
Contempt Of Court Regulation in Indonesia's Justice System

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Abstract

This study aims to evaluate the Contempt of Court regulations and their application in Indonesian justice system. This research is qualitative research which the data collection is obtained from literature study. The results and discussion in this study indicated that in several countries, *Contempt of Court* has been implemented for a long time, for example in England, it has started several centuries ago, however in Indonesia there is no Contempt of Court Law and even there is rejection from public against the act of *Contempt of Court*. Based on the exploration above, the existence of regulations related to Contempt of Court is quite important to be immediately promulgated within the aim of realizing law enforcement and achieve the justice. According to result and discussion, this research needs further examination to obtain more comprehensive result that represent every parties that involved with the court.

Keywords: Contempt of court, regulation, law enforcement.

Introduction

Nowadays, The Contempt of Court regulation has become an interesting discussion among academics and practitioners. In the context of legislation, the existence of Contempt of Court is reflected in Draft of Law on Criminal Acts of Judicial Administration or contempt of court, which has only been circulated among limited members of Legislative Council of Parliament to be proposed for 2016 Priority National Legislation Program. (Simangunsong, 2019).

Contempt Of Court was first began in Common Law system with its case law, including England and United States (Jeumpa, 2014). In historical perspective, Contempt or humiliation is an act in defiance of any direct orders of the leader or any direct opposition to the leader and his orders. Since 1742, England has implemented a *contempt of court*, which was subsequently renewed in 1981 within the adoption of Contempt of Court Act in 1981. United States was first promulgated the Contempt of Court in 1789. *contempt of court* is a term that comes from legal tradition of England and countries that follow the system of common law.

The design has pros and cons in society. For those who are pro, criminal acts of administering justice need to be regulated in a separate law. It is because judges and other judicial officers should be protected to ensure the judicial process that implemented without intervention, and to realize an independent, authoritative, and dignified judicial power. While the cons side think it is not necessary¹. Apart from the potential to silence the freedom of the press and expression recognized by constitution, the contempt of court has also been regulated in several laws and regulations (Taba, 2016).

In Indonesia, public's perception of judiciary needs further concern. Judiciary is no longer perceived by the public as a place to seek justice in the context of law enforcement, but as an extension of the ruler or power. Judiciary is no longer perceived by public as a place to seek justice in the context of law enforcement, but as an extension of the ruler or power (Luhut inside Sopyan, 2020).

Although in the end the draft was canceled for promulgation, the concept of Contempt of Court still includes as an urgency to be discussed. Based on the explanation above, this study aims to evaluate Contempt of Court regulations and their application in legal system in Indonesia.

¹One of the currents of rejection of this bill has also been carried out by several parties, such as the Indonesian Judicial Monitoring Society FHUI (MaPPI FHUI), the Press Legal Aid Institute (LBH), and the Institute for Criminal Justice Reform (ICJR)

Research Method

This research is qualitative research. The data collection is obtained from literature study. Literary study is data retrieval carried out by collecting data or information from books or other sources, then read and study it as research material (Zed, 2014). The data used in this research is secondary data. It has been provided by other parties, especially primary legal materials such as Law Number 51/2009 concerning on the Second Amendment, Law Number 5/1986 concerning on State Administrative Courts, Law Number 30/2014 concerning on Government Administration, and Government Regulations Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions to Government Officials and the 2019 of Draft Criminal Code (Marzuki, 2017).

Result and Discussion

The Beginning of Contempt of Court

Contempt of court is a medieval notion that was closely related to the form of monarchy in early medieval England, that king has ruled with God-like rights. According to this understanding, the chosen king represent God in the whole world that only accountable to God (Johny, 2009). The king is a source of rule and justice, and his officers have authority over him. As a result, contempt of court is nearly identical to disdain of the King. It is supported by Bracton's statement in 1260, "There is none bigger crime than disdain and insubordination, for all person ought to be susceptible to the king as ultimate to his official."

Contempt of Court derives from words Contempt, which implies affront or indignity, and Trial, which means court, thus it can be translated as an act intended to humiliate the institution of court. Contempt of Court, according to Oemar Senoadji, is handling with the "Application of Law," *recht pleging* (the course of justice) (Wagiman, 2005).

Contempt of court is defined in Black's Law Dictionary as "any act that can be regarded to demoralize, disrupt, or impede the assigned responsibilities of judicial institutes, or any action that can decrease their authority or dignity." The act is dedicated by an individual who intentionally resists or disregards his jurisdiction or hinders jurisdictional roles, or it is decided to carry out as part of a case by someone who intentionally does not abide with a legitimate final judgment.

