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CONTEMPT OF COURT REGULATION DISCOURSE IN INDONESIAN JUSTICE SYSTEM

Recently, contempt of court cases became an interesting topic to be discussed. The Contempt of Court cases are reflected on the legislation's draft of justice enforcement, which has both pros and cons in Indonesia society. The pros are the different regulations that protect judges and court officers, while the cons might cause silent speech freedom. This study aims to review the contempt of court particularly in the Indonesian justice and its relevance of regulation. This study used normative-sociology approach. The sociology approach used because judges and other related position and institution need to be protected to guarantee the court administration fairly. Contempt of Court is paramount importance to be regulated to avoid the chaotic situation particularly in Indonesia. Indonesian society needs to understand the history or reasons of the Contempt of Court as it could be seen in advanced countries. Hence, its existence is important to maintain law and enforce justice system.

Keyword: contempt of court, justice systems, court administration, Indonesia, law.

1. Introduction

Contempt of court regulation is still an interesting issue to be discussed whether by a practitioner or academic society. In Legislations context, contempt of court agreement is reflected in legislation drafts about justice enforcement criminal act, which had just been revolved in limited national council legislation to be proposed to National Priority Legislation Program 2016.

The draft of law has pros and cons in our society. The pro one, contempt of court is ruled on different regulations because judges and other court officers have to be protected to guarantee the court implementation process without any intervention and to realize judicial authority which is independent, authoritative and dignified. Whereas, the cons one is considered it unneeded¹. It might cause the silent speech freedom, which is approved by the constitution and because of the fact that contempt of court institution has been ruled in a few legislation regulations².

Although that the legislation draft was canceled, contempt of court concept is still urgent to be discussed. Therefore, this short article reviews about contempt of court, particularly in the Indonesian justice system and its relevance of regulation.

1.1 The basic root and term of Contempt of Court

Contempt of court was delivered firstly in Common law system by its case law. Those were in the United Kingdom and the United States of America. Historically, Contempt or mockery is an action against king's commandment. Since 1742, United Kingdom had applied contempt of court, and then in 1981, there was a renewal by Contempt of Court Act 1981 implementation. While the United States firstly used contempt of court in 1789. The term is derived from English law tradition and other countries practicing common law system.

Additionally, contempt of court was dark ages' ideology that related to England's monarchy. It was stated that kings had the same rights as God. Based on this ideology, they were the representatives and responsibility of God in this world. Every opposition or mockery would explicitly get punishment from the king. This was derived from the king himself not from the monarchy institution. All people had to obey him as the highest authority. King was law and justice source that delegated to the apparatus. Therefore, contempt of court identically was contempt of the king. It is proven and strengthened by English law writer

¹ One of the draft refusal had done by several parties. Such as, Indonesia Justice Monitoring Society FHUI (MaPPI FHUI), Law assistance institution Press and Institute for Criminal Justice Reform (ICJR).

² Taba, A.S. (2016). *Menyoal Pengaturan Contempt of Court*. <<http://id.beritasatu.com/home/menyoal-pengaturan-contempt-of-court/137141>>.

in ‘There is no greater crime than contempt and disobedience, for all person ought to be subject to the king as supreme and to his officer’.

Contempt of court is prospectively derived from “*Contempt*” word. It means to humiliate or mock, while “*Court*” is justice. Hence, this term translated as an intended act to mock justice institution¹. Based on Oemar Senoadji², Contempt of Court was headed or faced to “*Administration of Justice*”, *recht pleging*³

Black’s Law Dictionary stated ‘Contempt of court was any act, which was calculated to embarrass, hinder or obstruct court in administration of justice, or which was calculated to lessen its authority or dignity, or tended to impede, or frustrated the administration of justice, or by one who was under the court’s authority as a party to a proceeding therein, willful disobeyed its lawful order or failed to comply with an undertaking which he had given’⁴.

Syawie in Wahyu Wagiman stated that contempt of court was a genuine deliberate act that could shame the authority and dignity of the court and block the implementation of the court⁵.

Based on those several definitions, it could be concluded that contempt of court is an act done by someone who is involved in a case process or not, whether inside the court or not, actively or not, that aims to shame court’s authority and dignity and blocks court officers to do the justice.

