

Contempt of Court in Indonesian Criminal Justice System

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Abstract

Contempt of court is a cutting the edge in this era. This situation mostly happened when some people insulted the dignity of the court in case of expressing their dissatisfaction to the court. Therefore, contempt of court is a part of criminal offense eventhough there are stipulations concerning the issue. However it does not give any deterrent effect since the image of the court remains negative in this country. Therefore, with the Contempt of Court Act and stipulations in the Penal Code on the offense classified as contempt of court, it none other is to guard the authority and privilege of the respect of the court that is impartial and the place where people seek justice.

Keyword: *Contempt of Court, Criminal Justice System.*



A. INTRODUCTION

Social dynamics of millenium era makes an incredible leap. The rapid changes greatly influence and make contribution to the man's paradigm and behavior. It may either influence the structure of social culture of the tendency to the law applied. The development and intellectual also touch the critical drive of conscience to the development aspects of law, legal theory, body of law, or legal institution (court).

Critique of law without ethics and moral often incur the act or behavior of man that tends to demean or subvert the dignity and respect of the court (institution). The act can be categorized into criminal offense (criminalization) or was known as contempt of court in Indonesia Penal Code including the offense against the trial process.

Referring to the meaning of contempt of court is demeaning or instulting the institution of court. Therefore, contempt of court can be interpreted as a form or an act of derogating the institution of court. Even though the form and the act are various with the paradigm argued as the justification to escape from mistake of factual reality (Wahyu, 2005). Contempt of court is also directed toward the issue of administration. Oemar Seno Adjie argued that contempt of court is always facing the administration of justice, *rechtpleging* (due process of law).

Again, contempt of court is an act of demeaning the court process. It often occurs in Indonesia, for example, a defendant when going through court trial in big cases or mega-corruption involving politics and power. When viewed from the legal system, was a common law or Anglo Saxon system of family (Adjie, 1980).

In European continent such as in England, contempt of court falls into two parts: first, civil contempt that is disobeying court decision or order that can be categorized as an offense against the enforcement of justice). For instance, denying the court order (in civil case). The case, e.g. was of child custody. The sanction imposed upon the civil contempt is in coercive nature. Second, criminal contempt of court is any acts intentionally to disturb or to hinder the criminal process of court. This case is a form of an offence against the administrator of justice. The sanction against criminal contempt is punishment (primitive nature).

The qualification that is included in contempt of court, in the context of civil law system, is to protect courts and to keep guarding the effectiveness of justice system to be consistent with as stipulated in the codification of law of countries adopting civil law system. Legislations related to this *rechtpleging* do not use the term criminal contempt of court, but instead an offense against the court process as stipulated in the Penal Code in Chapter VI, Book II mentioning a criminal offense against the administration of justice starting from Article 325 to Article 335 of Penal Code (Ahmad & Rachmawati, 2016).

Responding the contempt of court occurred empirically in Indonesia, issue of contempt of court should be re-studied from the formal aspect of law. Logic of or the science of contempt of court, actually, is not adopted in civil law system that has long been applied in Indonesia (Ma'ruf, 2019; Prayitno et al., 2020). Evidently, contempt of court in reality or in empirical fact occurs in Indonesia. Contempt of court basically carries vast variants of definition and scope so it is not easy to elaborate in limited literacy in the form and characteristic of contempt of court category.

Pangaribuan (2010), argued that contempt of court is classified as direct and indirect, criminal or civil characteristic depending on the occurrence. Contempt of court is indirectly more potentially done by media reporters. While Barda Nawawi Arief and Muladi mentioned that court in the term contempt of court is court of judicature, a body established by law to exercise either generally or subject to defined limits, the judicial power should be differed from the power of legislative, executive, and judicative.

Meanwhile, Arief & Muladi (1992), said that the court in contempt of court is a judicial body established by law to carry out, either in general or subject to determined institutions, judicial power, must be distinguished from legislative, executive and judicial powers.

Table 1 Cases of Contempt of Court

No	Case	Act of Contempt of Court	Characteristic of Contempt of Court
1	John Key cs	Insulting and threatening to kill the prosecutor because he could not accept the indictment	Obstructing justice.
2	Advocate Pamudji	Commenting on mass media and criticizing a judge in Surabaya to violate the procedure	Attacking the integrity and impartiality of the court (Scandalizing the Court)
3	Customer of BPR PT. Surya	Screaming and bringing poster inside the court room while fanning the Judges with bill of money as of 10,000 rupiahs	(Misbehaving in Court)

Source: Antara (2015).

