

The important of designing legislation on Indonesian contempt of court act: legal practitioners perspective

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ABSTRAK

Istilah *contempt of court* di Indonesia pada awalnya muncul dalam definisi umum Undang-Undang Nomor 14 Tahun 1985 tentang Mahkamah Agung Pasal 4 ayat (4). Dalam definisi umum tersebut, tersirat adanya keharusan untuk segera mengukuhkan undang-undang yang secara khusus mengatur tentang *contempt of court* di Indonesia. Perspektif dari para ahli dan praktisi hukum diharapkan dapat memberikan kontribusi dalam implementasi pengaturan *contempt of court*. Kontroversi mengenai *contempt of court* mulai menjadi polemik seiring dengan munculnya Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana (RUU KUHP), dimana salah satu dari RUU tersebut memasukkan pasal-pasal mengenai *contempt of court*. Penelitian ini bertujuan untuk menganalisis faktor-faktor yang menyebabkan terjadinya *contempt of court* dan urgensi pembentukan regulasi *contempt of court* di Indonesia. Metode yang digunakan dalam penelitian ini adalah metode yuridis-empiris. Selain itu, peneliti dalam penelitian ini berusaha untuk mendeskripsikan pandangan praktisi hukum di Malang yang diperoleh dari hasil wawancara dan observasi dengan hakim, jaksa, dan pengacara. Para peneliti menggunakan pendekatan kualitatif sebagai jenis pendekatan penelitian. Hasil penelitian ini menjelaskan bahwa maraknya kasus *contempt of court* hingga saat ini muncul karena kurangnya kesadaran masyarakat dalam mematuhi hukum dan rendahnya etika hukum baik dari masyarakat maupun penegak hukum.

Kata Kunci: *Contempt of Court*, Perspektif Praktisi Hukum, Etika Perilaku Hukum

ABSTRACT

In Indonesia, the term contempt of court originated from the general definition of Law No. 14 of 1985 on Supreme Court item 4 paragraph 4. According to this general definition, it is necessary to quickly validate the law in Indonesia governing contempt of court. It was anticipated that the perspectives of legal experts and practitioners would contribute to the implementation of contempt of court regulations. Controversy over contempt of court became a topic of contention following the publication of a of Criminal Code that included articles on contempt of court. This study sought to examine the factors that could lead to contempt of court and the urgency of drafting contempt of court regulations in Indonesia. This investigation employed a legal-empirical methodology. In addition, the researchers in this study attempted to describe the perspectives of judges, prosecutors, and attorneys in Malang, Indonesia, which obtained through interviews and observations. The qualitative research approach was

adopted by the researchers. This research found that the prevalence of contempt of court cases until recently was due to a lack of public awareness in complying with the law and a lack of ethical behaviour regarding the law, either on the part of society or law enforcement.

I. INTRODUCTION

Since the implementation of Dutch Criminal Law (*Wetboek van Strafrecht*) under Law No. 73 of 1958 as a Criminal Law in Indonesia, this retributive philosophy has been regarded as the political foundation of Indonesian criminal law. Article 10 of the Indonesian Criminal Code, which identifies the death penalty and imprisonment as the principal forms of crime, names this practise as one of the many categories of criminal sanctions listed. In the Criminal Codes of the Netherlands, France, and Germany, the death penalty has been abolished. Consequently, the retributive philosophy of the previous regulation (Criminal Code) has been abandoned by many European nations adhering to the civil law legal system, which is distinct from the common law legal system. (Atmasasmita, 2009).

The government's efforts to reform criminal law are necessary for society to create a just law and to prevent crime through criminal law with multiple formulations of criminal acts, so that the potential of criminal cases can be reduced through criminal law enforcement. (Muhammad, 2019). Currently, the implementation of law enforcement, which ought to be the independence of a judicial institution, has not been attained. A judge's independence must be interpreted as the absence of interference from other parties or state institutions (both the executive and the legislature). This includes preserving the honour of justices in order to uphold a just law. Because the Indonesian legal system adheres to "Res judicato pro veritate habetur" (all court decisions are valid unless voided by a superior court), all court decisions are valid.

