

Construction of Contempt of Court Regulation in Indonesia

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Abstract: This study aims to analyze the Reconstruction of Contempt of Court Regulations in Indonesia. Contempt of court is defined as an act of contempt against the judiciary. In Indonesia, the meaning of contempt of court is only interpreted narrowly so that it is considered less inclusive of all judicial organizers. This type of research is normative legal research with a legislative, conceptual, comparative and case approach. The results of the study are that the position of the contempt of court regulation in Indonesia has been contained in a chapter in the latest Criminal Code, but its application has not been supported by formal procedures. The meaning of contempt of court in Indonesia is only interpreted narrowly, this can be seen in the latest Pasal 281 of the Criminal Code which only seems to protect judges, the contempt of court regulation should also protect all judicial organizers who are directly involved in a judicial process, namely the prosecutor, legal representatives, victims, witnesses, and all trial participants. Next, contempt of court in Indonesia also only accommodates criminal contempt and sets aside civil contempt so that there is no deterrent effect for people, officials and others who do not comply with judicial decisions. Therefore, there is a need for special arrangements related to contempt of court in Indonesia that regulate crimes (criminal contempt) and non-compliance with court orders (civil contempt).

Keywords: Legal Reconstruction, Contempt Of Court, Justice.

1. Introduction

The lack of public trust in the judiciary is the root of the problem of contempt of court. This crisis of public trust has a great influence on the integrity and authority of the judiciary as the last bastion to get justice. Contempt of court continues to occur, even to an alarming stage. This is because insult is no longer just a verbal act in court, but has led to violence in the courtroom. The target is not only the property of the court, but also the panel of judges.

Talk about contempt of court has been around for a long time in Indonesia, both among judges, academics and advocates. However, until now the presence of Contempt of court in Indonesia still invites controversy. Some say that the Contempt of Court Law is not important because the Contempt of Court Law only protects judges and makes judges more authoritarian. Meanwhile, some others stated that the Contempt of Court Law needs to exist in Indonesia on the grounds that judges need to be protected from acts that can make judges not free and independent in carrying out their duties, so that their authority and dignity need to be protected, so that judges can enforce the law fairly, including daring to release innocent people.

The absence of a specific legal rule regarding Contempt of court causes the meaning of Contempt of court to be interpreted too broadly and inappropriately. If identified into several

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groups of Contempt of court in Indonesia, it can be based on the causes of its occurrence into 4, namely:

1. Contempt of court related to violation of the Law;
2. Contempt of court related to violation of court order;
3. Contempt of court related to violations of the code of ethics of law enforcement officials.
4. Contempt of court related to disobeying court orders.

Talking about Contempt of court , it is often encountered by many trial visitors, both parties directly involved in the case and ordinary visitors who make actions that do not respect the course of the trial, such actions can be categorized as criminal acts against the judicial process or known as Contempt of court.

Lately, it is no longer a common thing to find either through the media or in person the atmosphere of the courtroom that is noisy and irregular. The visitors shouted at each other, even to the point of committing anarchic acts. There are also often quarrels between the parties to the case in the courtroom. Verbal warfare between prosecutors and legal counsel that leads to personal abuse is often heard in court trials.

In general, contempt of court is classified in 2 (two) forms, namely criminal contempt and civil contempt. Such a division is also based on an attitude related directly (direct contempts) or indirectly (indirect contempt) to an act of contempt of court. In essence, these differences do not correlate with the type of sanction (strafsort) because both criminal contempt and civil contempt are threatened with criminal sanctions (imprisonment or fines), but the distinction is based on the type of act committed by the perpetrator of contempt of court (contemtor).

The classification of contempt of court based on its continuation is still in the general context and has not been contextualized in the types and forms of actions or sanctions for its actions in a concrete and functional manner. Therefore, experts generally divide contempt of court functionally, namely criminal contempt of court and civil contempt of court. Basically, criminal contempt of court is qualified as a disturbance and obstruction of the administration of justice so that it deserves to be rewarded with criminalization. Meanwhile, civil contempt is more of an attitude of disobedience to regulations or court orders. Civil contempt often occurs in courts that impose administrative sanctions such as in state administrative courts.