Table 1 showed that the act occurred at District Court of Surabaya and District Court of Purwakarta can be categorized as an offense of criminal contempt of court against the court decision making the definition of contempt of court to be categorized as an offense against judicial power. This fact should be the reference for the science of law, legal practitioner, legal advocate and people in the future, development of laws, particularly law of contempt of court.

Court process in Indonesia is so slow, long and time consuming. Since the process is long, it is a dilemma for the judge victim of contempt of court because they have to be heard and examined as victim witness in either investigation or court trial. This condition makes many cases of contempt of court were not legally followed up and the offender of contempt of court can be easily free since there is no indictment and punishment imposed. In other case, contempt of court with political twist can be found in some big cases, for instance a defendant of corruption who happens to be an elite politician. It is obvious when they deliberately hinder the process of the trial. This reality is often showed to public by corruption suspect as if they challenge the power of the law and politics.

Republika.co.id (2011), reminds us with the case of Nunun Nurbaetie (Case of traveller cheque) when the defendant pretended to be ill and suffered from acute amnesia. At last, the legal process in court is often hindered and postponed for quite some time, eventhought the suspect finally was arrested in Saphan Sun, Bangkok, Thailand.

Similar case also occurs with Angeline Sondakh (corruption case of budget planning in Ministry of Youth and Sport and Ministry of National Education). The defendant testified with false testimony (that she didn't Nokia mobile phone). The evidence was the recorded conversation between the defendant and Mindo Rosalina Manulang (merdeka.com). The false testimony, the act to escape the court trial. The case of Nenek Leona (case of fraud and embezzlement) in land transaction with Putra Masagung, a Jakarta businessman). Court process was similar with the reason of illness.

Concerning some cases above, harassment/insult, disrespect to the court often occurred. It is obvious that the stipulation or criminalization against the offense of contempt of court in Indonesia. The question is that how can the court kept on the real track and guard the dignity and purity?.

In Law No. 14, 1985, point 4 amended with Law No. 15, 2004 concerning the Supreme Court, it is written: "to guarantee more the conducive atmosphere of the administration of the court to enforce law and justice under Pancasila, it is necessary to promulgate legislation stipulating the enforcement against any action, behavior, attitude and or utterance that can demean the dignity, respect and nobility of the court of justice that is contempt of court".

In Chapter VI of Penal Code, it is also discussed about an offense against the court process and specific provision on contempt of court. Implicitly, it adopted the common law system. Articles qualified in the Penal Code "an offense against the court process". Such as Article 210, 216, 217, 222, 223, 224, 225, Article 231, 232, 233, Article 317, Article 417, and Article 522. Those articles, other that written in one specific Chapter, similar articles are spreaded out in other Chapter, and there were stipulations or new legislation adopted from other countries.

Public expectation from law since the reformation era 1999 was that justice stood upright in the society. However, with the distorted cases of law by the power of some elites therefore the law became sharp in one side. The reality of law has been shaped the perception of the layman that district court institution cannot yet bring the justice and the truth. Worse, that people are skeptical. Eventhough by amending the applied legislation, the sense of justice owned by the elite power.

"Many court established, but justice is not served". This public perception is considered normal since they don't get the sense of justice as expected. Justice is identical with the court including in it, the judges. Judgment upon one case does not necessarily satisfy the sense of justice. When a court is easily intervened by some elite politicians and power. This perspective is understandable to be made by public towards the position of the judge in partially deciding a case.

There is a wrong perception when the placement of a judge was interpreted simpler. A judge who took side because he was positioned in line with Muspida. In this case, the judge was considered a part of bureaucrat. Meaning that the judge can be

called upon to hear any case at the police precinct. Logically, when a judge was positioned to be under the coordination of executive, what happened was that law enforcement became simply an issue of coordination. This cannot happen. Judge should remain in different chamber and cannot be touched by any means when it comes to legal decision (Pangaribuan, 2010).

Concerning this issue, the Supreme Court has issued KMA No.104A/SK/XII/2006 on the Guidelines of Judge Conduct. In the point 7 on holding high up dignity and what explained more in point 7.3.4 saying that a judge is not allowed to hold double position as stipulated by the law. Chief of the Supreme Court promulgated a Joint Decision with the Head of Judicial Commission dated 8 April 2009 concerning the Code of Ethic and Conduct of Judge. To strengthen the Supreme Court and Judicial Commission, the government also promulgated the Implementing Law No. 36. 2011 as the replacement of Implementing Law No. 13, 1993 that has been revoked for it was no longer applicable.

1945 Constitution in Article 24 stipulates the independence of courts universally stated and adopted in various legal instruments. Such as Universal Declaration of Human Rights Article 10, and International Covenant of Civil and Political Rights Article 14. The power to uphold justice should be in line with the accountability, moral and ethical integrity, transparency, control, and professionalism of the judge as law enforcement.