Based on the preceding concepts, it is feasible to conclude that perjury criminal acts can be perpetrated by individuals whom is or are not engaged in an experimental comparison, within or outside the court, actively or passively and directed at insulting the power and integrity of the judge or impeding court staff linked to the justice system. In this due consideration, Oemar Senoadjie contends that the criminal act of judicial contempt deals with "administration of justice," *rechtpleging* (the course of justice).

In the context of Indonesian, until today there is no general accepted definition of what is the actual term, regarding the reason of an offense can be included in *Contempt of Court*.

An offense against the administration of justice actually has a wider scope than the *Contempt of Court (ansch)*. Because it is not only insults the committee when the trial begins, it takes place, but includes every violation in judicial process (*offence against the administration of justice*). It is possible for insults to occur at the stage of investigation, prosecution, and examination before a court hearing or even during the execution of a court decision (execution). it turns out that in Criminal Code, there are many provisions regarding offenses related to the administration of justice.

Contempt of Court in several countries

Several of the countries below provide arrangements regarding the Contempt of Court in a special statutory regulation, such as UK, United States and several other countries.

a. United Kingdom

Contempt of Court is a state institution that surfaced in the English common law system around the 13th century. In general, the intention of Contempt of Court is to safeguard the integrity of a judicial process by avoiding the court from developing various preconceptions that would damage the respondent as a result of mass media interest beforehand and during a case's litigation.

The Contempt of Court is regulated in two kinds of regulations, **First**, the *Contempt of Court Act 1981*. The Contempt of Court Act 1981 is a regulation that regulates the Contempt of Court that carried out by journalists through the reports they made. According to the Contempt of Court Act 1981, news that can include Contempt of Court is only news that has been published since the first action against a case that has been taken. It means that there has been detention, an indictment has been made, or a bail that has been set for detention, or an order has been issued to present the defendant at trial (MAPPI Admin, 2018)

Second, Contempt under common law According to the Contempt of Court Act 1981, if news is published while the first action is being taken, it is a contempt of court. Contempt is a principle that applies before the first action, such as when it is obvious that the court case will also be managed to carry out as shortly as possible or will be delayed. If a news article is charged with contempt of court under Common Law, it must be demonstrated to the state attorney that the journalist aimed to cause discrimination.

b. United States

In United States, law that regulate Contempt of Court has long been in affected both in the state and Federal Government to be a guide for judges considering the form and nature of various harassment. The Federal Government has governed the Contempt of Court since 1831 within the Act of March 2, 1831 which then revised in 1873 and 1964. Furthermore, each state regulates the Contempt of Court in a different system of law. Generally, constitution manage the right time of judge can take action against harassment directly or through the usual procedures (MAPPI Admin, 2018)

Contempt of Court consist of 2 acts as following below:

Direct Contempt occurs in the existence of the judicial officer (*in facie curiae*) and is dealt with subsequently; the judge informs the aggrieved party that has disrupted the trial system and prejudiced the justice system. The adjudicator may enforce the condemnation directly after providing the individual the chance to respond.

Indirect Contempt is the entity whose advantage the order was arrived will be alleged of implicit contempt if it occurs outside the immediate presence of the court. A person charged with indirect contempt is entitled to notice of the charge and a listening on the proof of contempt; however, because there is no documented procedure, they may or may not be permitted to present substantiation in refutation.

c. Japan

Japan has a special constitution regarding civil contempt, the Law to Maintain Order in Courtrooms, and other laws, as well as a Criminal Code. According to Article 1 of the constitution, the law aims to maintain order in the courtroom, among other things, it upholds the integrity of judicial decisions in order to ensure lawful reputation in democratic country.

Article 2 regulates the criminal and the formulation of the offense. It is stated that a person who conducts a trial or other process for a case inside or outside the court, ignore the orders or did not pay attention to the actions that was taken by the court to maintain order or obstruct the implementation of court duties that seriously harm the dignity of court decisions, by means of harsh words, violence, noise or other inappropriate words and attitudes in court process. In another area, it shall be imprisoned for no and over 20 days or a non-criminal fine of no more than 30,000 yen, or both sanctions will be applied concurrently.

