

Legal Sanctions Against Contempt of Court Actors: Analysis Based on Criminal Law and Criminal Procedure Code

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Abstract

Arrangements regarding the Contempt of Court process to enforce and ensure the judicial process runs without various parties, other parties involved in the judiciary, the mass media, and office officials themselves. The regulation regarding the Contempt of Court is a legal effort to defend the public interest and the rule of law so that the judicial process can be carried out properly and fairly, without interference, or being undermined by other parties, both during the judicial process in court and outside the court building. In connection with cases that occur in trials, judicial power needs to be protected from all forms of action that can guarantee the authority of the institution and the organizers, both as a private institution. In this context, we need a rule of law to protect the institution from all forms of action that can be applied to its authority. Unfortunately, the current legal regulations do not adequately accommodate all internal experimentation problems. Analytical descriptive research, with a normative legal approach in laws and regulations (law in books). The results of the study explain that the application of legal sanctions against Contempt of Court actors based on the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) is not firm because it does not clearly explain the actions or actions that are applied to the Court so that the application of legal sanctions for Contempt of Court actors cannot be implemented adequately and optimally.

Keywords: Contempt of Court, Criminal Procedure Law, Criminal Law.

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A. INTRODUCTION

In judicial power there is a fundamental principle in the form of independence of judiciary. This principle implies that the course of the judicial process must be guaranteed in such a way as 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 judiciary is universal and is enforced in various countries. Oemar Seno Adji argues that the independence of the judicial power contains within it the freedom to carry out its judicial duties (within the exercise of the judicial function), so as "personnel/rechtspositionil" freedom it contains "verbot" which is a prohibition for other state powers to intervene and "gebot" as an obligation for judges in carrying out their duties is guided by their juridical conscience (Asshiddiqie, 2005; Disemadi & Roisah, 2019; White, 2020).

From the context of the principles mentioned above, the judicial process must be carried out in an open, objective, impartial manner by legal provisions and a sense of justice. So important is the position and function of this principle that it is specifically regulated in the 1945 Constitution and then translated into various laws and regulations governing judicial power. the apparatus (Hasibuan, 2015; Rozikin, 2019). However, in the dynamics of recent developments, there is an interesting phenomenon that can reduce the judiciary's dignity, nobility, and authority and its apparatus, especially the dignity and authority of judges. Attitudes and actions displayed by justice seekers, legal practitioners, the press, socio-political organizations, non-governmental organizations, academics, judicial commissions, and various other parties that are suspected to be in such a way can be categorized as injuring the dignity, nobility and authority of the judiciary, both attitude and behavior. and actions aimed at judicial processes, judicial officials, and court decisions.

In addition, the exercise of judicial power in the practice of state administration is relatively vulnerable to intervention, either through legal policies of legislators, horizontal institutions, power in society (mass organizations, mass media, political parties) through the formation of public opinion on while the trial is in progress. The influence of parties who have political interests in power or violence or anarchic mass mobilization, color the judicial process so that it interferes with the administration of the judicial process, both inside and outside the trial, as well as inside and outside the court building (Sarda, 2016; Subarkah et al., 2017; Darma, 2020).

The freedom of a judge in adjudicating a case is protected by law. Every form of action or deed that is insulting, demeaning and influencing the judiciary either directly or indirectly in its functions and duties to enforce law and justice is a violation of the law and is a form of Contempt of Court. Article 3 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power states that: "any interference in judicial affairs by other parties outside the jurisdiction of the judiciary is prohibited except in cases as stated in the 1945 Constitution of the Republic of Indonesia." , furthermore in paragraph (3) it is stated that: "everyone who intentionally violates the provisions as referred to in paragraph (2) shall be punished in accordance with the provisions of the legislation (Dunodd et al., 2015; Wahyono, 2017).

Actions and dimensions that are included in the Contempt of Court category, for example, releasing chickens in the Supreme Court courtroom, the Larantuka District Court building being burned by the mob, the defendant's lawyer walking out at the Jakarta Corruption Court (Tipikor), Chaos at the Constitutional Court after the gubernatorial election verdict was read. Maluku, the decision of the Supreme Court was not obeyed by the Bogor Agricultural Institute (IPB), mobs surrounded the Jakarta Industrial Relations Court and the Corruption Prosecutor at the Bandung District Court was hacked after the trial. Suppose various actions to undermine and even undermine the authority of the judiciary are not immediately found the best solution. In that case, it will be a serious challenge for judges, judicial institutions (Supreme Court or Constitutional Court), especially for the Judicial Commission in charge of maintaining/enforcing the authority/nobility of the judiciary in Indonesia (Baroto et al., 2015; Harris, 2016; Subarsyah, 2020).