This neutrality was built up in the Conference on International Communication of Jurist in Bangkon in 1965. In which independence of the power of judge upon courts is the foundation of the administration of the government and a democratic state in guarding the rule of law that is free from any intervention of power (Lotulung, 2012).

This illustration can elaborate that the judicial power with its independence provides protection for the judge from any forms of intervention. The justice values of a judge in the social society are able to protect the existence of justice in the society. To analysis the issue of contempt of court in the perspective how contempt of court viewed in Indonesian criminal law; and the implementation of legal system in providing best solution to answer problems for the law enforcement in Indonesia.

B. METHOD

To answer the problems above, the author used a juridical normative method of research. Juridical normative method is a research with deductive nature. The law materials used were such as primary law including regulations, and secondary law materials, Penal Code, and literatures, academic writings, and dissertation. The objectives were to understand the definition and the act of contempt of court and the urgency of contempt of court in the Penal Code currently applied in Indonesia.

C. RESULT AND DISCUSSION

1. Empirical Condition of Contempt of Court

Empirical fact in the justice system such as to hear, to adjudicate, and to decide can be easily seen on mass media directly. Moreover, in Indonesian legal system regulating the contempt of court, in Article 207, 217, 224 of Penal Code and Article 218 of Code of Criminal Procedure depends on the demeaning done against the justice system. All forms of contempt of court lowering the dignity of the court directly and indirectly, such as inside the court room and without any law enforcement.

The term contempt of court is officially used in this country in the Law No. 14, 1985 concerning the Supreme Court, the annex of general explanation point 14 stating: "to guarantee more the conducive atmosphere of the administration of the court to enforce law and justice under Pancasila, it is necessary to promulgate legislation stipulating the enforcement against any action, behavior, attitude and or utterance that can demean the dignity, respect and nobility of the court of justice that is contempt of court."

In addition, it is stated as contempt of court in Joint Decision of the Supreme Court and Minister of Justice 1987 concerning the Procedure of Control, Enforcement, and Defense of Counsellor at Law. However, the decision was no longer applied after the enactment of Law No. 18, 2003 concerning Advocate.

Adjie (1980), argued that the institution that is fit with the hearing procedure for the contempt of court in the Code of Criminal Procedure as "Short Hearing" for the contempt of court in the form of *ex facie* (criminal contempt of court occurred outside the court room). While the criminal contempt of court in the form of *in facie* (criminal contempt of court occurred inside the court room) used the method applied in the country.

The definition according to Blacks Law Dictionary is: "any act that deemed demeaning, hindering, or preventing the duty of the court from any court or any act that lowering the dignity or the nobility of the court". The mean of contempt of court in the Blacks Law Dictionary states contempt of court: "Any act which can be considered humiliating, hindering or hindering the judicial duties of court bodies or any action that can reduce their dignity or authority". According to Baker, contempt of court is "the act of rebel against the court order or to harass the power of the court either done inside or outside the court room.

The development of the domain of law continuously goes according to the social condition of the society. Various regulations keep promulgated for the sake of the sense of social justice. It is also for the court as the sacred law institution to be obeyed by all citizens of the country (Permana et al., 2020). The case of contempt of court displays that the role of the court is as the final means to seek justice so people would believe when one case is decided by the court whose credibility is admitted.

Prayitno (2005), classified criminal contempt into 5 parts:

- a. Contempt in the face of the court, direct contempt in the face: any disturbance inside the court room such as: the sayings of the prosecutor or any act that threatens, insults, and physical attacks to the judges, prosecutors, legal consellor, witness, and what not.
- b. Act calculated to prejudice the fair trail indirect contempt ex facie: any act to intervene the court process outside the court. The acts fall into this category are:
 - 1). To threaten, intimidate, bribe, and privately make a communication to intervene with the decision.
 - 2). To comment on mass media upon any case awaiting decision.
 - 3). To provide information or publication that is taking favor of one party to intervene with decision.
- c. Scandalizing in the court: Any act to humiliate or to create scandal for the court. Contempt of court intended to lower the dignity of the court, such as any false act done by judge.
- d. Obstructing Court Officer: To disturb the court officer done outside the court room, to threaten, to attack, to hit, to threaten the judge, prosecutor, or clerk administrator after leaving the court room.
- e. Revenge for acts done in the course of litigation: this contempt is an act of revenge for acts targeting the witness testified in the court room.