Fundamentally, the purpose of law enforcement is to uphold and preserve social order. In this process, cooperation between the community and the judiciary is essential. This is in accordance with Cicero's dictum, *Ubi Societas Ibi Ius* (where there is society, there is law): from a philosophical standpoint, law is the product of society. A nation is considered civilised if it has just laws and competent and independent tribunals. (Friedman, 2000). In practise, however, we continue to face a number of issues with justice administration. As a matter of fact, disputes that undermine the authority, dignity, and honour of the judiciary frequently occur and can be classified as criminal acts, including contempt of court. (Dianita, 2013).

Actions resulting in contempt of court can diminish the dignity, honour, and authority of the judicial system. There needs to be a statute that specifically addresses court contempt. Due to the absence of a law that specifically addresses contempt of court, the Criminal Code has been used to address contempt-related issues. Articles 207, 212, 214, 217, and 218 of the Criminal Code and Articles 217 and 218 of the Criminal Procedure Code are included in these provisions.

In Indonesia, the term contempt of court is first defined in the Law No. 14 of 1985 on the Supreme Court, item 4, paragraph 4. In this general explanation, it is implied that the law regulating contempt of court in Indonesia must be ratified soon. However, the formulation of the contempt of court concept began in 1978 during the conference of the Supreme Court Chairman in Asia Pacific, and continued in 1986 when the Indonesian Judge Association held a national working meeting on the subject. (L. Mulyadi & Suharyanto, 2016). However, not all practitioners view the need of law regulating about this problem.

Based on the researches of Litbangkumdil Supreme Court, in 2015, about 94% of respondents have stated the need of specific regulation on contempt of court, and only about 6% of respondents have stated that the current law in Indonesia has fixed this problem. The majority of respondents have expected a specific rule rather than having to be regulated in Law 48th 2009 on judicial authority, Civil Law, and Law 3rd 2009 on Supreme Court.

Based on several previous research, it refers that the respondents have expressed dissatisfaction with the regulation on the problem of contempt of court that has been arranged in Civil Law, Criminal Code of Law, and the other rules. One of reason that contempt of court should be regulated in specific law is that humiliating and demeaning act on the court dignity is a part of special crime, so it required the consequence to arrange a specific rule regulating about this problem.

In fact, the justice created by a judicial institution is still far from fairness. A lot of cases occur in world of justice that can undermine the authority of judicial institution are widely recognized due to the situation that many people have not received justice and minimum knowledge of law. The judicial institution should be an institution that can initiate a legal continuity itself, because the law is functioned to protect human activities in preserving their rights and obligations (Mertokusumo, 2007). The judicial institution as an institution that should reflect justice, it should be also supported by an adequate legal instrument and system. Then, the aim of impartial justice is achieved through the process taking place in the court (Shodiqin, 2017).

Point of view of the legal advisers and legal practitioners is expected to contribute within the implementation of regulation referring to contempt of court. Actually, this problem should be solved as soon as possible. The term of contempt of court does not have a clear definition instead. A lot of differences are found in the definition of contempt of court. Moreover, perspectives of a group of judges who disagree if the problem of contempt of court is mentioned in Law, they argue that this idea will even hurt the meaning of judicial institution itself, as an independent institution, due to the legislative and executive intervention in approving this rule. This assumption then triggers some groups of judges disagree if the problem of contempt of court is written in special law.

The need of a regulation on the problem of contempt of court is also based on ongoing social changes among society lately that cannot be solved by law. The law is assumed to be

unable to handle and offer solution in order to realize justice. This problem occurs a lot in civil law countries like Indonesia. As a country with civil law concept, it has become a necessity in making law. In this context, a coercive law is deliberately positioned for the law itself, not for human. This problem is seen in a number of cases in the court when the judge decided a case out of sense of justice. For example, in the case that was being experienced by Mina who was sentenced to 1,5 months in prison for being proven guilty of stealing three cocoa beans out of compulsion (Sarmadi, 2012). This case is assumed to be out of sense of justice. Or, in another case that was being viral among society, about Mrs. Baiq Nuril, this woman was accused to be guilty of violating information technology law. Though in this case, Mrs. Baiq was also a victim. Therefore, many people think that judicial institution is not able yet to provide justice. Those assumptions stated above trigger a bad image of justice.