Of the many Contempt of Court actions that have occurred so far, such as demonstrations in the courtroom, throwing sandals, throwing eggs, throwing money in court, burning court building facilities, swearing/slamming the table with dirty words. between lawyers, prosecutors or judges in a trial. Especially the case that most tarnished the authority of the judiciary, namely the murder that took place in the Sidoarjo Religious Court, East Java, until the murder of a judge, showed that the Court was like a supermarket "which has no authority, aka the independence of judges and the dignity of the judiciary has been contaminated with noise, which in the end judges in carrying out their duties as independent judicial power officials will be threatened with fear.

The Contempt of Court is still a serious threat to court ranks, such as judges and prosecutors, advocates, or the defendant's family/family within the court. However, we must be honest, that the

cause of all of this is the lack of public trust in the judiciary as the last bastion of justice seekers. The contributing factors are difficult to describe in words, due to the complexity of the factors that hinder law enforcement itself, almost all of whom are judges. In order to uphold the dignity of the judiciary which has been tarnished, it is hoped that the judges must be aware and introspect to leave the habit of attitudes/behaviors that are not liked by the public. Because the Judicial Commission and the Supreme Court are only institutions that carry out guidance, supervision and prosecution of judges who are judged to have made mistakes (Hinkes, 2019; lee & Lee, 2019; Friedman & Pattilo, 2019; Landau & Dixon, 2019).

The proposal for establishing a Contempt of Court Law (blasphemy/contempt of court) has often been discussed by both the Supreme Court and the Judicial Commission, because the Supreme Court Law has mandated that a Contempt of Court Law be established. However, so far this idea has not materialized. This came to the fore again, when Kompas published this news twice in a row, namely: "It is necessary to make a Blasphemy Law on Judiciary" (dated 19 March 2012) and "The Criminal Code is not yet complete, a special law is needed" (20 March 2012) . In other words, until now Indonesia has not had adequate legal instruments/umbrellas that regulate and protect the dignity, nobility and authority of the judiciary in particular from Contempt of Court acts.

B. METHOD

The data technique used in this research is the study of documents or literature, namely conducting research on documents related to the problems being discussed in this thesis and then conducting a study of data retrieval from library materials in the form of literature books related to the problems discussed. . After the above data is inventoried, then analyzed juridically-qualitatively using secondary data obtained in library research, as for the use of qualitative juridical methods because this research is based on legislation and intends to obtain various information that can be used to analyze and understand certain aspects of criminal law experts by discussing the doctrine or theory that underlies the birth of legislation and policies in the field of criminal law.

C. RESULT AND DISCUSSION

Application of Legal Sanctions Against Contempt of Court Actors Based on the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP)

The trial process in Indonesia recognizes the principle of an open trial and is open to the public, except for the trial process for cases of decency and children as defendants, as regulated in Article 153 paragraph (3) of the Criminal Procedure Code jo. Article 13 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. With this principle, everyone can attend, see and follow the trial. Court hearings which are open to the public sometimes attract public attention, especially if the case involves officials or gets a sharp spotlight from the public so that the Court looks very busy filled with people who want to witness the trial, it's just that there are often many visitors to the trial, both parties directly involved in the case as well as ordinary visitors make actions that do not respect the proceedings. This action can be categorized as an insult to the Court (Contempt of Court).

In Indonesia, actions or words that harass or blaspheme the courts have recently become increasingly common. Sometimes it is carried out in the court room itself when the judicial process is in progress or or after the judge has read out his decision, even though other legal remedies, such as appeals and cassation, are still open. Those actions or words of course either directly or indirectly can influence public opinion, and insult the authority of the court (Prima et al., 2019; Fernandes et al., 2019; Robinson & Darley, 2019).

Often the blasphemy published in the mass media is not accompanied by rebuttals from other litigants, so that the public only gets incomplete information. Often the blasphemy is based only on "issues" that do not have a solid basis. If the blasphemy is directed at the judge, of course it will have a psychological impact on him. It has become a universal principle that must be followed that the court is a place that must be respected where the rule of law must be processed and enforced by all parties. There is still a legal route that can be taken if there are parties who are not satisfied with the judge's decision. There is still a legal route that can be taken if the judge is deemed not to have carried out his duties properly. What is clear is that this cannot be done in the trial court.