In Indonesia, there is no definition that could be accepted as standard meaning, so as an offense could be categorized as contempt of court. “Offence of justice execution actually has a wider scope than contempt of court. However, it is not only done in the early council but in all court process execution (offense against the administration of justice). The mockery could happen at investigation, prosecution and check stage in court council or execution court. Apparently, Criminal Law Legislations has ruled relevant offense in court execution.

1.2 Contempt of Court in Several Countries

A few countries below give rule about contempt of court in a particular legislation, like the United Kingdom and America and other countries.

a. United Kingdom

Contempt of Court was a law regulation that appeared in the common law system around the 13th century. Generally, contempt of court goal was to keep the court process integrity by avoiding jury’s prejudice. Thus, it would disadvantage the defendant because of mass media news before, after, and during the case court execution process.

Contempt of court was ruled by two kinds of rule. First is contempt of court Act 1981 that had ruled as to contempt of court by journalists through their news making. Based on contempt of court Act 1981, the act considered as the contempt of court was news published at the first execution. It meant there was detention, indictment, bail or commandment to summon a defendant to court⁶.

Second, Common Law Contempt in contempt of court Act 1981, news that could be categorized as contempt of court was news published in the first act of execution. Then, Common Law Contempt was a rule that encircles before the act started or canceled. If the news was contempt of court prosecuted under the Common Law, then public prosecutor had to prove that editor intended to create prejudice.

b. America

Legislation as to contempt of court had been applied for a long time in America, whether in states or federal government to be the judge’s standard reminding that the form of contempt was varied. Federal Government had ruled Contempt of Court since 1831 by *Act of March 2, 1831*. Then, it was revised in 1873

¹ Wagiman, W. (2005). *Contempt of Court Dalam Rancangan KUHP 2005*. Elsam, Jakarta, 5.

² Senoadji, Omar, Indriyanto, S. (2007). *Peradilan Bebas Negara Hukum dan Contempt of Court*. Jakarta: Diadit Media.

³ Translation: *Contempt of Court* is a shameful, blockful deed or decrease the honor or dignity viewed in the court implementation. It is genuinely done by a person who violates deliberately or the court implementation vainly, with someone who is under the court authority as the convict, disobeyed the court deliberately or unfulfilled yhe obligation.

⁴ Black, H.C. (1979). *Black’s Law Dictionary*. West Publishing Cooperation: St. Paul. Minnesota, United Stated of America, 390.

⁵ Wagiman, W. (2005). *Contempt of Court Dalam Rancangan KUHP 2005*. Elsam, Jakarta, 5.

⁶ Mappi, a *Contempt of Court*. <<http://pemantauperadilan.com>>.

and 1964. Each state had ruled Contempt of Court in particular legislation. Generally, legislation ruled when a judge could act harassment actor directly at a time or through regular procedure¹.

Contempt of Court was divided into two:

1) Direct Contempt is that which occurs in the presence of the presiding judge (*in facie curiae*) and may be dealt summarily; the judge notifies the offending party that he or she has acted in a manner which disrupts the tribunal and prejudices the administration of justice. After giving the person the opportunity to respond, the judge may impose the sanction immediately.

2) Indirect Contempt occurs outside the immediate presence of the court will be accused of indirect contempt by the party for whose benefit the order was entered. A person cited for indirect contempt is entitled to notice of the charge and an opportunity for hearing of the evidence of contempt and, since there is no written procedure, may or may not be allowed to present evidence in rebuttal.

c. Japan

Japan has particular legislation about contempt of court. That is Law to Maintain Order in Court Rooms, etc. inside Criminal Law Legislation Guide. Verse 1 stated that legislation aimed to maintain the order at court and so forth. Also, honor the court decree to keep the law prestige in democratic society.

Verse 2, ruled about offense pattern and law. It is said that when a person processes a court for criminal acts, whether by ignoring the commandment, block the court implementation, disadvantage the court decree (likes, profanity, violence, noise, chaos or other inappropriate attitudes inside or outside the court, would threaten by confinement act, with no more than 20 days or 30.000 yen fine both altogether.