The high number of contempt of court cannot be allowed because it pollutes the authority of the Court in Indonesia as an institution that decides a legal case. Whatever the mode, all forms of contempt for the court cannot be tolerated, whether it is civil contempt or criminal contempt. The due administration of justice process as part of law enforcement must be guaranteed security and honor. Upholding the authority of the judiciary from acts of contempt is part of the constitutional affirmation that the Unitary State of the Republic of Indonesia is an independent state of law (rechtstaat).

Currently, the contempt of court regulation only regulates more criminal contempt, this is clearly seen in Law No. 1 of 2023 concerning the Criminal Code, while civil contempt has not had a deterrent effect to date for persons and legal entities who do not comply with court orders. Furthermore, in Law No. 1 of 2023, it is considered to only protect judges, this is reflected in Article 281 that all people involved in a judicial process should be protected from contempt of court, both prosecutors, lawyers, victims, witnesses, judges, defendants and others who participate in a trial process, because contempt of court does not only happen to judges but can happen to other judicial organizers.

Based on the explanation above, the author is interested in analyzing and writing an article with the title **"Reconstruction of the Contempt of Court Regulation in Indonesia"**.

2. Methods

This study uses normative legal research methods. The approach used in this study is normative juridical, which is an approach method based on existing laws and regulations as positive legal norms. In addition to using normative juridical research, this study also uses empirical normative legal research methods. Empirical normative law research examines the implementation or implementation of positive (legislation) and factual legal provisions in every specific legal event that occurs in society in order to achieve a predetermined goal. Empirical (applied) normative law research begins from the provisions of written positive law (laws) that are applied to legal events in concreto in society.

3. Discussion

Studied from a historical perspective, contempt of court is known in the common law system or case law. The tradition of Contempt of court was born, grew and developed in the Middle Ages correlated with the form of the English kingdom so that Contempt of court was seen as synonymous with Contempt of the king.

Studied from an etymological and literal perspective, Contempt of court consists of the word Contempt which is interpreted as violating, insulting, and looking down upon. Then the word court is interpreted as a court. In short, it can be said that Contempt of court is an attempt to violate, insult, and look down on the court. The word Contempt in English contains 5 meanings, namely:

1. 1.Lack of respect accompanied by a felling of intense dislike. (Lack of respect is accompanied by intense feelings of dislike);
2. A manner that is generally disrespectful and Contemptuous. (Generally disrespectful and insulting manners);
3. Open disrespect for a person or thing. (Open disrespect towards someone or something);

4. A willful disobedience to or disrespect for the authority of a court or legislative body. (Deliberate disobedience or disrespect for the authority of the courts or legislative bodies);
5. The act of contemning or despising; the feeling with which one regards that which is esteemed mean, vile, or worthless, disdain, scorn. (An act of contempt or contempt; the feeling of one considering what is honorable, vile, or worthless, contempt, ridicule.)

In Indonesia, the terminology and definition of Contempt of court from the perspective of laws and regulations are first contained in point four of the fourth alenia of the General Explanation of Law Number 14 of 1985 concerning the Supreme Court. However, the idea of establishing Contempt of court began in 1978 at the conference of Chief Justices of the Supreme Court throughout Asia Pacific, and then continued in 1986, IKAHI (Indonesian Judges Association) held a National Working Meeting with one of the topics discussed on Contempt of court.

In the context above, specifically from the perspective of point four of the fourth paragraph of the General Explanation of Law Number 14 of 1985 concerning the Supreme Court, the definition of Contempt of court is any act, conduct, attitude and/or speech that can degrade and undermine the authority, dignity and honor of the judiciary.

The idea of establishing a Contempt of Court Law must be clear in scope rather than in the interests that must be protected, and according to Loebby Loqman the legal interest that must be protected is the implementation of good justice, meaning that the law must provide protection for the administration of justice.

The nomenclature regarding Contempt of court or Crime against the Administration of Justice has two meanings. In a broad sense, it is defined as crimes against the administration of justice. In a narrow sense, it is defined as the crime of insult, harassment, and contempt of court.