In Contempt of Court cases, court officials or the police may detain the perpetrator at crime scene. In this case, if the court does not provide detention within 24 hours, then the decision to place the criminal subject to prison should be terminated immediately. *Contempt of Court* process are similar to ordinary events. before giving a decision, the court necessary examine witnesses and evidence. If a crime is imposed, every part of the court costs is borne by the convicted subject.

d. Hong Kong

Contempt of Court include several points of:

- 1) *Affront a prosecutor or fairness, a witness, or a defense attorney.*
- 2) *Kept interrupting the legislature's litigation.*
- 3) *Interrupt with the administration of justice.*

- 4) *Judicial misbehavior (i.e., use of mobile phone or recording devices without permission).*
- 5) *A jury member who turns the courtroom without approval during a trial.*
- 6) *Defying a court ruling or conviction*
- 7) *Contract violation*
- 8) *Violate of an obligation imposed on an attorney by judge's ruling.*

e. India

Several act that can be stated as *Contempt of Court* include:

1. *Deliberate defiance of any court's decision, decree, guidance, command, warrant of arrest, or even other process, or intentional violation of an endeavor granted to a judge*
2. *Disobeying a court's judgment, decree, direction, order, writ, or other process, or willfully breaching an underlying challenges to a court. The publication in form of words, spoken or written, or by signs, or by visible representation, or otherwise of any matter or the performance of any additional act that even: (i) scandalizes or tries to mortify, or reduces or lowering the authority of, any court, or (ii) actually reduces the jurisdiction of, any court, or (iii) works by interfering with or tries to intrude with the judicial process in any other way.*

The Qualification of Contempt of Court

Contempt Court was divided into two categories based on several references. **First**, civil disobedience. Civil contempt is used to define disdain induced by defiance of a social judicial order. Violations in civil contempt are caused by the failure of one litigants to carry out a court order for the benefit of other party (Wagiman, 2005). Therefore, the action is not against the dignity of court, it is detrimental to other party, which at the request of the damaged party the court issues an order or determination in order to make the refuses party to carry out the court order and its obligations.

Second, *Criminal Contempt of Court*, Black's Law Dictionary defines criminal contempt as an act that does not respect the court and its judicial process with the aim of obstructing, hindering, interfering with the proceedings of judiciary or tend to cause the court to be dishonored. In this case, criminal contempt is a violation directed against the court and its judicial process (Black, 1990). Muladi (2002) stated in relation to the topic that criminal contempt is any action that tends to obstruct the management of court. It is viewed against an organization that is fighting for the social interest.

Sanctions that can be imposed on contempt criminals are punitive sanctions. In common law countries, the criminal subject can be sentenced to pay a fine or imprisonment. The purpose of giving punishment to criminal's contempt is to deter perpetrators from doing the same thing. This is important to protect the power of judiciary and dignity of the court, which in this case, the state, government, courts and society have an interest in the proper management of fairness (the due administration of justice) (Wagiman, 2005).

Lawbreaker contempt is frequently referred to as "offenses against the administration of justice" in legal system literary works. Arief (2013) classified the scope of criminal contempt as following below:

a) The Contempt inside the courtroom

This type of contempt is also known as disdain within the court, straightforward disdain, or lack of respect in facie. It manifests itself effectively in the trial during the legal system. In this case, an action that occur inside a court room can occur in any kind of trial, whether it committed by the parties, court visitors, press, or even the law enforcement. In this type of criminal contempt, judicial process should be protected, because the administration of justice is necessary to protect the rights of general public by providing guarantees that will not be disturbed.

b) Criminal acts to influence an impartial judicial process

Lawbreaker contempt of this type occurs outside of the judge and is frequently alluded to as scorn out of court, implicit scorn, or disdain ex facie. Several action in this type of contempt are threats, intimidation, bribery or trying to influence in other ways against judges, jurors and witnesses, such as :1) privately communicating

with judges to influence the judge decisions 2) Commenting on newspapers, magazines, television about an ongoing case 3) Publish something that is impartial in nature or influence ongoing and future judicial proceedings.

c) Scandalizing the court

Scandalizing the court include as *contempt out of court*, however it more specifically aimed at lowering the authority of the judge or court. In scandalizing the court, there are principles regarding the matter of defamation of court to maintain an atmosphere of court honor and to protect the public from the attempts that try to turn the court into a contemptible one in the society. *Contempt by scandalizing* declared as news that reduces power and affects the objectives of judiciary.

d) Interference of court officials

Lawful procedure can be established without relying on judicial authority, such as state prosecutors. People who have an interest in balancing their social order expect the court to be the one to maintain balance and legal order in society. Therefore, court officials should be protected from the factor that can interfere their duties. The interference can come from the involved parties in court or from the parties who are not directly involved.

e) Retaliation for committed actions during judicial process

This type of contempt is usually directed against witnesses. This revenge is carried out by parties who are sentenced by the court and they are not satisfied with court's decision. It happened because the parties thought that they were sentenced because of incriminating reports given by the witnesses in court. The act may take the form of violently attacking, making threats, or challenging witnesses.

f) Violation of obligations by court officials

Legal power is related to the activity of providing justice, which in this case is carried out by the court. Anyone in any different jurisdiction has the ability to seek equality in any prosecution. As a result, every judiciary's representative must obey the regulatory requirements. The contravention of king officer's responsibility is the traditional type of contempt. Action that can be categorized as this type of violations for example, correctional officers holding documents or letters from prisoners and sent to their lawyers.

g) Lawyer's Violation

In carrying out their duties, lawyer should be bound by the rules and professional ethics. Therefore, a lawyer as professional should always be responsible for respecting, being right and being kind to the court officials, clients, and judiciary. The example of *contempt of court* that was done by the lawyer include:

1. Reach a compromise with the adversary, even as being aware that the act should endanger the preferences of the aided group.
2. Attempting to persuade the customer to accept recompense in order to influence witnesses, translators, researchers, lawyers, or courts in the relevant evidence.