Contempt of court act, court official or police could arrest the perpetrator at a site. If the court does not act the arrested in 24 hours, then the placement must be ended soon. Contempt of court case act is similar with the usual act. Before the court gives decrees, the evidence and witness' checking is needed. If it is burdened criminal, then all or part of court fee is given to the convict.

d. Hong Kong

Contempt of Court as follows:

- Insult a judge or justice, witness or officers of the court.
- Interrupts the proceedings of the court.
- Interfere with the course of justice.
- Misbehaves in court (e.i., Use of mobile phone or recording devices without permission).
- Juror who leaves without permission of the court during proceedings.
- Disobeying a judgment or court order
- Breach of undertaking
- Breach of a duty imposed upon a solicitor by rules of court.

e. India

Contempt of Court deeds as follows:

– Willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

– Disobedience to any judgment, decree, direction, order, writ or other processes of a court or willful breach of an undertaking given to a court The publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which : (i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

1.3 Contempt of Court deed qualification

Several references concluded that contempt of court is divided into two main forms. First is Civil Contempt. Civil Contempt is used to describe disobeyed Contempt towards civil law court decree. Civil Contempt deviation is caused by the court commandment failure to another party advantage.² In this case, the act does not against the court honor but disadvantages another party. Therefore the court issued a commandment or mandate to the party who refused court commandment to do the mandate.

¹ Mappi, a *Contempt of Court*. <<http://pemantauperadilan.com>>.

² Wagiman, W. (2005). *Contempt of Court Dalam Rancangan KUHP 2005*. Elsam, Jakarta.

Punishment given to civil contempt perpetrator is coercive nature in which it will be stopped if the perpetrator does the court commandment. The given punishment protects the winning party and also protects the court administration implementation effectiveness, by showing that court commandment would be done.

Second is criminal contempt of court, *Black's Law Dictionary* defined Contempt of Court as the disrespectful court act and process that aimed to block and disturb the court process or tended to disrespect the court dignity. Thus, criminal contempt was a violation of the court process¹. Regarded to this, Muladi stated that criminal contempt was a deed that tended to block the court administration. That deed considered to oppose the paramount importance institution which struggled for the public prominence.

The given punishment to criminal contempt perpetrator is punitive punishment. *Common law* countries, the perpetrator can be convicted by fee or jailed. The goal is to make them cured and it would not be imitated by others. The criminal contempt perpetrator conviction is important to protect the court authority and dignity. Whether, it is country, government, court and relevant society towards the court implementation (the due administration of justice)².

Common law, criminal contempt shortly used to call "*offenses against the administration of justice*". Barda Nawawi Arief classifies forms or criminal contempt as follows³:

a) Disturbance inside or right in the courtroom.

This kind of Contempt called contempt in the face of court, direct contempt or contempt *in facie*. Contempt directly happens inside the courtroom, when judicial process is happening. Thus, the act can be happened at any court, whether press conference or law enforcer. This kind of criminal contempt is protected by the court process. The protected one is the process court. It is caused by court administration needed to protect the public rights and guarantee that court implementation would not be disturbed.

b) Any acts to impact the court process parties.

This criminal contempt happens outside the court. It is called as contempt out of court or indirect contempt or contempt *ex facie*. These include, threats, intimidation, bribery or an attempt to impact others, such as judge, panel and witnesses, like 1) the private communication to impact a decision with a judge, 2) comments in a magazine, newspaper, television or a process case, and 3) publication of something which takes sides and impacts a process or future court.

c) Shameful or scandalized acts for court

Scandalizing the court included into contempt of court, but aimed to decrease the judge or court honor. Thus, there are principles of court name contamination and maintenance of court dignity and protection of the society from humiliating the court trial. Contempt by scandalizing is stated as decreasing authority and influencing the court goal.

d) Disturbs the court officials

Law order can be achieved freely and independently by court authority including the court officials. The society expected a balance of social order expects the court as one facility to keep the law balance and order in society. Therefore, the court official must get protection from the duties disturbance. Thus, can be the relevant parties or indirect parties.

e) Retaliation to any deeds done during the court process.

This contempt is aimed at witnesses. The revenge is done by punished parties or unsatisfied court decree. It is caused by a punished party who felt that the witness burden them. The deeds can be in the form of attacking, threatening or intimidating

f) The obligatory violation by court officials

Law authority relates to justice activity done by court. In each law country, every person has the right to get justice from the prosecution. Therefore, every court officers must act as the applied rule. The obligation violation by "*king officer*" is "*the oldest form of contempt*". The included deeds are such as the document detention by a correctional institution or criminal's letter that sent to their lawyer.

¹ Black, H.C. (1979). *Black's Law Dictionary*. West Publishing Cooperation: St. Paul. Minnesota, United Stated of America, 390.

² Wagiman, W. (2005). *Contempt of Court Dalam Rancangan KUHP 2005*. Elsam, Jakarta.

