

Contempt of Court: Some Considerations for Weighting Criminal Sanctions

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Abstract

Increasingly expanding various actions that have been categorised as contempt of court, which threaten the authority of the court, it is necessary to regulate. The research method used is the normative legal method using statute, case, and conceptual approaches. This research is a legal study based on norms in force related to the contempt of court in existing regulations. The results show that all forms of actions that, in principle, disrupt safety, psychological and physical calm both inside and outside the trial, can be categorized as contempt of court. Although contempt of court has not been regulated clearly and firmly in statutory regulation many events can be classified as contempt of court. The scope of contempt of court in the justice system in Indonesia is very broad. The weighting of criminal sanctions is imposed based on the category of the seriousness of the crime committed by the defendant. Criminal weighting can be given if a crime fulfils special elements. Considering that the criminal justice process takes much time or is complex contempt of court can be used as a factor in increasing criminal sanction by the defendant so that there is no need for a new or separate criminal justice process to be held.

Keywords: Contempt of Court; Criminal Law; Legal Policy; Penal Code.

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I. INTRODUCTION

Indonesia is a constitutional state, and law is the place to seek and obtain justice where the judicial process becomes a serious concern. The rule of law, both theoretically and practically, there are at least three conceptions, namely; first, the substance that the government (in a broad sense, which includes both legislative, executive, and judicial branches of power) is limited by law; Second, the substance of formal legality is the existence and enactment of a law order that is bound by the rules made and maintained by the state; Third, the substance that the law governs, not humans (the rule of law, not of man) [¹].

In the globalisation era, laws are forced and challenged to be able to adapt [²]. Current progress has led to many changes. The social aspects that were

formerly considered taboo were due to the modernization of the taboo thing that has passed. Even something that has previously considered an area that is impossible to change has easily been changed by it, for example, religious traditions, community social relations and law [³]. In Indonesia, the justice system influenced by the concept of the Due Process Model, which assumes that in a criminal case no one can place himself above the law. The Due Process Model concept that upholds the rule of law also highly supports the principle of Presumption of Innocence [⁴]. Justice is highly respected in the judicial process in Indonesia. Several cases in criminal justice trials are open to the public, except for child criminal cases, cases of domestic violence, and so on. The court's openness to the public doesn't rule out the possibility of a

¹Carrillo, J. (2007). "Links and choices: popular legal culture in the work of Lawrence M. Friedman." *S. Cal. Interdisc. Law Journal*, 17: 1-12.

²Schmitz, M. (2016). Strengthening the rule of law in Indonesia: the EU and the combat against illegal logging. *Asia Europe Journal*, 14(1), 79-93.

³Disemadi, Hari Sutra, and Kholis Roisah. (2019). "Urgency of the Contempt of Court Criminalization Policy to Overcome Harassment Against the Status and Dignity of Courts." *Brawijaya Law Journal* 6, no. 2: 224-233.

⁴Fleischer, Jennifer. (2002). "In Defense of civil contempt sanctions." *Colum. JL & Soc. Probs.* 36: 35.

commotion or insult to justice. This insult is known as Contempt of Court.

In the judicial system in Indonesia, the term Contempt of Court was first mentioned in the General Elucidation of Law Number 14 of 1985 concerning the Supreme Court. In Item 4, Paragraph 4, it is stated as follows:

"Furthermore, to be able to ensure better the creation of the best possible situation for judicial administrators to enforce law and justice based on Pancasila, it is necessary to make a law that regulates actions, behavior, and attitudes, and/or words that can demean and undermines the authority, dignity, and honor of the judiciary known as the Contempt of Court."

The term Contempt of Court comes from the word Contempt, which means 'insulting', hence, the term Contempt of Court is translated as an act intended to insult the judiciary [5]. Therefore, ethics or attitudes are needed for trial participants. The application of this Contempt of Court applies to anyone, be it judges, state officials, attorneys, Public Prosecutors, and so on [6]. Although there have been several regulations that regulate the ethics of proceedings in court which apply to anyone who follows the course of the trial which has been regulated in the Regulation of the Constitutional Court Number 19 of 2009 concerning Procedures for Trials. This Regulation of the Constitutional Court regulates the rules for session participants and especially for court visitors.