Research results from the National Law Reform Consortium (KRHN) also noted that from September 2005 to February 8, 2011 there were no less than 30 acts of humiliation against the

court, which were not only carried out outside the trial, but during the trial. Another Contempt of Court fact, where the perpetrator is required to conduct a Contempt of Court, which in practice has occurred is in a case where the case has been decided based on the Purwakarta District Court Decision Number 241/Pid.B/2006/PN.PWK in conjunction with the Bandung High Court Decision Number: 38/PID/2007/PT.BDG in conjunction with the Decision of the Supreme Court of the Republic of Indonesia No. 1316 K/Pid/2007 (Maemoenah, 2003).

South Jakarta District Court Decision Number 6/Pid.Tpr/201 I/PN J kt. Sel in conjunction with the Decision of the High Court of DKI Jakarta Number 207/Pid/2011/PT.DKI in conjunction with the Decision of the Supreme Court of the Republic of Indonesia Number 1800K/Pid/2011 and the Decision of the Medan District Court Number 144/Pid.B/2001/PN.Medan, that the perpetrators were in the room the trial showed disrespect to the court, behaved not in accordance with the dignity of the court and did not obey the order after receiving a warning from the head judge of the trial, the person concerned was expelled from the courtroom and demanded to carry out a Contempt of Court which implicitly regulated the form of violation of committing a crime in the Criminal Code.

The Contempt of Court cases show that the Court is seen as a "supermarket" that has no authority. The independence of judges and the dignity of the judiciary have been contaminated with noise, which makes judges feel afraid when carrying out their duties as officials of the judicial power who should be free from influence or threats of any kind. In addition, when a judge is carrying out his main duties, he is not provided with special weapons or security. In addition to these cases, there are also cases in the form of public intervention or pressure on cases that are being examined or do not yet have a final and binding decision. In fact, court institutions and/or judges often receive scorn or harassing criticism. This is certainly very dangerous because the judges' independence guaranteed by the constitution in deciding a case is very disturbed in their belief (Bala & Slabach, 2019; Ross, 2019).

Based on the variety of blasphemy/humiliation of the court above, it is time to stipulate in detail what is meant by/definition of blasphemy/insult to court institutions and/or judges and their forms both in official duties and outside of service as well as imposing legal sanctions explicitly regulated in the Contempt of Court Law. Contempt of Court actors are parties involved in a case, whether they are prosecutors, advocates or defendants and witnesses, or other parties, such as visitors to

court hearings who have no connection with the case being tried to obstruct the trial. Contempt of Court. This Contempt of Court action targets are no longer against the Court building but also against Court officials (judges, public prosecutors, substitute clerks and legal advisors), witnesses, and defendants.

Given the importance of handling the Contempt of Court issue, the imposition of effective and immediate sanctions for Contempt of Court perpetrators is an important requirement. Judging from its history, since centuries this institution has been implemented in a large number of countries. Until now the type of "Contempt of Court" is still developing by the development of the era, law and order must be enforced everywhere, especially in courts that are tasked with enforcing the law and order "supremacy of law". Therefore, the court's inherent authority is to effectively punish those who abuse the judiciary (Arlen & Buell, 2019; Silalahi, 2019).

The statutory provisions regarding contempt of court are intended to ensure that the judicial process against contempt of court acts can be carried out effectively. Namely, among others, by imposing sanctions on those who interfere with the judicial process or do not want to carry out court orders. The Contempt of Court action that has taken place in Indonesia has not yet been fully resolved. This can be seen from the increasing number of Contempt of Court actions in Indonesia, this is due to the lack of firmness by law enforcement officials and the government in dealing with Contempt of Court cases that occur. Looking back, the rules for harassment against the court have actually been listed in the Criminal Code. It is part of an insult to certain institutions or officials who are carrying out their duties. This means that it can use Articles 207, 212, 214, 217, 218, 220-224, and Article 310 of the Criminal Code. However, these articles still contain weaknesses so that in practice they are rarely used for cases of harassment against judges or the judiciary (Masthura, 2011; Amiruddin, 2016).

The context of court was later mentioned in the General Elucidation of Law Number 14 of 1985 concerning the Supreme Court. Here it is stated that the Contempt of Court is needed to ensure the creation of the best possible atmosphere for the administration of justice to uphold law and justice. In addition, the Contempt of Court Law regulates actions, behavior, attitudes, or words that can demean and undermine the judiciary's authority, dignity, and honor. Previously, Law Number 8 of 1981 concerning the Criminal Procedure Code has mandated that everyone respect the court. Article 281 explicitly states that anyone is obliged to show respect to the court in the courtroom. If

a visitor behaves inappropriately with the court's dignity and does not comply with the court order, the judge will give a warning. The judge ordered that visitors be removed from the courtroom if they still do. If the violation is a criminal offense, there is the possibility of prosecution of the perpetrators.