Realizing about social changes and development that are also followed by a growth of criminality seem to encourage efforts of criminal law reformation that is sustainable with rational steps according to policy and value approach. In fact, the effort of criminal law reformation has not shown a significant advance, although this reformation has been initiated since the early period of independence, due to the basis of no legal vacuum was seemed to make this reformation attempt as it was not an urgent issue. The law draft of Criminal Code which had entered into a part of national legislation program, it has not been ratified yet until now, because of the social polemics in the articles, including about this contempt of court.

There are several previous research related to this study, Artaji, et al suggested to arrange this problem into a special rule. Another conducted by Bimas Abimayu, Erna Dewi & Eko Raharjo which revealed regulation of contempt of court in recent time is just a mere discourse because of no firm action performed for this problem (Abimayu et al., 2017). Our research focused on the analysing caused factors of contempt of court and the urgency to forming the regulation of contempt of court in Indonesia.

II. METHOD

This research is categorized into juridical-empirical research (Marzuki, 2010). Primary data obtained through the interviews with the judge, attorney and lawyers in Malang, Indonesia. Secondary data in this research include primary and secondary legal material consist of law, books, and another document related to this topic. After data collected, the researcher analyses through qualitative technique and present the results descriptively.

III. RESULT AND DISCUSSION

3.1. Practice of Contempt of Court in Indonesia

The situation of high distrust in the judiciary has resulted in some people taking advantage of this situation. The lengthy judicial process and the results that cannot be predicted based on facts seem to be reasons for a group of people to avoid the trial process. Thus, the

public's trust and respect in the context of implementing the functions of the court will influence their attitude to respect and obey the laws of the country. Currently, the implementation of the justice system has not been carried out as it should be due to the lack of public understanding of the law or the weak application of ethical values, as well as the integrity of all parties involved in the justice system, including judges, prosecutors, advocates, police, and the community as a justice seeker. Criminal act against judiciary was also called as contempt of court, it was defined as a crime that might be occurred during the process of court, either in the middle or out of court proceeding. In the concept of Criminal Code, the provisions that regulated about contempt of court were quite a lot, as regulated in the Article 328-347.

The articles mentioned above have regulated criminal acts during the court process as listed in Criminal Code, but in fact, many of those acts were still violated by our society, either by civilians or law enforcement apparatus, this condition might be occurred due to several factors, like the lack of law knowledge, lack of public awareness in complying with the law itself, and no special sanction that could regulate this problem. Fact of harassment or contempt of court that occurred in Indonesia was really apprehensive. For instance, there was a group of masses demonstrating and demanding the end of judicial process, or any action shown by the justice seeker, or legal practitioner either directly in the form of protest during court or via social media that those things might harm the dignity of judicial institution. Furthermore, after the judge decided a case and even it has legal force, there is still a lot of resistance to avoid the decision as presented in Table 1.

Table 1. *Subject Liable to Contempt of Court*

No	Subject Liable to Contempt of Court	Percentage
1	Prosecutor	17,30%
2	Advocate/Lawyer	18,95%
3	Judge	14,01%
4	Court Visitor/Related Party	31,05%
5	Mass Media	18,69%

Source: various

Several acts of the contempt of court presented in Table 2.

Table 2. *Cases of Contempt of Court*

Case	Act of the Contempt of Court
Adnan Buyung Nasution	Screaming in the courtroom
Judge Agung Syaifuddin Kartasasmita	Killed

Judge Achmad Taufiq	Killed
Desrizal	The act of hitting a judge in District Court of Central Jakarta
Judge Lilik Mulyadi	A hundred of workers force entering into the judge's room

Source: various

Based on the perspective of the effectiveness of contempt of court setting in positive law, either in material law or formal law, the solution of law renewal on contempt of court setting was quite important, the significance of contempt of court setting in the context of *Ius constituendum* which then brought up an idea to be considered into legislation. All this time, the setting and implementation to the perpetrator of contempt of court were implicit. This situation has caused a repetition of contempt of court by the other parties. Based on the philosophical perspective, the law that has regulated about contempt of court was needed in order to preserve judicial power, so they could keep being independent and sovereign. Further, Mochtar Kusumaatmadja has defined that a problem in the developing society must be regulated by law that could be broadly divided into two classifications:

1. Problems that are directly relating to someone's personal life and its relation with cultural and spiritual life of society.
2. Problems that are related to society and progress that are generally neutral referring to the cultural aspect.

