 2011 is certain serious criminal acts, such as corruption, terrorism, narcotics, money laundering, trafficking in persons, and other organized criminal acts, which have caused serious problems and threats to the stability and security of society, thus undermining democratic institutions and values, ethics and justice and endangering sustainable development and the rule of law. However, in the judge's consideration, although the case of premeditated murder could not be included, in the judge's mind the birth of SEMA No. 4 of 2011 was based on the provisions in Law No. 13 of 2006, which although it has regulated the Protection of Whistle Blowers and witnesses of Cooperating Perpetrators (Justice Collaborators) in article 10 of Law No. 13 of 2006, it was realized that there was still a need for the protection of whistle blowers and witnesses of cooperating perpetrators. 13 of 2006, it is realized that further guidance is still needed in its application. In this case, the judge should use a careful analogy to SEMA No. 4 of 2011, the protection given to both Whistle Blowers and witnesses of Cooperating Actors (Justice Collaborators) is based on "certain criminal acts", while Whistle Blowers and witnesses of Cooperating Actors (Justice Collaborators) based on "criminal acts in certain cases", are not yet part of SEMA No. 4 of 2011 in accordance with the decision of the LPSK as referred to in article 5 paragraph (2); that article 5 paragraph (2) basically contains the same content as article 28 paragraph (2) letter a, where the explanation of article 5 paragraph (2) explains what is meant by, "criminal offense in a particular case", among others, criminal acts of corruption, criminal acts of narcotics/psychotropic drugs, criminal acts of terrorism, The judge based that the defendant was in a dangerous position so that the legal formal basis for positioning the defendant as a justice collaborator was not strong enough, but the judge's recognition of the position of justice collaborator should be appreciated. In addition, the judge also considered that the facts of the trial had shown that the Defendant Richard Eliezer Pudihang Lumiu had brought to light the case of the loss of life of the victim Yosua, with testimony that was honest, consistent, logical and in accordance with the remaining evidence available so that it greatly helped the aquo case to be revealed, even though it put the Defendant in a position and situation that was very dangerous for his soul, considering that the Defendant was practically walking alone in this case if viewed from the principle of expediency, then the judge's consideration has the principle of expediency in revealing the murder scenario carried out by the witness Ferdi sambo because he became a key witness so that in the end a large conspiracy at the police level was revealed regarding the murder of Victim Joshua. In the judge's consideration, from the perspective of expediency, the defendant's position is a way to reveal the truth of the engineering conspiracy that has been arranged by the major police generals in various ways to cover up the murder case that occurred to the victim Yosua so that in this case it contains aspects of benefit to the community. Benefit according to Jeremy Bentham means that the existence of the state and law is solely for the sake of true benefit, namely happiness for all the people. In the above decision has created this happiness should be felt by every individual in a nation. Bentham also argued that the purpose of legislation is to produce happiness for the community. [11]

On the other hand, the decision also has negative characteristics when decision No. 798/Pid. B/2022/PN. Jkt.Sel will be accepted as a decision that serves as a guideline for other judges who decide cases of premeditated murder involving more than one perpetrator, so it is feared that the decision will be made into jurisprudence by other judges easily. This can be a bad precedent for the judiciary when judges analogize that certain criminal acts here can also be interpreted for all types of criminal acts committed by more than one perpetrator and the participating perpetrators will be positioned as justice collaborators when they want to help reveal certain cases. Whereas in the case of Bharada E, there is a big difference, namely Bharada E is a police officer with a non-high rank who is considered to have sincerely admitted his guilt and wanted to reveal a case involving a 2-star general who had engineered a murder case by involving many parties in the police realm, to the point of trying to eliminate evidence in the murder case. So that Bharada E's role was quite large in uncovering the premeditated murder case involving Ferdi Sambo.