In the Indonesian judicial system, the Regulation of the Contempt of Court is needed to emphasize the power of the judiciary. The Contempt of Court itself has been regulated implicitly in several Per-Laws. The role of judges in upholding justice through the judiciary in Indonesia indirectly provides limited freedom for judges in adjudicating a case as fairly as possible. Regulation of the Constitutional Court No. 19 of 2009 only mentions the obligations for visitors to the session and provides sanctions in the form of a warning and if not heeded, the Chairperson of the Session can order to expel anyone who violates. The upholding of the value of justice which is a basic spiritual need of the community makes a need for Contempt of Court rules which are not solely for the benefit of judges but for the

sake of maintaining and protecting the existence of community justice [7].

In various countries, especially countries that adhere to the Common Law system of government, it has regulated the Contempt of Court. In the criminal justice system in Indonesia, the imposition of sanctions for this crime is still associated with other criminal acts, one of which is a humiliation of public power. The imposition of sanctions for this crime is decided separately or independently from the demands or judicial process that is being carried out by the defendant of a crime.

II. RESEARCH METHODS

The research method used is the normative legal method with using statute, case, and conceptual approaches. This research is a legal study based on norms that have been in force and are in applicable regulations. The statutory approach used to carry out normative analysis and identification related to the Contempt of Court in existing regulations [8]. Where an assessment is carried out on Contempt of Court criminal acts that do not have fixed regulations by linking the scope of Contempt of Court enforcement and the weighting of criminal sanctions with criminal offenses contained in existing regulations [9].

III. CRIMINAL SANCTIONS AND CONTEMPT OF COURT PENALTIES WEIGHTING

Contempt of Court can be interpreted as an act that is intentionally carried out, which is considered to be able to humiliate the authority and dignity of the court or hinder the court in carrying out the trial which is carried out by a person as a litigant or by another person who is not a party in the litigation [10]. However, as it turns out into practice, contempt of court is a term to describe all steps that intend to disrupt or acknowledge the system or process of implementing the judiciary. Also acts of violating members of the public to use the justice system and resolve their disputes [11].

⁷ Johny, Ruby Hadiarti, 2009, *Contempt of Court (Kajian tentang Ide Dasar Dan Implementasinya Dalam Hukum Pidana)*, Jurnal Dinamika Hukum, Fakultas Hukum Universitas Jendral Soedirman Purwokerto, Vol.9 No.2, hlm. 137

⁸ Irwansyah. (2020). *Penelitian Hukum; Pilihan Metode dan Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media, pp.205-206

⁹ Soetandyo Wignyosoebroto, (2013). *Hukum Konsep dan Metode*, Malang: Setara Press, p. 68.

¹⁰ Sjawie, Hasbullah F. (1994). "Sekelumit Catatan Mengenai Tindak Pidana Contempt of Court di Indonesia." *Jurnal Hukum & Pembangunan* 24, no. 4: 324-334.

¹¹ Masthura, Syarifah. (2011). "Kajian Yuridis Terhadap Contempt of Court di Depan Pengadilan (Studi di Depan Pengadilan Negeri Medan)." *Jurnal Mercatoria* 4, no. 2: 129-137.

⁵ Prayitno, Kwat Pudji. (2005). "Prospek Pengaturan Contempt of Court dan Permasalahannya." *Jurnal Dinamika Hukum* 15, no. 1: 37

⁶ Sukanada, I., Slamet Sampurno, Syamsuddin Muchtar, and Nur Azisa. "Reveal the "Face" of the Impartiality in the Indonesian Criminal Justice System: Challenges and Development." (2021). *International Conference on law and human rights (ICLHR)*, April 14-15, 2021. Jakarta, Indonesia. DOI: 10.4108/eai.14-4-2021.2312845

There are no regulations that regulate the Contempt of Court. The imposition of criminal sanctions imposed by judges is still associated with offenses in general regulations, such as the Criminal Code (KUHP). The Contempt of Court itself has been mentioned implicitly in several articles in the Criminal Code. One of them is contained in several articles in Chapter VIII concerning Crimes Against Public Powers of the Criminal Code. Several articles that implicitly provide criminal sanctions to Contempt of Court perpetrators, namely:

Article 208

- (1) Whoever prepares, displays, or attaches writings or pictures that contain insults to power in the State of Indonesia or to a general assembly that is there, with the intention that the insulting content is known to the public or more widely known, sentenced to imprisonment for a maximum of four months or a fine of up to Rp. 4,500, -
- (2) If a person commits the crime in the course of his work and at the time of committing the crime, two years have not passed after his previous law was fixed because of a similar crime, he may be dismissed from serving his position.