Considering to the criteria mentioned above, they were related to the urgency of contempt of court arrangement, in which the law enforcement relating to court dignity was needed. However, the freedom of speech, expression and opinion statement are essentially required in a democratic state, without such conflict, the logical consequence tended to lead to a totalitarian state.

To make a good rule, then it should be the law draft that would be submitted to become legislation, and it should be well formulated. Based on the Article 43 Paragraph 3 Law No. 12 of 2011 on Formation on Legislation, it refers an obligation or mandatory to include academic papers for all legislators in submitting a law (Giri, 2014). The academic paper was script of the result of legal research and other research results of particular issues that would be reviewed in the law draft and scientifically accounted.

A judge named Lilik and his colleague at the Jakarta Industrial Relations Court (PHI), namely Sri Razziaty Ischaya, had to tear down the courtroom door in order to escape. This story illustrates how vulnerable the security of judges is when carrying out their duties. For any reason, Indonesia as a legal country should be settled according to the applicable law.

The number of contempt of court cases so far has not been separated from the factor of lack of public understanding in law. The society with various cultures, tribes, and religions, they might be different in understanding the law. Even though, this problem could enrich the understanding of law in overall due to the different cultural factors. The role of legal awareness among society as the goal of law itself was to guarantee certainty and justice. In the life of society, that there would be always differences between behavioral pattern and manners in the society with a behavioral pattern required by legal norms. This situation could be a factor affecting social gap problem, then in certain time affecting some conflicts and social tension that could definitely disrupt the process of human change in the expected direction. Moreover, this situation was appeared because of the law arrangement that was expected to be an orientation for the society to act, however it did not reflect the legal compliance through the absence of legal awareness (Rosana, 2014).

According to Lawrence M. Friedman, to realize the effectiveness of law enforcement in our society in order to encourage the application of sanction for criminal acts, these three sub-units of legal system could affect the effectiveness of law enforcement:

- a. Legal structure component, in this component, it was possible to see how this system could offer service to the legal materials regularly. In Indonesia, the legal system referred to the law enforcement institutions, such as judiciary, court, and the other law enforcement institutions. The legal system could take a role in the society through support of legal enforcement.
- b. Substance component, this component as an output of rule that was used either by the regulated party or the governing party.
- c. Cultural component, this component was consisted of value and attitude that could affect the effectiveness of law. This culture was a component that was functioned as an intermediary between legal regulation and legal behavior of society (Deslita et al., 2020).

Self-awareness without any pressure, compulsion, or instruction from the outsiders to comply with applicable law was referred as a form of legal awareness. Through the legal awareness in the society, the law no longer needed to impose sanction. The sanction would be only needed for people who actually broke the law. The body of law was comprised of order and prohibition. The law might tell us any unlawful acts that if done would be subject to sanction. Doing unlawful acts was certainly considered as violating the law, so it could receive threat of punishment.

As the consequence of pluralistic society, Indonesian societies have plural culture type. In a depth observation, this cultural diversity did not only have social meaning, but also political meaning. Political culture that was developing among local society sometimes differed from political culture in the center of country. This difference could often bring up imbalance relation between local society and the country due to the clash of different cultural values.

Bribery case that has added into a long list of disclosure of the corruption cases by Corruption Eradication Commission was the arrest case of eight names of justice enforcers, in which four of them were judges in an arrest operation in Medan, North Sumatra. The four names of judges that have been in an investigation were Judge Marsuddin Nainggolan (Chairman of District Court, Medan), Judge Wahyu Prasetyo Wibowo (Vice Chairman of District Court, Medan), Judge Sontan Merauke Sinaga, and Judge Ad Hoc Merry Purba. This case was continued with the investigation on Marsuddin Nainggolan as the Chairman of District Court, Medan, in the last September 2018. The result of investigation and case title has determined Merry Purba as the suspect of bribe receiver from Tamin Sukardi in the corruption case of sales of ex-cultivation land of PTPN2.