II. The Effect of Amicus Curiae in the Independence of Judges deciding cases

In the judge's consideration there is also a consideration that the judge received a letter of application for the submission of amicus curiae (Friends of the Court) in the case of the defendant Richard Eliezer from various parties, among others: Institute For Criminal Justice Reform, Alumni Association of the Faculty of Law, Trisaksi University, Farida Law Office, Iluni FHAJ Advocacy Team and finally from the Indonesian Academy Alliance which basically states that honesty and courage are the key to justice for all, therefore we ask that the honesty of the Defendant Richard Eliezer be properly rewarded. In this case the amicus curiae position has adopted article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power. 48 of 2009 on Judicial Power, which reads "Judges and constitutional judges shall explore, follow, and understand the values of law and the sense of justice that lives in society". A judge must also have integrity and a personality that is irreproachable, honest, fair, professional, and experienced in the field of law and must obey the code of

ethics and code of conduct for judges. Therefore, although judges have an important role as a power, judges must still be subject to the applicable law as well. How they exercise their authority must also be adjusted to the applicable laws and regulations. Looking at the existing provisions, Richard Eliezer's decision does not appear to be an error in the application of the law. This is because the judges themselves are authorized by law to make subjective judgments based on existing values of justice. Likewise, other judges are appointed with a sense of justice that lives in the community in accordance with Article 5 of the Judicial Power Law. However, with the different subjectivity of each judge, the relationship between law and power can be seen. If the panel of judges who decided Richard Eliezer's case was a different panel of judges and focused more on objective evidentiary considerations, it is likely that the verdict that Richard Eliezer would have received would have been different. Likewise, the relationship between power and law can be seen in the role of the public prosecutor in Richard Eliezer's trial. Although Richard Eliezer was said to have fulfilled all the elements of the offense, the public prosecutor did not provide the maximum prison sentence. And when the decision given by the panel of judges was less than half of the charges given, the public prosecutor still did not appeal. From the above it can be seen that the quality of the application of a law depends on the quality of the powers that be. How it is applied must be for the benefit of the community and not for other interests. However, even though in the aspect of justice in the consideration it is explained that the panel will not turn a blind eye and feel pressure related to the application of *amicus curiae* (Friends of the Court) to the case of the Defendant Richard Eliezer, on the contrary, it views it as a form of love for the nation and state, especially in law enforcement so that the parties, both institutions and alliances that represent the hopes of the wider community, are called upon to deliver justice that is felt and craved to be upheld, especially against the Defendant Richard Eliezer. Based on the research conducted, the results show that **First**, *Amicus curiae* can be the basis for the judge's consideration in making a decision. Although the opinion of *amicus curiae* is not mandatory to be considered, the existence of *amicus curiae* can certainly be used as a legal breakthrough in finding additional material or information for judges in their legal considerations. *Amicus curiae* serves to assist judges in carrying out their obligations to explore the values of justice that exist in society and help judges to be fair and wise in deciding cases. *Amicus curiae* can be said to be a second opinion given by parties outside the litigation to the judge. The position of *Amicus curiae* cannot be categorized as evidence listed in the Criminal Procedure Code. However, in the Indonesian judiciary there are judges who make it as a letter of evidence in their consideration to render a verdict. **Second**, the number of *amicus curiae* submissions in criminal justice practice in recent years shows that *amicus curiae* has begun to exist in Indonesia.

The legal basis for the admissibility of *amicus curiae* in Indonesia is through Article 5 Paragraph (1) of Law Number 4 of 2009 concerning Judicial Power. "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society." The Indonesian judiciary under the Supreme Court does not have rules on *amicus curiae*, but the legal basis for *amicus curiae* criminal acts is based on Article 180 of the Criminal Procedure Code, consisting of 4 paragraphs which read; 3 1). In the event that it is necessary to clarify the issues arising in the court session, the presiding judge may request expert testimony and may also request that new material be submitted by those concerned; 2). In the event of a well-founded objection by the accused or his legal counsel to the results of the expert testimony referred to in paragraph (1), the presiding judge may order that the matter be re-examined; 3). The judge may by virtue of his/her office order a re-examination as referred to in paragraph (2). And 4). The re-examination as referred to in paragraph (2) and paragraph (3) shall be conducted by the original agency with a different composition of personnel and other agencies authorized to do so. Paragraph (1) states that "the presiding judge may request expert testimony and may also request that new material be submitted by the interested party." The sentence indirectly refers to the concept of *amicus curiae*. Therefore, it can be said that the concept of *amicus curiae* has been used in the criminal justice system in Indonesia although it is not specifically institutionalized. Currently, there is no specific regulation on *amicus curiae* in Indonesia.[6] The application of the *amicus curiae* concept will be beneficial for judges because it can be said that *amicus curiae* is the embodiment of justice felt by the community for a criminal case submitted to the court. In the aforementioned case, the position of *amicus curiae* is not the only consideration of the judge that is used as the basis for the verdict, so that it is not prohibited. Based on the theory of the evidentiary system, the Indonesian Criminal Procedure Law adheres to a negative statutory evidentiary system (*negatief wettelijke bewijs theorie*) which determines that the judge may only impose a sentence on the defendant if the evidence is limited by law and is also supported by the judge's confidence in the existence of the evidence. This theory is implemented in Article 183 of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP), which states that the judge may not impose a penalty on a person unless based on 2 (two) valid evidence he is convinced that the criminal offense really happened and that the defendant is the one guilty of committing it.[9]