While Djunaedy (2010), argued that contempt of court falls into two aspects, among others: Contempt or harass; ment by interference including in the contempt of court in the face of the court, such as:

- a. Assaulting or threatening persons in court
- b. Insulting the court that is any act done inside the court room such as insulting the judge in person, for example "yelling at the judge that he was unfair and racist"; bullying the witness testified in the court trial; attacking witnesses heard in the court trial, assaulting or threatening the judge (throwing eggs, paint, water, or bomb toy to the judges, threatening the defendants, obstructing the trial process, refusing to answer the judges and so on).

Considering the dynamic social condition of the society where law needs adjustment with the needs of the people. It is also for the dignity of the Supreme Court that is fully responsible to the judges. Therefore the Contempt of Court Act cannot be separated from the monitoring of professional performance of the judge. In the Law No. 22, 2004, it is implicitly stated that the duty and the power of Judicial Commission is to recommend the appointment of the Supreme Justice to the parliament, to uphold the respect, dignity, and to to guard the judge conduct.

The ground of the contempt of court is to protect the institution of the court from things that can derogate the dignity and respect, from interference of any forms including the politics and power as mandated by the Article 24 of the 1945 Constitution.

c. Criminal Contempt of court in Indonesia

Law enforcement process in Indonesia at the court is at high level. The institution employs the law enforcement with social justice for all the citizen of Indonesia. People believe that this body is run by great people, the justice defender that can be trusted and guarantee the enforcement of the law. Therefore, the purity should be always guarded. The dignity of and respect to the court should be defended and protected from any act of contempt of court or any other contempt.

This country has stipulated the issue of contempt of court in its material law such as the stipulations in the Penal Code, special provisions in Article 224, 522, 242, 217, and Article 210 of Penal Code. The general provisions in Article 220, 317, 310, 311, 313, 314, 312, 221, 223, 231, 232, 233, 44, and Article 420 of Penal Code.

While in the Law No. 8, 1981 concerning the Code of Criminal Procedure, there are some Articles stipulate the issue such as Article 154 section (6), Article 159 section (2), Article 161 section (1), Article 167 (3), Article 174 section (2), Article 218 section (1). In the Bill of Penal Code, Chapter VI, it is regulated about the Criminal offense against the administration of justice ranging from Article 325 to Article 335.

The provisions stipulating contempt of court exist therefore the harassment to the dignity of the court is face to face with the some legal instruments. Even though in reality we do not find many of the offender of contempt of court brought to justice due to the lack of written regulating law. Therefore some special legislations are needed.

The law on contempt of court as mandated in the Law No. 14, 1985 concerning the Supreme Court and now the Law No. 5, 2000 on the Supreme Court. The Supreme Court with those provisions mentioned above promulgates the law in an academic study, i.e. (i) misbehaving in court; (ii) disobeying court orders; (iii) scandalizing the court; (iv) obstructing justice; and (v) subjudice rule.

Those provisions are simply to protect the dignity and the position of the court as the legal body that is sacred in upholding the justice in the country including the judges as the wise and fair decision makers.

d. Contempt of Court, the Implementation of Legal System

In court trial, an obscure case against the court body often occurs particularly in the court room, in this case the Constitutional Court is strongly urged by the Supreme Court to immediately enact the Law on Contempt of Court as the measures to protect the judge and the court from any outsider interference that can intervene the independence of the judge.

Bringing the offender of contempt of court to justice through the Contempt of court Act certainly should omit the obstruction of justice, because there is a concern on the establishment of the new tyrant with the abuse of power by the judge, the administration of the court, the court body in general. Therefore, in the case of contempt of court, the case should be viewed as a whole or comprehensively such that the realization of Contempt of Court Act can be the right solution to the legal problems and to prevent public strong dislike against the court body for the credibility is in doubt. This is simply to gain back public trust to the social justice court.

Building up the image of the court is not an easy thing. It needs hard work and evidence that the court can provide the sense of social justice. It needs hard works from all the apparatus in the body to reform wholly and from the root of the issue. In addition, the recruitment process of the judge and the administrator of the court should be transparent based on the competence and morality. It is so important to make the law down to earth in this country to be able to uphold justice since it has been living in a plural social and culture for thousand years which is still believed by the people and the nation of Indonesia.

D. CONCLUSION

Contempt of court in Indonesia is currently still a rethoric and the offender is yet to be enforced upon by the judge. In fact the stipulations spreaded out in the Penal Code, naturally can be used to guard and to defend the body of the court to be respected and noble. The judge holds the power to strictly impose law upon the offender of the contempt of court and not merely to give warning to those deliberately harassing the dignity of the court. Therefore, the promulgation of Contempt of Court Act should not only accommodate the judges but also listen many inputs and suggestion from the general public, mass media (press) and law sholars.

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