Furthermore, this case seemed to be a reflection of bad image of our law enforcement, thus it needed a strict sanction, so the justice could be enforced. This case was also a form of contempt of court carried out by the law enforcer.

The society would never stop from a change and always develop along with the time change. Along with the current society development especially in science and technology field, this advance could not only give benefit for human life, but also give a negative impact. From the perspective of law enforcement, when the law was viewed from its functional aspect, society's experience on how the law worked was an indicator to identify the law enforcement.

3.2. Perspective of Legal Practitioners in Malang about Contempt of Court

3.2.1. Judge

Based on the result of interview carried out by the researchers with one of judges in District Court of Malang regarding the need for contempt of court to be legalized, it referred that the problem of contempt of court was a specific concern, which this matter could ruin the dignity of court, it was righteously that this regulation should be legalized in a specific law with special enforcement (*lex specialist*). According to Intan, when the regulation of preserving the dignity and honor of judicial institution has been legalized, it would give positive effects in the process of court. All this time, many of our society have not complied yet with the rules in a courtroom, for example eating during court, playing hand phone, or chatting during court. Although, a courtroom guard has warned them, and even the legal counsel sometimes have warned the audience, but they were still repeating the same. This condition surely needed a concern of our society. If those acts have only disrupted the course of the trial, which were not included in the realm of criminal contempt, the sanction could only be given in warning. But when the acts leading to any criminal acts, like the visitor or participant who caused a commotion or injured someone during the trial, those acts should be ruled in specific law, particularly regulating about this problem. In fact, this regulation has not been ratified until today.

The informants in this context have agreed that the problem of contempt of court should be legalized into a special regulation, especially on the problems that might hamper the

process of court and acts that might lead to someone's disobedience to the court decision, but on the other problems that have been ruled in professional code of ethics for the law enforcement did not need to be regulated in a separate law, since this problem has been ruled within each ethical code for the law enforcer.

Next, when the researchers asked about the possibility of someone's action that might be included into the realm of contempt of court would be subject to layered article of different law under the consideration that when the rule of contempt of court was legalized, there would be many rules regulating about the similar problem with different rules, and whether this situation would be contradicted to the principle of *nebis en idem*. In this matter, the judge has stated that this problem was not contradictory, in as much as when someone who violated the regulation of contempt of court, he would only subject to the articles in that regulation, because this problem is special (*lex specialist*), so that person did not need to subject with the other rules, although it might have similarity in term of action.

The informants expected that the rule regulating about the criminal acts that might humiliate the prestige or dignity of judiciary could awaken our society to the existence of law, because all this time when the acts that might bring down the dignity of judicial institution occurred, the rules were only limited to the general legal rules in Criminal Code.

Normatively, the arrangement of contempt of court specifically relating to the criminal contempt was not comprehensive enough and tended to be equated with the general criminal acts. This tendency was aimed to assume and perceive it as a specific criminal act with a quite progressive consideration. This tendency was functioned to guarantee that the law worked properly. It has been a reality that the law enforcement through a process of court was becoming a public concern, especially on the certain issues that have grabbed public attention.

Further, the researchers also asked whether the case of contempt of court had ever happened in District Court of Malang?

According to the informant's statement, so far there has never been an incident of contempt of court that was categorized into criminal acts, like act of injuring or threatening a judge or injuring court participant. The problem of contempt of court was just related to the disrespectful conduct for the trial, for example the court participant were chatting or eating in the courtroom. But, the informant gave an example of criminal contempt that had ever occurred in Religious Court of Sidoarjo in 2006, when the litigant disagreed with the judge's decision during the decision reading, one of related parties, in this context was the husband who was a member of military killed the judge and his wife with a knife.

In this context, the military prosecutor demanded the death penalty and dishonorable dismissal as the member of military agent for defendant. But this prosecutor's decision particularly referring to the death penalty was changed by Supreme Court into lifetime imprisonment on the basic consideration that the death penalty decision must be taken selectively and given only to certain extraordinary crimes that might impact widely or endanger the general public. In this case, the cassation panel did not see the related factor.