4. CONCLUSION

Related to Decision No. 798/Pid. B/2022/PN. Jkt.Sel contains two interesting points, namely the first position of the defendant as a Justice Collaborator can be a bad precedent, but on the other hand it is very necessary to reveal a case that is considered quite large because it involves the POLRI institution. While the position of amicus curiae here has not been clearly regulated in Indonesian legislation, but as long as the independence of judges is maintained from outside parties, in this case amicus curiae may be used as a consideration of judges who are not the only ones as a basis for deciding criminal acts as a manifestation of justice desired by the wider community which is also for the purpose of criminal law reform.

References

- [1] L. R. Eno, Tarmudi, and O. S. Malinim, "Kedudukan Hukum Justice Collabolator pada Peradilan Pidana di Indonesia (Studi Kasus Putusan Nomor : 1273/Pid.Sus/20019/PN.Plg)," *J. Huk. Bisnis*, vol. Vol. 12 No, p. hlm. 202, 2023.
- [2] L. Mulyadi, "Perlindungan Hukum Whistle-blower dan Justice Collaborator dalam Upaya Penanggulangan Organized Crime di Indonesia Masa Mendatang," *PADJADJARAN J. Ilmu Huk. (Journal Law)*, vol. 1, no. 3, pp. 578–597, 2014, doi: 10.22304/pjih.v1n3.a9.
- [3] Hendra Budiman, "Kesaksian Edisi II," *J. LPSK*, p. 126, 2016.
- [4] L. Ayu Pralampita, "Kedudukan Amicus Curiae Dalam Sistem Peradilan Di Indonesia," *J. Lex Renaiss.*, vol. 5, no. 3, pp. 558–572, 2020, doi: 10.20885/jlr.vol5.iss3.art4.
- [5] I. N. B. Anak Agung Gde Rahmadi, "Amicus Curiae Dalam Pembuktian Perkara Pidana Di Pengadilan," *J. Kertha Semaya*, vol. 9, no. 2, pp. 330–338, 2021.
- [6] Sukinta, "Konsep dan Praktik Pelaksanaan Amicus Curiae Dalam Sistem Peradilan Pidana Indonesia," *Adm. Law Gov. Journal.*, vol. 4, no. 1, p. 10, 2021.
- [7] I. T. Eka Aryantara, Agus Takariawan, "Kemandirian Hakim Dalam Memutus Perkara Kaitannya Dengan Larangan Hakim Memutus Lebih Dari Yang Dimintakan Oleh Para Pihak," *Syiar Huk. J. Ilmu Huk.*, vol. 18, no. 2, pp. 195–221, 2020, doi: 10.29313/shjih.v18i2.6829.
- [8] M. Hertoni, "Independensi Hakim Dalam Mencari Kebenaran Materiil," *Lex Crim.*, vol. 5, no. 1, p. 52, 2016.
- [9] I. Tajudin, R. Ramadhani, and A. Az Zahra, "Pembentukan Keyakinan Hakim Dalam Perkara Pidana Di Lingkungan Peradilan Jawa Barat," *Arena Huk.*, vol. 13, no. 02, pp. 348–368, 2020, doi: 10.21776/ub.arenahukum.2020.01302.9.
- [10] A. S. Sirait, "Kedudukan dan Efektivitas Justice Collaborator di dalam Hukum Acara Pidana," *J. el-Qanuniy J. Ilmu-Ilmu Kesyarahan dan Pranata Sos.*, vol. 5, no. 2, pp. 241–256, 2020, doi: 10.24952/el-qonuniy.v5i2.2148.
- [11] E. Pratiwi, T. Negoro, and H. Haykal, "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?," *J. Konstitusi*, vol. 19, no. 2, p. 268, 2022, doi: 10.31078/jk1922.

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