Elements of Contempt of court according to the author:

1. Intervening the parties in the interests of the judiciary as well as persons/individuals (naturlijk persons) who carry out their profession as judicial organizers.
2. Making a fuss in court,
3. Damaging the facilities of the judicial organizers.
4. Insult to the authority of the judiciary.
5. Obstructing an official who is lawfully carrying out his duties, as well as a person/individual (naturlijk person) who carries out his profession, whether he is given a valid power of attorney or not in the administration of justice.
6. Not complying with a judgment or court order.

Delicacy against the administration of justice actually has a wider scope, compared to Contempt of court (ansich). This is due not only to insult during the trial, but also to include

all judicial processes (offence against the administration of justice). Humiliation and harassment may occur at the stage of investigation, prosecution and examination in court hearings, even at the time of execution of court decisions (execution). In the Indonesian Criminal Code, delicacies related to the administration of justice have been regulated .

In Article 280 of the New Criminal Code which reads as follows:

Sentenced to a maximum fine of category II, Any person who, at the time of the court hearing:

- a. failing to comply with a court order issued in the interest of judicial process;
- b. disrespecting the judge or the trial or attacking the integrity of the judge in court hearings; or
- c. without the court's permission to record, publish directly, or allow the proceedings to be published.

The provisions in Article 280 of the New Criminal Code, according to the author, are categorized as Contempt of court in a narrow sense, because it is a crime of insulting, harassing, and degrading the court by disobeying orders from the court. In a broad sense, Contempt of court is interpreted as, Crimes against administration of justice, which includes criminal acts against other law enforcement officials such as public prosecutors, legal counsel, defendants, victims, plaintiffs (civil), defendants (civil), translators, witnesses, experts, clerks and other people who participate in the administration of justice.

A concept of thought that is carried out is by finding a middle ground not only for the interests of the judges, but also for the arrangement of law enforcement officials, judicial organizers, and other parties, such as: public prosecutors, legal counsel, defendants, victims, plaintiffs (civil), defendants (civil), translators, witnesses, experts, clerks and other people who participate in the administration of justice. The path used is a way to find balance on the part of the judicial administrators, which consists not only of judges but also of law enforcement officials and other parties as mentioned above. The principle of prioritizing individual interests and social interests in a balanced manner is what is meant by the basis of balance in a monodualist society. The idea of this balance is to better fulfill the sense of justice that lives in society. Where in achieving balance, the community/(party) one sees the community/(party) the other, in this context Contempt of court, whether the provisions he gets are the same or not to his position before legal regulations.

Considering that the New Criminal Code model is an open codification, it is therefore possible if crimes related to the administration of justice are made a separate/special law (lex specialist). With the norm of the article, it can be modeled after the Contempt of court Act 1981 in the United Kingdom with rigid norm arrangements, the content of the norm is not only for the judge but for all parties in the administration of justice including the public

prosecutor, legal counsel, defendant, victim, plaintiff (civil), defendant (civil), translator, witness, expert, clerk and other people who participate in the administration of justice.

4. Conclusion

The contempt of court regulation in the new Criminal Code is considered to only strengthen the authority and interests of judges as seen from the formulation of Article 281 so that it needs to be updated with provisions to protect all judicial administrators, namely: judges, prosecutors, legal advisors, witnesses, experts, clerks, defendants, victims, plaintiffs, defendants, translators, and other people who participate in the administration of justice. So that from the definition and category of crimes against the administration of justice that have not been clearly and clearly described, this is because the meaning of Contempt of Court is only interpreted narrowly, so there is a need to expand the meaning related to contempt of court in Indonesia considering that contempt of court does not only occur in the courtroom but also occurs outside the courtroom.

The urgency of the establishment of the Contempt of Court Law is based on several things, namely from the side of Criminal Contempt: 1) the absence of the Contempt of Court Law makes criminal acts related to the CoC in the Criminal Code considered as ordinary crimes, and its handling seems not serious in maintaining the dignity and dignity of the judicial institution. 2). The need for a contempt of court law in which, in addition to regulating material crimes, also regulates the law enforcement mechanism. 3). In some cases, contempt of court is not followed up so that it causes injustice. Furthermore, in terms of civil contempt, the mechanism for enforcing decisions is ineffective..

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