Although, it did not have a direct impact and wide-scale impact on society, but it has brought up a very serious indirect impact to the judicial institution or wide community, as the judicial authority, it might bring up anxiety in carrying out the duty. In addition, the judicial security and protection for the judge was still minim and this case could be experienced by the other judges, therefore this case raised worry in performing the profession. If the decision in this context was not given maximally, there would be an assumption that killing judge and litigant during the trial in the court was equal to the murder against ordinary people who did not perform state duty (as the judicial authority). Such situation did not reflect *lex specialist* in the acts of contempt of court .

Since Indonesia was a state with basis of law, the administration of state power should be regulated based on the law. On the judicial authority, the principle of independence of judiciary was referred that the process of trial must be well-secured and guaranteed from all kinds of threat, effect, or pressure from all parties. This principle was valid in all countries, which was aimed to guarantee freedom of judiciary (A. W. Mulyadi, 2015).

However to put in a fact, there were a lot of news outside the trial where the news was often exaggerated, so the ongoing problem in this trial sometimes has affected the judge in deciding a case. The informant (judge) valued that this aspect should be actually ruled in legislation, in order to be given a strict sanction in the future.

3.2.2. Attorney

The second informant was functional attorney, who has stated that the rules of contempt of court should be soon approved. So, the society and law enforcement apparatus could understand the regulation relating this problem. The informant has also said that when the problem of violation against the judiciary has been exactly ruled in Criminal Code. It was just the implementation needed special rules, so the sanction could be clear, so far the sanction for contempt of court could not be applied specifically because of the absence of applied rules. Usually, the sanction for violation in the courtroom was only in the form of reprimand or warning to comply with the court rule, when the violation still happened after warning, the offenders were ordered out of court.

For the attorney, the example of contempt of court was giving question to the defendant out of courtroom material, which the question might ruin the authority of defendant. This problem was one of contempt of court that should be soon regulated, so the process of trial would be in line with applicable law.

Moreover, according to the second informant, the things that should be regulated in law of contempt of court included the sanction for someone who did not perform decisions that have permanent legal force and this decision did not also apply for an execution, so how about the sanction given for this problem. Next, the articles regulating about violation of ethical code of the law enforcer should not be written in a separate rule of contempt of court, because every profession would definitely have their own ethical code, which the common administrative sanction would be given when they violated the ethical code.

The second informant has also asserted that the rules applied specifically on the law of contempt of court should only be limited to any acts violating the process of trial and out of courtroom which were relating to the court decision. As an attorney who has legal functions to screen for weak evidence cases, prepare for prosecutable cases, and prosecute cases in the trial, therefore the attorney should comprehend and understand the duty and authority, and this matter has been regulated in ethical code of attorney, no need further regulation in contempt of court. According to the informant's perspective, anything that should be regulated in contempt of court was only limited to the problems that hamper the process of trial and disobeyed decision by someone and also the application of proper sanction for each case.

The problem of contempt of court that was still becoming a hot issue among practitioners and academics until today has left a big question. The contempt of court was an issue that has received a high attention from activists of criminal law reformation. Anggara Suwahju as the Executive Director of Institute Criminal for Justice Reform has stated that the punishment in criminal judiciary was not properly applied in Indonesia (Hidayat, 2018).

He has argued that Indonesia adheres to non-adversary model-inquisitorial system. This system referred that the judge held such power and authority. Additionally, the judge was the main controller in the process of trial. The judge and defendant's position was different. The role of both parties relating to the case evidence has been started since investigation step. While, the concept of contempt of court was only known and applied in countries that tended to adopt adversary system. In this context, the judge only played role as a facilitator of court, while the panel as a determinant. However, the position of attorney was precisely equal to the defendant. Hence, the main evidence was essentially carried out during the trial. According to the second informant, in the countries that have applied contempt of court, they were expected to close the small judicial power gap in the concept of adversary system. It was different from Indonesia that adhered to non-adversary model-inquisitorial system, in which the contempt of court was not exactly needed anymore in the criminal justice. Inasmuch as the judge has big authorities that no longer need to be protected with the concept of contempt of court.