Contempt of Court Regulations in Indonesia

In the framework of Indonesian law, the first presence of criminal contempt in legislation was found in Point 4 of the General Elucidation on Law Number 14/1985 concerning the Supreme Court, which stated that:

... to be able to ensure the creation of a better atmosphere for the administration of justice in order to uphold law and justice based on Pancasila, it is necessary to make a law that regulates the action, behavior, attitude, or speech that undermines the authority of the court.

However, even though it has been commanded in constitution number 14/1985 above, there has never been any legislation related to the *Contempt of Court* (Pemerintah Pusat, 1985), until the occurrence of a new constitution of Supreme Court which known as the constitution number 5/2004. Moreover, *Contempt of Court* was included as one of the materials for National Legislation Program (Prolegnas) 2005-2009 Number 83, within the name of "RUU Concerning on Crime Against the Implementation of Court (Contempt of Court)". However, until the end of prolegnas period, this constitution has not been discussed and enacted.

The material on contempt of court was then excluded from the 2010-2014 National Legislation Program (Prolegnas). The Contempt of Court substance has been re-entered as a constitutional amendment of the 2015-2019 National Legislation Program (Prolegnas) number 61, under the title "The proposed bill of Contempt of Court." Until eventually, the CoC charter suggested by IKAHI emerged under the title "Contempt of Court Crime," and afterwards lately a further draft of the CoC Bill emerged under the title "Criminal Act of Amending Justice and Contempt of Court." Nevertheless, this constitution draft has yet to be acknowledged by the DPR Legislative Institution.

Regarding the Contempt of court constitution draft, the first thing that caught this research attention was Article 20 and Article 25 of this draft as stated below:

Article 20

Everyone who offends judges, the honesty, objectivity, or fairness of judges or officials managing equality in connection with the administration of justice, both verbally and nonverbally, will face an optimum custodial sentence of 8 (eight) years and/or a maximum fine of 1,000,000,000.00. (one billion rupiah).

If they did this through composing that was publicized via digital media, people will encounter up to ten (ten) years in prison and/or a \$1,500,000,000.00 fine (one billion and five hundred million rupiah).

Article 25

Everyone who publicizes or enables to be released the continuing trial or indeed a case in trial system, which may impact the autonomy or objectivity of the judge, faces a maximum prison sentence of 5 (five) years and/or a maximum fine of 1,000,000,000.00. (one billion rupiah)

Everyone who posts statements on a court's ruling before it acquires perpetual legal effect, which tries to undermine the legitimacy of the judiciary, will result in a penalty for a maximum of 5 (five) years and/or a maximum fine of 1,000,000,000. (one billion rupiah).

Conclusion

Contempt of Court has been used for a long time throughout many countries, including England, where it dates back several centuries. However, in Indonesia, Contempt of Court Law does not yet arise, and there are public rejections of Contempt of Court, despite the fact that Contempt of Court is quite effective and should occur since Contempt of Court is anticipated to maintain the law and equality (Hasibuan, 2015).

Based on the results of research conducted by the Center for Research and Development in Supreme Court, it turns out that among the judges themselves there are still quite a number of people who do not approve of the existence of this Contempt of Court which was made in a separate law and most of people agreed to it. From the research results of Research and Development Center of Supreme Court itself, from 611 total questionnaires given to 611 judges, it turns out that there are 260 judges who did not approve of the Contempt of Court which is regulated in a separate constitution. Logically every Judges should agree with the arrangement of separate Contempt of Court, because after all, Contempt of Court Act should be quite useful to protect Judges from Contempt of Court, when the Judges implementing his duty. However, in reality not every judge agrees. Therefore, it is necessary to study further regarding the reasons for judges not accepting the law that regulated separately.

Based on the exploration above, this research concluded that the existence of regulations related to Contempt of Court is quite important to be promulgated immediately within the aim of realizing law enforcement and achieving justice. Unfortunately, the research that conducted by Research and Development Center of Supreme Court only uses judges as respondents and does not research for further opinions of prosecutors, advocates and the community that looking for justice. Therefore, this research still needs further follow up, in order to get more comprehensive results that represent every parties which involved with the court.

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