Article 217

Whoever makes a disturbance in a court hearing or at a place where a civil servant exercises his legal position in public and does not want to leave after being ordered by or on behalf of the competent authority, shall be sentenced to imprisonment for a maximum of three weeks or a fine of up to Rp. 1,800.

In several articles that have been mentioned above, it is stated: "the power that exists in the State of Indonesia". The power in question is the power or authority in government such as the Police, Governor, General Assembly, Courts, and so on. It can be concluded that the scope of the Contempt of Court in the Indonesian judiciary is very broad. Although the sanctions given in some cases are criminal [12]. The application of the Contempt of Court in the Indonesian judiciary does not only cover criminal justice but also includes all levels and courts in Indonesia. The application of the Contempt of Court also includes actions that harass or insult the court outside the judicial process. This broad scope must also have limits in its interpretation. So that identifying an event and imposing sanctions on Contempt of Court perpetrators can be done appropriately. The existence of restrictions in the interpretation of the scope of the Contempt of Court is needed to distinguish the elements of insult and

convey opinions or input for the judicial or government power.

Contempt of Court is seen as a threat to the judicial power. Hence, the Contempt of Court itself becomes urgent in the judicial system in Indonesia, seeing the many cases or events that harass and insult the Judicial Authority or the Court [13]. Punishment is a retaliation (in the form of suffering) imposed by the authorities against a certain person who is deemed to have acted wrongly in violation of the rules of conduct, the violation of which is punishable by punishment. The criminal sanctions are intended as an effort to maintain peace (or security) and community regulation. Criminal sanctions will intersect with "general prevention" and "special prevention" efforts in criminal law theories. Also, the need for "fairness" and effectiveness [14].

In Indonesian Criminal Law, criminal sanctions can be divided into 2 types, namely the main criminal sanctions and additional criminal sanctions. In the draft version of the National Criminal Code Bill, the five categories are used to determine the maximum threat of a fine or imprisonment for a crime. The category can be determined by distinguishing behavior that is detrimental to legal interests or only poses a threat to legal interests. As previously discussed, the current scope of the Contempt of Court is very broad and includes all acts of contempt directed at the judicial power. So that the imposition of criminal sanctions is uncertain because there are no special regulations on which to base or still use offenses in the Criminal Code in imposing criminal sanctions. The Contempt of Court itself in several countries has been implemented effectively and even has its special regulations. Contempt of Court criminal sanctions in some cases are decided independently or through a new judicial process [15]. The criminal justice process, which is known to be time-consuming and complex, can create uncertainty for the accused. The intended uncertainty is the amount of the fine or the length of time the defendant will carry out his criminal sanctions.

In the criminal justice system in Indonesia, it is known that there is a weighting of criminal sanctions or additional penalties. Criminal aggravation is part of the pattern of punishment. Where determine the criminal

¹³Achmad, A. (2012). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence)*, Jakarta: Kencana, p. 98.

¹⁴Ministry of Law and Human Rights, Republic of Indonesia. (2010), *Perencanaan Pembangunan Hukum Nasional Politik Hukum Pidana Dan Sistem Pemidanaan*, Jakarta: Kemenkumham RI, p. 24.

¹⁵Rizal, F., Andi Muhammad Sofyan, Abrar Saleng, and Anwar Borahima. (2019). "Reviewing Restorative Principles of Corporate Punishment in Corruption Crime." *Journal of Law, Policy and Globalization*, Vol. 88, 159-164.

¹² Nurhidayat, S. (2021). "Pengaturan Dan Ruang Lingkup Contempt Of Court Di Indonesia." *Jurnal Ius Constituendum* 6, no. 1: 73-98.

weight of a particular criminal case must compare the formulation of general offenses that are almost similar or similar in the Criminal Code as a generic crime. Considering the increasing extent of actions that can be categorized as Contempt of Court, all actions and actions that in principle disrupt safety, psychological and physical calm, it is necessary to have a separate Contempt of Court arrangement, because it is a special crime, in the sense that the word has not integrated in the Criminal Code [16]. The main principle of the Indonesian state which is the basis of the civil law system is that the law obtains binding power because it is embodied in regulations in the form of shrimp law and systematically arranged in certain codifications or compilations [17].