The controversy about contempt of court started to be a polemic along with the draft of Criminal Code, which in one of that law drafts have proposed to include the articles on contempt of court. Some legal experts have argued that during ratification of rules regarding contempt of court needed to discuss the problem of court system. Since the current court system has not changed in line with the complexity of new problems in law.

According to Oemar Seno Adji, the types of contempt of court were defined below:

- a. Sub judice rule, including to the type of contempt of court through publication.
- b. Disobeying court orders, the contempt of court in this matter was related to disobedience of court order, for instance disrespectfulness to the judge as a chairman of court.
- c. Obstructing justice, the contempt of court in this matter was related to rude language during the trial, spit, and the other inappropriate behaviors during the trial.

- d. Scandalizing the court, the contempt of court in this matter was related to attacks on integrity and impartiality of judicial institution.

3.2.3. Lawyer

The following statement from the third informant, a lawyer, he explained that as a lawyer who has been in the legal field for a long time would certainly need a regulation that might preserve the court dignity, in which this matter was not only dedicated for the judge, but also for the other law enforcement apparatus. Lawyer or advocate was one of law enforces who often became the target of crime from the individuals who considered them as the enemy. Since, the lawyer profession would serve society freely without any exception and in the same time the lawyer was a part of law enforcement function. In this context, the lawyer must avoid conflicts that would be appeared from the court practice. As the skill and trust-based legal profession, the lawyer might receive legal immunity rights. The legal immunity did not mean that becoming a lawyer was immune to all rules; the immunity here was referred in the implementation of his position as a lawyer that could receive legal protection, and no legal immunity given out of his lawyer position.

In the Article 70 Paragraph 1 of Criminal Procedure Law, it has stated that “anyone whose work, dignity, and position was required to keep secrets, they might be released from the obligation to provide testimony as a witness, as things entrusted to them”. As in the other professions, lawyer profession has ethical code containing norms about the morality of how to run the practice as a lawyer or advocate. Through this ethical code, it was mainly expected that the advocate independence could be limited and examined, so it would not violate public interest. Therefore, the informant has argued that the law of contempt of court should be more focused in regulating the implementation of sanction for anyone’s violation during the trial and sanction for anyone who did not comply with the court decision.

The third informant has also explained that within the draft of Criminal Law per August 28, 2019, specifically in the Article 281, the criminal act of contempt of court was threatened with imprisonment for a maximum of 1 year or maximum fine of 10 million rupiah. The criminal acts that were categorized into the realm of contempt of court:

- a. Anyone who did not comply with the court orders or judge’s decision issued for the sake of court process;
- b. Anyone who dishonored the judge or court or attacked integrity or impartiality of the judge during the trial; or
- c. Anyone who violated the law by recording, publishing directly, or allowing the publication of anything that could influence impartiality of judge during the trial.
- d. On the point 1 and 2, the informant agreed if those things were regulated in a specific rule, but the informant’s opinion on the point 3, the press freedom should not be inserted into the acts of contempt of court, since after all public have rights to know ongoing problem or dispute, especially when the problem was related to the public interest. Practically, the acts of contempt of court have actually triggered a lot of cases that should not be included into criminal realm. For instance in the article 281, this article would easily refer to the academics, press or media, until civilian who strived to speak up the opinion to the judge or the court that was

considered as impartial side, this matter seemed to limit someone's freedom in stating opinion and speaking up against the ruler's action, in this context referring to the judge or court. Moreover, no strong power relation was found between the critics and judge or court which was able to change the judge's integrity.

The judge would independently adjudicate a dispute, they would not be disturbed by no matter how loud the criticism was voiced, except the factors that have been mentioned above through unlawful means of violence, and that have been ruled in the other criminal law. Next, in the article 281 on point 1 and 2, those points have been regulated in the article 217 and 218 of Criminal Procedure Law, which regulated the process of court, in which we must obey the rule in the courtroom, in this case the sanction was administrative, so far the court audience who did not comply with the rule could be warned by the judge, or if they still violated the rule, they would be asked to leave the courtroom, and if the acts leading to any criminal acts, it would continue to a prosecution. However, this case was different in the draft of Criminal Code version September 2019 in the Article 281 that the sanction of imprisonment for a maximum of 1 year or the maximum fine of 10 million rupiah.