³ Wagiman, W. (2005). *Contempt of Court Dalam Rancangan KUHP 2005*. Elsam, Jakarta.

g) Violation by lawyer

A lawyer is tied to the professional ethics and rules of their job. Therefore, a lawyer must be responsible to keep righteous and respectful to court officials, client or court institution itself. Contempt of Court by advocate such as:

1. Conducting agreement to an enemy party of an assisted party, whereas it is known that the deeds could disadvantage the assisted party.
2. Trying to win the assisted party, asking reward by influencing the witness, linguists, investigator, public prosecutor or relevant case judge.

1.4 Indonesian Contempt of Court Regulation Discourse

Indonesian contempt of court emergence in legislations firstly on point 4 No. 14 Legislations 1985 about the Supreme Court stated:

‘..... In order to assure the best situation for court implementation on *Pancasila*, it is needed to make legislation to rule an act towards attitude, performance or utterances, which could lower and undermine the authority, honor and respect of law institution. Thus, are known as contempt of court’

Although it has been mandated by Legislations No. 14 1985 above, in fact, there was no relevant contempt of court¹ legislation, until published the new legislation about Supreme Court which replaced the legislation above. That was Legislations No. 5 2004. Then, contempt of court included to one draft in National Legislations Program 2005-2009 n.83, by “Draft about contempt of court. Even though, the national legislation program ended, this draft is never legislated.

Then, the contempt of court was not included in National Legislations Program 2010-2014. Contempt of court reissued as National Legislations Program Draft 2015-2019 n.61, by “Humiliation in court draft (contempt of court)”. Finally, the CoC draft is made by IKAHI (Indonesia Judge Society) with “Justice Enforcement criminal act (contempt of court)”. Recently, there is a new CoC draft legislation, which called the revision by IKAHI version with the title “Criminal act justice execution and humiliation outside the court (contempt of court). However, this draft has not been accepted by People Representative Council.

The first time reading CoC draft Legislation, the most interesting are clauses 20 and 25. Those stated:
Clause 20

- a) Every person who mocks or attacks the judge integrity or relevant court officials, whether oral or written, will be convicted at maximally 8 years or a maximum fine of one billion rupiahs.
- b) If it is done by published, written, or electronic/printed media, they will be convicted at maximally 10 years or a maximum fine of five hundred billion rupiahs.

Clause 25

- a) Every person who published or allowed to publish the court process, or the case court process, which could impacts the independent or impartial a judge, will be convicted at maximally 5 years or a maximum fine of one million rupiahs.
- b) Every person that commented the court decree before the decree had the confirmed law power, that could tend to impact the convicted court independent, would be jailed maximally 5 years or a maximum fine of one million rupiahs.

Contempt of court in a few countries has been applied for a long time such as in England and America. However, Indonesian Contempt of court legislation has not been existed or even refused from the society. Moreover, normatively Contempt of court legislation ideally is very good and needed. It is expected that Contempt of court law and justice can be achieved uprightly².

However, the Supreme Court Puslitbang result shows that between the judges, there are still many disagreements about Contempt of court legislations, although there are more who agree. From the Supreme Court Puslitbang research, there were 611 questionnaires given to 611 judges. Apparently, there were 260 disagree judges contempt of court ruled in their own legislation. Honestly, this is a very surprising

¹ Based on 14 Legislations 1985, published by *Surat Keputusan Bersama* (SKB), Head of Supreme Court and Ministry of Judges in Indonesia Republic. n: KMA/005/SKB/VII/1987 and n: M. 03-PR’08.05 1987 about supervision guide, enforcement and law advisory self-support. By this SKB published, then the aim of n.14 Legislations 1985 had undertaken, but it was not as expected. That was in legislations form.

² Hasibuan, O. (2015). Contempt of Court Di Indonesia, Perluakah? [Contempt of Court in Indonesia, is it Required?]. *Jurnal Hukum dan Peradilan*, Vol. 4: 2, 267-274.

result. Actually, all judges must agree with rules, because it is very useful to protect the judges from contempt of court. Therefore, it needs to be reviewed further as to the judges' disagreement reason.

Unfortunately, the research only used the judges as the respondents and did not ask advocates, prosecutors and justice seeker society. Therefore, that research must be reviewed further to get a comprehensive and representative result.

From the explanation above, contempt of court existence is very important to be legislated. The goal is to maintain law and enforce justice.

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