There is no clear regulation of the Contempt of Court in Indonesia, but in the Criminal Code and the Criminal Procedure Code there are provisions of articles that can be qualified as rules regarding the Contempt of Court, namely those listed in Articles 207, 208, 209, 210, 211, 217, 224, 233 and 420. KUHP. The provisions of the articles contained in the Criminal Code are not clear because they do not clearly explain the actions or actions aimed at the Court so that law enforcement for Contempt of Court actors cannot be carried out optimally, and Indonesian courts (judges) do not have the authority to impose sanctions directly. against the perpetrators of such harassment as regulated and carried out in other countries, even though the act was carried out in court, the process to prosecute and punish the perpetrators was too long to be followed up, and the Court did not have the special means to implement the sanctions immediately (Ahyani et al., 2020).

The Urgency and Relevance of Contempt of Court Arrangements in Special Laws

Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states that: "Judicial power is an independent power to administer judiciary to uphold law and justice". The existence of these provisions is intended to emphasize that the task of judicial power in the Indonesian constitutional system is to administer an independent judiciary, free from intervention from any party, to uphold law and justice. The provisions of Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia are further regulated in the Law on Judicial Power. Article 1 point 1 of Law Number 48 of 2009 concerning Judicial Power in place of Law Number 14 of 1970 and Law Number 4 of 2004, stipulates that the power of an independent state to administer justice to uphold law and justice based on Pancasila and The 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the legal state of the Republic of Indonesia (Panggabean, 2015)

Then in Article 3 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power stipulates that: "In carrying out their duties and functions, judges and constitutional judges are obliged to

maintain the independence of the judiciary", and paragraph (2) states that: "All interference involvement in judicial affairs by other parties outside the jurisdiction of the judiciary is prohibited, except in matters as referred to in the Constitution of the Republic of Indonesia. Therefore, what is meant by "independence of the judiciary", is free from outside interference and free from all forms of pressure, both physical and psychological (Explanation of Article 3 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power). Regarding the independence Regarding this independence, Bagir Manan emphasized that efforts to protect an independent judicial power are to (1) ensure that court decisions are obeyed or obeyed; (2) prevent any form of interference or intervention in the judicial process; and (3) ensure an honest (and impartial) trial.

The judicial power that administers justice is vulnerable to various practices undermining these institutions. Acts of humiliation against individuals and/or court institutions are often carried out verbally, in writing, and/or physically. These acts of humiliation often occur both inside and outside the court. Even the media also participate in various efforts that lead to an attitude of demeaning the judiciary's authority. The authority of the judiciary, which used to be very "sacred", has now become a "normal" thing in the "era of freedom of expression", which has no limits. Many people say that in the era of "democracy, people have the right to free expression regardless of the existing rules. Whereas Article 28J paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that: "Everyone is obliged to respect the human rights of others in the orderly life of society, nation and state (Manan & Harijanti, 2016).

In addition, normatively, all judges who hear cases are entitled to security guarantees. Article 25 paragraph (5) and (6) of Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts explicitly states that court judges are given security guarantees in carrying out their duties. Statutory provisions regulate the security guarantee. It is not only the neglect of the judge's decision and the lack of security that has occurred. In practice, the trial process cannot be separated from harassment and humiliation of judges and judicial institutions. Screaming in the courtroom has become a common sight. Various cases of contempt in trial or Contempt of Court often occur as the authors have stated in Chapter III above. There are no rules or laws that specifically regulate criminal acts or Contempt of Court offenses, so that even if the perpetrators of Contempt of Court are processed legally, law, then the legal basis for

investigators to ensnare Contempt of Court actions is the existing provisions in the Criminal Code so that there is no legal vacuum (Zimmermann, 2019).

Based on the facts above, in the author's opinion, so that the court's authority is realized, in addition to the forms of humiliation as described above to be included in the Contempt of Court Law, it is also time for all court orders and court decisions within the judiciary such as general courts, administrative courts State, religious and military efforts are carried out by all parties without exception. If certain parties are unwilling to carry out the court's order or try to hinder it, they can be classified/disqualified as having committed contempt/blasphemy against the court.

