

Collective Press Release



IMDLN ICJR



“Amicus Curiae: Prita Mulyasari Vs. Indonesia Republic”

ELSAM, IMDLN, ICJR, PBHI, YLBHI

Prita Mulyani case that has been examined by Tangerang district court in which she was accused of breaching article 27 subsection (3) of information and technology Act (UU ITE) and article 311 of criminal law (KUHP) has attracted people attention. It was the first time in history of contempt of court case in Indonesia that a suspect could be arrested by prosecutor. Moreover, this case is a task for the government to find out their seriousness to give respect on their international duties in protecting freedom of speech after the ratification of covenant for civil and political rights which ruled in Act no.12/2005.

In this context, Institute for Policy Research and Advocacy (ELSAM), Institute for Criminal Justice Reform (ICJR), Indonesia Media Defense Litigation Network (IMDLN), Indonesia Legal Aid and Human Right Association (PBHI), and Indonesian Legal Aid Foundation (YLBHI) have entrusted Amicus Curiae in the case of Prita Mulyasari Vs. Indonesia Republic to Penal of Judge at Tangerang district court which examined the case numbered 1269/PID.B/2009/PN. TNG. The committee consists of several judges who are; Arthur Hangewa, SH, Perdana Hukum, SH, and Viktor Pakpahan, SH, MH, Msi.

“Amicus Curiae”, is a Latin term rarely used in Indonesian court. It is a Roman law concept tradition which developed and practiced in common law tradition. The concept makes a court able to invite third parties to provide some information or law facts related to some unfamiliar issues. Amicus curiae is known in English as “friend of the court” which means “someone who is not a party to the litigation, but who believes that the court’s decision may affect its interest”. Literally, amicus curiae is translated



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as ‘friend of court’ in which the party that has interest toward a particular case gives its law opinion to the court. Therefore, amicus curiae is testified by someone who is interested in affecting witness voice but not the one who is tangled in a case; a court advocate on some law cases who wants to influence court result by involving mass of people to solve the case.

In Indonesia, amicus curiae has not been known and used either by academicians or practitioners. So far, there are only two amicus curiae brought to the court in Indonesia. The first one was proposed by freedom of the press pioneers on judicial review of time magazine Vs Soeharto case at supreme court and the second one on “Upi asmaradana” case at Makasar district court when it was proposed as the additional information for penal of judge who examine cases. Even though amicus curiae had not been known in Indonesia system at that time, but article 28 subsection (1) Act no.4 2004 about court power that states “judge must explore, obey, and understand law values and justice in the society”, as the law principle proposal of amicus curiae, so it’s normal if this mechanism can be used as one of the strategies to clarify was principles and constitutions, especially some cases have connection with several acts and controversial articles.

Through this Amicus Curiae, ELSAM, ICJR, IMDLN, PBHI, and YLBHI want to participate in the judicial court process on Prita Mulyasari versus Indonesia Republic in order to give an overview on how contempt of court can be categorized as flexible articles that can bound everyone without considering a statement context in a democratic country and also Prita irrelevance accusation with the human rights standards that have been recognized and ratified by Indonesia Republic.

There fore, ELSAM, ICJR, IMDLN, PBHI, and YLBHI recommended penal of judges at Tangerang district court who examined the case numbered 1269/PID.B/2009/PN.TNG between Prita Mulyasari versus Indonesia Republic as follow;

Freedom of expression is the vital basic rights for some individuals to participate and take responsibility in democracy. It is one of the very strategic human rights to make democracy work because democracy cannot work without the freedom of expression and speech.

Indonesia has given guarantee on freedom of expression and speech through its constitution, article 28 F UUD 1945 and in its several acts such as; Act no. 39/2009 about human rights, International Covenant of civil and political rights that has been ratified by Act no. 12/2005. As a result, the rights of expression and speech have been among the strongest fundamental rights in our law system because it is clearly protected by Constitution and the other law instruments. The infraction of these rights does not only breach the law but also break the citizen constitutional rights.

Indonesia has ratified International Covenant of Political and Civil Rights in 2005. Based on article 2 of this covenant, Indonesia must:

Promise to respect and give guarantee on the recognized rights in this covenant for all of people who live in its area and under its law authority, without any discrimination of race, skin color, sex, language, religion, political stance, nationality or social status, economic condition, origin, and other status.

If there is something that has not been included in the rule of acts or other valid regulations, every country in this covenant promises to take necessary steps which is appropriate with its constitution and with some rules in this covenant to determine the rule of acts or other regulations needed to enact the recognized rights in this covenant.

Give guarantee to everyone on their rights and freedom which is recognized in this covenant. If there is a violation on it, the government must do appropriate steps to protect or give their rights and freedom back even though the violation is done by someone who has power.

Based on article 2 of International Covenant of civil and political rights, Indonesia has a duty to give respect and guarantee on the covenant recognized rights (including the rights of expression and speech). It works on the people who live in its area and obey its law. It means that Indonesia must do some changes toward all of acts and rules which are against some covenant articles of human right protection.

Indonesian laws that are in connection against the rights of expression and speech of International Covenant are Article 27 subsection (3) UU ITE, Article 310 WvS and Article 311 WvS. The articles are particularly in contrast to Article 19 of International Covenant of civil and political rights as the contents of those articles are not inline with Article 19 including the acceptable limitation rule. The use

of those articles is the real threat for freedom of expression and speech.

The use of Article 27 subsection (3) UU ITE, Article 310 WvS and Article 311 WvS to sue Prita Mulyasari is not appropriate because those articles are in contrast to Article 19 of International Covenant of Civil and Political Rights.

If the court will accept Article 27 subsection (3) UU ITE, Article 310 WvS and Article 311 WvS as an existed norm, they have to apply them very carefully and they have to consider about the freedom of speech and expression as have been guaranteed by Constitution, Human Right Acts and Act No. 12/2005 about the ratification of International Covenant of Civil and Political Rights.

In the Court, Prita was stated innocent, consequently the court must have given Prita restoration of her rights which had been violated. It is inline with Article 2 International Covenant of civil and political rights which guarantees certain recognized rights and assures the ones whose rights are violated will have the effective restoration even though the rights are violated by someone who has official capacity.

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