As a lawyer, the informant has said that the rules in Criminal Law draft, especially in this article 282 was really contradicted to the lawyer profession, in which this article seemed to regard the lawyer as a perpetrator of criminal acts. It should be not included into criminal realm, and this case was sufficiently regulated in ethical code of each profession.

So far, in the Indonesian positive law, the norm or sanction setting for perpetrators of contempt of court was actually implicit. The minimum setting and sanction for the perpetrators which could affect the repetition of similar cases. A number of contempt of court have caused the low level of public trust in the court, it was expected through the law of contempt of court could provide a new paradigm change to the society for the dignity and honor of judicial institution.

The policy of crime prevention or it was named as the term of criminal politics could cover a quite broad scope. According to G. Piter Hoefnagels, he has illustrated that the goal of crime prevention could be achieved through these following attempts (Arief, 2011):

- a. Criminal law application
- b. Prevention without punishment
- c. Influence of public view on the criminality
- d. Based on those attempts, it could conclude that the crime prevention or criminal politics could be performed through penal and non-penal methods. In short, it could be differed that the criminal politics efforts through penal method has emphasized on repressive properties after the crime occurred, while non-penal method has emphasized on preventive properties before the crime occurred, regarding to the attempts of crime prevention through non-penal method was more preventive for the occurrence of crime, this factor was centered on either direct or indirect social problem or condition that could impact or cause any criminal acts, thus, according to the perspective of macro and global criminal politics, the non-penal method has occupied a key and strategic position of all crime prevention efforts.
- e. The strategy of crime prevention must be based on removal of causes and conditions that might give rise to a crime, the main causal factors of crime in many

countries were social discrepancy, racial discrimination and national discrimination, unemployment, and other economic problems. According to Remmelink, the Criminal Law was not self-directed, but it was aimed to enforce the rule of law which was very dependent on coercive factor. According to some English literatures, the goals of criminal law were usually abbreviated as three R and one D: Reformation, Restraint, Retribution, and Deterrence consisting of individual deterrence and general deterrence (Hamzah, 2017).

Based on this English literature, it could be concluded that the reformation was aimed to fix or rehabilitate someone who used to be bad becoming a good one and useful to the society. But in fact, this case could not go that well due to a number of recidivists after prison sentence. Meanwhile, the term of restraint was referred to alienate the offender from society which was aimed to realize public safety. Next, the retribution was defined as retaliation against the offender or rule breaker of doing crime, and deterrence was referred to deter or prevent anyone who would do criminal act, thus creating a deterrence or fear effect of doing so.

In fact, the theory of punishment was increasingly moving toward a more humane and rational system. This improvement was based on the division of criminal law in both general and specific meaning. The criteria of general and specific criminal law division were differed according to the legal experts. Pompe & Utrecht were guided by the Article 103 of Criminal Law which has contained of *lex specialist derogate legi generali* principle. To put in an example, the economic criminal law was considered into a specific criminal law. As the law of corruption eradication in Indonesia was categorized into a specific criminal law. Also, about the contempt of court which was included into the realm of specific crime.

IV. CONCLUSION

The change and development of society which was obviously followed by an increase of criminality rate has triggered the efforts of a sustainable criminal law reformation along with rational steps on the basis of policy and value approaches. One of the steps was the government effort to soon legalize the special rules on contempt of court. As for the causes that might impact a high number of contempt of court case were the absence of legal awareness in our society and the low ethics of legal behavior of law enforcers. Therefore, based on the facts found in the field, the legal practitioners have argued the need for specific rule on contempt of court. Since along this time, the rule of contempt of court containing in Criminal Law was less effective. Inasmuch as that the previous rule has regulated contempt of court into a realm of criminal contempt, while the realm of civil contempt has not been regulated yet. Then, this case should be regulated in a specific rule relating to the contempt of court as a whole.

Authors' Declaration

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