

Actions That Obstacle The Justice Process (Contempt Of Court) in The Criminal Law System in Indonesia

H. Yusep Mulyana
Universitas Pasundan

Corresponding Author: H. Yusep Mulyana Yusepmulyana09@gmail.com

ARTICLE INFO

Keywords: Contempt Of Court, Criminal Law System, Criminal Code

Received : 06, December

Revised : 12, January

Accepted: 22, February

©2023 Mulyana: This is an open-access article distributed under the terms of the [Creative Commons Attribution 4.0 International](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

In Law Number 1 of 2023 concerning the Criminal Code, especially Article 281, criminal acts against the court process (contempt of court) are punishable by imprisonment for a maximum of 1 year or a fine of up to 10 million rupiah. The actions included in the offense of contempt of court, among others, are aimed at anyone who: Does not comply with a court order or a judge's decision issued for the benefit of the judicial process. Being disrespectful to judges or the trial or attacking the integrity or impartiality of judges in court proceedings; or Unlawfully record, publish directly, or allow for publication anything that can affect the impartial nature of judges in court hearings. The environment of the court body must be able to become a legal institution that is trusted by the public. These events should be viewed from the perspective of the "consequences" that events could have had. Some of the public are of the opinion that sometimes courts are not really a place to seek and find justice. This assumption arose because of a number of previous events. For example, there were cases of judges and other court officials who were tried and convicted of accepting bribes. Another incident, there are arrears of cases that are not terminated in accordance with the principle of simple and fast. Therefore, it is important to strengthen public trust. This is to reduce the number of contempt of court and to foster the public's desire to maintain and protect the honor of the court and judges from all forms of harassment.

INTRODUCTION

Indonesia is a constitutional state as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (abbreviated as the 1945 Constitution of the Republic of Indonesia). In line with the strengthening of the concept of a rule of law state, law gets the main place above politics and the economy, which in realizing With the rule of law, a judicial institution is formed as an ideal means of law enforcement. Indonesia as a constitutional state has a judiciary whose duty is to protect interests the law and at the same time carry out the orders of the law.¹ The judiciary is a task or function that is assigned to the court, while the court is an organ or body that carries out the duties or functions of the judiciary. The task of the

Indonesia is a constitutional state as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (abbreviated as the 1945 Constitution of the Republic of Indonesia). In line with the strengthening of the concept of a rule of law state, law gets the main place above politics and the economy, which in realizing With the rule of law, a judicial institution is formed as an ideal means of law enforcement. Indonesia as a constitutional state has a judiciary whose duty is to protect interests the law and at the same time carry out the orders of the law.²

The judiciary is a task or function that is assigned to the court, while the court is an organ or body that carries out the duties or functions of the judiciary. The task of the judiciary is to examine and adjudicate and settle every case submitted to it.³

The judiciary in Indonesia in accordance with the authority granted by law consists of Constitutional Court, Supreme Court, General Court, Military Court, Religious Court and State Administrative Court.

Settlement of every legal case through the judiciary is carried out through a court hearing by an internal judge The solution is in the form of a judge's decision. Judges are people who have the task of adjudicating, deciding cases by giving verdicts or court decisions. The main task of a judge is to try, examine, and decide a case with unclear or non-existent legal reasons. For judges, deciding every case submitted to him is an obligation.⁴

As a rule of law that gives full authority to the judiciary and judges in resolving any legal issues that occur, then one of the important principles adopted in Indonesia is the guarantee that the administration of an independent judicial power, free from the influence of other judicial powers to administer justice in order to uphold law and justice. Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia emphasizes that "judicial power is an independent power to administer justice in order to uphold law and justice."

Furthermore, Article 1 point 1 of Law Number 48 of 2009 concerning Judicial Powers (hereinafter referred to as the Judicial Powers Law) confirms that: Judicial power is the power of an independent state to administer justice in

order to uphold law and justice based on Pancasila and the State Constitution. Republic of Indonesia in 1945, for the establishment of the legal state of the Republic of Indonesia.

Based on Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power it is stated that "Judges are obliged to explore, follow, and understand legal values and a sense of justice who live in society." As a law enforcement institution that provides justice to the parties to a case through a judge's decision, the judiciary must be respected throughout its institution (the court), the process or mechanism, as well as the judges who examine and decide cases must receive protection and security guarantee.