Various forms of humiliation and violence against Courts in Indonesia can also occur due to factors such as: imposing a sense of justice on behalf of groups or individuals, namely. When they are not satisfied with the court's decision, then impose their will. Also the dissatisfaction of the justice-seeking community towards law enforcement officers, such as the occurrence of selective selection of suspects/defendants who are made investigators or prosecutors become defendants while other defendants are not prosecuted for reasons that cannot be accepted by common sense; also for the detention of suspects or defendants who should have been detained, but the others were not detained; a protracted trial or the reading of the prosecutor's demands or the judge's decision which is always postponed without a reasonable reason or the judge's decision (convict) is low or heavy; not being objective by the prosecutor or judge in examining the witnesses or the defendant or the plaintiff/defendant. All of the above factors can be one of the triggers for various forms of "noise" and violence in court (Musah, 2019; Simangunsong, 2019).

If the problem is due to dissatisfaction with the Court's decision, legal remedies for certain parties can be an appeal to the High Court or an cassation to the Supreme Court for a judicial review. On the other hand, if it is judged that the judge is not neutral or there is an element of accepting "bribes" from the litigants, the public can report the judge concerned to his superiors at the Supreme Court or the Judicial Commission. Suppose various actions that demean and even undermine the authority of the judiciary are not immediately found the best solution. In that case, it will be a serious challenge for judges, judicial institutions (Supreme Court or Constitutional Court), especially for the Judicial Commission to realize the dignity and dignity of the judiciary. in Indonesia. The author has stated that the "Contempt of Court" Law does not yet exist in Indonesia. However, the strong desire for the existence of the law has been reflected in Law Number 14 of

1985 concerning the Supreme Court, especially in the General Elucidation point 4. Provisions that fall within the scope of "Contempt of Court" are partially contained in the Criminal Code, such as Article 217 of the Criminal Code.

Therefore, the establishment of the Contempt of Court Law, KY as the guardian and protector of judicial authority, can immediately expand KY's network with parties appointed by KY in all courts in Indonesia to monitor the proceedings of the trial. Suppose there are allegations of criminal acts that undermine the honor and dignity of the Court/Judges of KY. In that case, they can immediately report the case to the police so that the case is legally processed. Even if it is possible, the judge can order the prosecutor so that the perpetrator of a disturbance at trial can be made a defendant immediately. This method can minimize humiliation/blasphemy against the court or judge so that the authority of the court/judge is realized as adopted in the Common Law system, where the authority of judges according to this system is quite high, unlike in Indonesia, which adheres to the Civil Law system where the authority of judges is very low. Moreover, it is triggered by judges' low salary/welfare, making him vulnerable and encouraging him to be more easily influenced and influenced by various parties who can influence his decision.

Thus, one of the best solutions to upholding the judiciary's authority in Indonesia is to empower the Chief Justice of the Court of first instance, the Chief Justice of the Court of Appeal, and all judicial bodies. If the chairman has leadership style, skills in leading subordinates, has administrative and judicial technicalities, the court will become authoritative and sacred. Because the Chairperson of the Court has the prerogative to maintain the good name of the Court, including securing every trial through good cooperation with the local security forces/police. As the highest leader in the judicial field, the Chief Justice of the Supreme Court has entrusted the judicial process, including the security of the trial, to the Chief Justice of the Courts throughout Indonesia. That's why they are promoted and elected/appointed as leaders in the courts (Mulyadi & Suhariyanto, 2016).

C. CONCLUSION

The application of legal sanctions against Contempt of Court actors based on the Criminal Code (KUHP) and the Criminal Procedure Code (KUHP) is not firm because it does not clearly explain

the actions or actions aimed at the Court so that the application of legal sanctions for Contempt perpetrators of Court cannot be implemented adequately and optimally. Arrangements relating to actions that can be qualified as Contempt of Court and their sanctions to date in Indonesia are still scattered in the articles of the Criminal Code, so the urgency and relevance of Contempt of Court arrangements in special or separate laws regarding Contempt of Court, both In material and formal laws, it is very urgent and very important in the Indonesian legal system, for the sake of the authority and honor of the judiciary, to enforce and guarantee the judicial process without interference from outside parties. The regulation is a legal effort to defend the public interest and the rule of law so that the judicial process can be carried out properly, without being disturbed or undermined by other parties, both during the judicial process in court, or outside the court building. What is at stake here is not only the rights of the parties, or the authority of the judiciary itself, but more fundamentally, namely the enforcement of the principles of the rule of law.

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