

## CHAPTER V

### CLOSING

#### A. Conclusion

Based on the above explanation, the conclusions of the discussion of this thesis are as follows:

1. Indonesia, as a civil law country, has several times adopted legal practices carried out by the common law legal system, one of which is *amicus curiae*. The application of *amicus curiae* has been carried out several times in the criminal justice system in Indonesia, although it is not regulated explicitly. *Amicus curiae* can be applied in Indonesia by using the legal basis of Article 5 Paragraph 1 of Law No. 48 of 2009, which explains -hakim dan hakim konstitusi wajib menggali, mengikuti, dan memahami nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakatl. *Amicus curiae* is a legal value that lives in society and is adopted from the common law legal system, so it is applied in the Indonesia judicial system, but because it is only an opinion from outside the litigants, the judge is not obliged to follow the opinion of the *amicus curiae* so that the judge still has his own opinion and can still maintain the.
2. Similarities and differences in the application of *amicus curiae* in Indonesia and the United States are as follows:
  - a. Similarities in the application of *amicus curiae* in Indonesia and the United States lies in:

- 1) a party to *amicus curiae* is a person or organization as a third party who is not a party to a matter;
  - 2) The interests of *amicus curiae*, namely its own or the interests of the group it represents, the interests of one of the parties in litigation, and the public interest.;
  - 3) The function of the *amicus curiae* is to support the opinion made by the litigant, to give a new opinion on a case, and to give an opinion to the court regarding the consequences of a judgment;
  - 4) The purpose of the *amicus curiae* to influence the outcome of the verdict and provide information that helps the examination;
  - 5) The form of information *amicus curiae* can be written or orally in court;
  - 6) The judge is not obliged to consider the opinion of *amicus curiae* because Indonesia and the United States guarantee the court and Judge are independent;
  - 7) The courts of filing *amicus curiae* in low-to high-level courts.
- b. The difference in *amicus curiae* differences in Indonesia and the United States lies in:
- 1) different legal systems, America as a common law country with jurisprudence as its legal source, and Indonesia as a civil law country with the law as its legal source.;

- 2) The system of evidence in Indonesia which adheres to a negative proof system and closed proof, while the United States the source of law is not limited to the law alone.
- 3) The position of the *amicus curiae* brief on criminal justice, for which there is no regulation in Indonesia. While the United States has set the *amicus* brief in Rule 37.2, which mentions the *amicus* brief to support the plaintiff or the defendant,;
- 4) Regulation in the application of *amicus curiae* There are differences: Indonesia does not regulate explicitly or specifically in law, while the United States has specifically regulated;
- 5) The procedure for making *amicus* briefs is not regulated by law in Indonesia, while the United States has specifically regulated the procedure for writing *amicus* briefs;
- 6) The deadline for filing *amicus curiae* is not regulated by law in Indonesia; the United States has set the deadline for filing *amicus curiae*.
- 7) Prosecutors filed for *amicus curiae*, in Indonesian prosecutors have never filed as *amicus curiae*, while the prosecutors in the United States filing *amicus curiae* has become frequent

## B. Suggestion

Based on the results of the research that has been described in the discussion section in the previous chapter, it raises some suggestions for consideration in the application of *amicus curiae* in Indonesia.

- 1) *Amicus curiae* (Friends of the Court) has been used in some cases in Indonesia, but there is no specific regulation on the use of *amicus curiae* in Indonesia, so a special regulation or explicit regulation of *amicus curiae* in the criminal justice system in Indonesia should be established.
- 2) The legal system of evidence in Indonesia is a closed and limited system, so *amicus curiae* is often ruled out because it is not clearly or explicitly regulated in the Criminal Procedure Code. So it is hoped that the future Criminal Procedure Code will use an open proof system so that the practice of *amicus curiae* can be applied in the criminal justice system in Indonesia.