This is as emphasized in Article 25 paragraph (5) of Law Number 29 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts (hereinafter abbreviated as the Law on General Courts) that "Judges guaranteed security in carrying out their duties.

Referring to point 4, paragraph 4 of Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, it is emphasized that: as well as possible for the administration of justice in order to uphold the law and justice governing prosecution against actions, behavior, attitudes and or speech that can demean and undermine authority, dignity and the honorary body of justice is known as the Contempt of court.

Furthermore, in Article 20 paragraph (1) letter e of Law Number 18 of 2011 concerning the Judicial Commission confirms that: In order to maintain and uphold the honor, dignity, and behavior of Judges, the Judicial Commission has the task of: taking legal steps and/or steps other to people individuals, groups of people, or legal entities that undermine the honor and dignity of judges.

The above provisions are a form of legal protection granted by law to judicial bodies and judges in carrying out their duties and authorities, which based on Law Number 14 of 1985 concerning the Supreme Court then stipulates that all actions, behavior, attitudes and or utterances that can humiliate and undermine the authority, dignity, and the honorary body of justice is known as the Contempt of court.

According to Black's Law Dictionary, Contempt of court is any act that is considered to embarrass, obstruct or hinder the judicial duties of court bodies, or any action which can reduce his authority or dignity. This act was committed by a person who intentionally violated or violated his authority or thwarted the duties of the judiciary or was carried out by someone who was a party to a case being tried, who deliberately did not comply with a valid court order. However, in reality what happened, the provisions mentioned above have not been fully realized.

The judicial power administering justice is vulnerable to the practice of Contempt of court which demeans the institution. The lack of public trust in the world of justice is the root of the problem of contempt of court.

This crisis of public trust greatly affects integrity and judicial authority as the last bastion to get justice.⁵ Acts of insulting judges and/or court institutions

that lead to criminal acts are often committed, either verbally, in writing, and/or physically, which often makes the judge as a victim, humiliated and even physically attacked. The act of humiliation can occur both inside and outside court.⁶

The actions mentioned above show an apprehensive atmosphere in the life of Indonesian law which has led to a decline in the authority of the judiciary, thus disrupting the stability of the protection of the public interest which should be protected by the judiciary. Therefore, regulation regarding Contempt of court has become an urgency that really needs to be strictly regulated in the criminal justice system in Indonesia, now it is regulated in Law Number 1 of 2023 concerning the Criminal Code.

Based on the description above, the formulation of the problem is:

1. How is Contempt of court regulated in Law Number 1 of 2023 concerning the Criminal Code?
2. How to reduce the number of contempt of court and foster the public's desire to maintain and protect the honor of the court and judges from all forms of harassment?

THEORY REVIEW

Definition of Crime

According to PAF Lamintang that: Criminal law consists of norms that contain requirements and prohibitions which (by legislators) have been associated with a sanctions in the form of punishment, namely a special suffering. Thus it can also be said that criminal law is a system of norms that determine which actions (to do something or not to do something where there is a compulsion to do something) and under what circumstances the law can be imposed, as well as what punishment can be imposed for these actions.⁷

Furthermore, the definition of a crime has been put forward by several legal experts as follows:

a) Tri Andrisman

A crime is an act committed by someone by committing a crime or criminal offenses that harm the interests of other people or harm the public interest.⁸

b) Moeljatno

Crime comes from the term "strafbaar feit". In his opinion, the term "criminal act" is an act that is prohibited by a legal regulation which prohibits it accompanied by a threat (sanction) in the form of a certain penalty, for anyone who violates the prohibition.⁹

History and Definition of Crime Contempt of court

History or the Contempt of court tradition is a medieval understanding that is closely related to the form of kingdom in England in the early Middle Ages, that kings rule with rights like God. According to this understanding, the elected kings represented God in the world and were only responsible to God.

Any open resistance or insult to the king's power will only be punished by the king. This punishment is the punishment of the king himself, because he is as king or king as personal rather than as a royal institution.