The criminal burden will cover both the quality and quantity aspects of the crime. What is meant by quality here is when the weighting occurs due to a change from one type of lighter punishment to another type of heavier punishment. While the weighting from the quantity aspect here is if the number of criminals increases from the number of crimes that were previously threatened [18]. The weighting of criminal sanctions can be done by adding the amount of the maximum penalty due to additional or special elements. The additional factor is caused by behavior or effect. For example, ordinary theft (Article 362 of the Criminal Code) is punishable by a maximum imprisonment of 5 years. Meanwhile, the theft which is preceded or accompanied or followed by violence or the threat of violence is punished and carried out together (more than 2 people) is threatened with a maximum imprisonment of 12 years.

The weighting of criminal sanctions can be given due to the presence of special or additional elements in the form of time, method, place, tool, or in certain circumstances. So that the Contempt of Court can be used as a reason for weighting in giving criminal sanctions. This is because it is carried out in a certain place and or situation (in the judicial process). However, this can also be an obstacle because there are no clear boundaries to determine which actions can be used as a factor in the aggravation of criminal sanctions with which to be tried individually.

Like the case of the stabbing of an ex-wife by a member of the military after reading the results of the

judge's decision on the distribution of marital property, because what was done was murder, the judicial process could be carried out separately or independently [19]. Another example is the beating of state officials or judges or anyone in the courtroom. This limitation can be determined if only minor injuries can be used as a factor in criminal sanctions, but if serious injuries cause death or disability, a separate judicial process can be carried out. In addition, the parties conducting the Contempt of Court, especially the suspect or the defendant, should be able to be used as a factor in the weighting of the crime as outlined in the judge's decision. So that the criminal procedural justice process in Indonesia is more effective and does not take a lot of time just to decide 2 (two) cases that have a relationship like this Contempt of Court.

In judicial power, there is a fundamental principle in the form of independence of the judiciary. The principle implies that the course of the judicial process must be a guarantee in a way to avoid all forms of influence, pressure, threats that come from any party that has the potential to reduce the nobility of the principle. The principle of independence of the judiciary said is universal and is applied in various countries. Based on the principles, the judicial process must be carried out openly, objectively, impartially following legal provisions and a sense of justice. However, the implementation of judicial power in constitutional practice is relatively vulnerable.

Strictly speaking, it can be said that in fact until now, Indonesia still does not have its legal instruments that are sufficient to regulate and protect the dignity of the judiciary from various actions of various parties. The indication is that relatively few have tried for conducting Contempt of Court [20]. The logical consequence is an urgent, urgent and urgent need for critical and academic studies and research to be carried out comprehensively towards the birth of the Law on Criminal Procedure for the Implementation of Courts to maintain nobility and uphold the dignity of the judiciary.

IV. CONCLUSION

All forms of actions and actions which in principle disrupt safety, psychological and physical calm both inside and outside the trial, can be categorized as Contempt of Court. Contempt of Court can be interpreted as all acts that are carried out intentionally both within the court environment or outside the court environment to insult or harass the power of the judiciary or court. Although the Contempt

¹⁶ Ahmad, Sufmi Dasco. (2020). "Legal Sanctions Against Contempt of Court Actors: Analysis Based on Criminal Law and Criminal Procedure Code." *Ayer Journal* 27, no. 4: 27-40.

¹⁷ Kholis, N. (2018). "Asas Non Diskriminasi Dalam Contempt of Court," Vol. 26 (2), *Jurnal Legality*, 210, 230.

¹⁸ Subarkah, Ibnu, Lukman Hakim, and C. Anwar. (2017). Law Enforcement to Offenders' Rights Based on Contempt of Court. *Jurnal Yustisia*, 6(3), 552-569.

¹⁹ Sofyan, Andi Muhammad. (2014). *Hukum Acara Pidana Suatu Pengantar*. Jakarta: Kencana, p. 217

²⁰ Suhariyanto, B. (2016). "Contempt of Court" Dalam *Perspektif Hukum Progresif*. Jakarta: Pusat Penelitian dan Pengembangan Hukum dan Peradilan Mahkamah Agung RI, p. 32

of Court has not been regulated clearly and firmly in statutory regulation many events can be classified as Contempt of Court. The scope of the Contempt of Court in the justice system in Indonesia is very broad. The weighting of criminal sanctions is imposed based on the category of the seriousness of the crime committed by the defendant. Criminal weighting can be given if a crime fulfills special elements. Considering that the criminal justice process takes a lot of time or is complex the Contempt of Court can be used as a factor in increasing criminal sanctions by the defendant so that there is no need for a new or separate criminal justice process to be held.

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