Contempt of court when viewed from the legal system, it originates from the Common Law legal system or Anglo-Saxon law so that the Contempt of court teachings are not recognized in the legal system in Indonesia which adheres to Civil Law, but many cases occur in Indonesia.

Judging from the history of the Contempt of court, the former court institution existed to represent the English king as God's representative in the world, to punish anyone who openly opposed order or prohibition.

According to history, contempt or contempt is an act of opposing any direct order of the king or any direct opposition to the king or his orders. Since 1742, England has established the Contempt of court with the existence of the pure streams of justice doctrine which is considered as the basis for enforcing the Contempt of court which was then renewed in 1981 with the implementation of the Contempt of court Act 1981. The United States first enacted the Contempt of court in 1789.¹⁰

The definition of Contempt of court based on Black's Law Dictionary that: Contempt of court is any act that is considered to embarrass, hinder or hinder the judicial duties of judicial bodies, or any action that can reduce their authority or dignity. This act is carried out by a person who deliberately opposes or violates his authority or thwarts the duties of the judiciary or is carried out by someone who is a party to a case being tried, who deliberately disobeys a valid court order.

Furthermore, the definition of Contempt of court according to the United States Federal Law is defined as "misbehavior un the presence of the court or so near threat as to obstruct the administration." If freely translated, it carries the notion of unreasonable behavior before the court or a place adjacent to it so that it can obstruct the judicial process.¹¹

The term Contempt of court in Indonesia is mentioned in Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court confirms that: Furthermore, to be able to better guarantee the creation of the best possible atmosphere for the administration of justice in order to uphold the law and justice that regulates the action against actions, behavior, attitudes and or remarks that can humiliate and undermine the authority, dignity and honor of the judiciary known as the Contempt of court.

Contempt of court in Law Number 1 of 2023 concerning the Criminal Code, it is defined as a criminal offense against the judicial process. Contempt of court

was originally a regulation that regulates the procedure for having powers owned by public or special institutions, administration of justice.

The definition of Contempt of court itself in the applicable laws and regulations in Indonesia has not been clearly explained, but several experts provide Contempt of court, including:

a) Lilik Muljadi

Contempt of court is a crime committed by a person who is involved in a case process or not, inside or outside the court the act is committed obstructing, obstructing, deliberately not carrying out court orders which could undermine the authority and dignity of the court.¹²

b) A. Abu Ayyub Saleh

Contempt of court is to undermine the authority of the judiciary and the dignity of judges during the trial. There are also those who use Contempt of court as an act of harassment as an insult to a judge committed by lawyers or advocates or journalists and or other people with an interest in justice.¹³

c) Muladi

Contempt of court can be interpreted as a good deed actively or passively, which is carried out both in court or outside the court which is considered to be harassing or undermining the authority of the court.¹⁴

d) Hasbullah F. Syawie

Contempt of court (Position Paper Advocacy of the Criminal Code, Contempt of court) In the new Criminal Code, it can be interpreted as an act that was intentionally done which is seen as being able to embarrass the authority and dignity of the court or obstructing the court in administering justice which is carried out by a person as a party to the case or by another person who is not a party to the case.

e) Luhut MP Pangaribuan

Contempt of court the classification can be direct or indirect, criminal or civil depending on the incident. According to him, Contempt of court indirectly has more potential to be carried out by journalists.¹⁵ Furthermore, Luhut MP Pangaribuan explained that in the context of direct and indirect behavior of a criminal or civil nature, anyone following a congregation's attitude has been condescending, damaging, harassing authority of the court, then the Judge who has been so great (absolute) its power is granted by the Criminal Code and the Criminal Procedure Code does not require it more additional powers. Article 218 of the Criminal Procedure Code has given authority to judges with a penalty of up to three weeks in prison.¹⁶ All of the above criteria must have the effect of "be able to undermine and undermine the authority, dignity and honor of the judiciary.

Contempt of court classification

Classification of acts of contempt of court can be direct or indirect, and can be carried out in the courtroom or outside the court. Jurisprudence has shown that anyone who is present at court can act contempt of court. When grouped specifically that determines existence actions, behavior, attitude and/or speech which are classified as contempt' of court.

When discussing the definition or understanding of contempt of court many different opinions, as well as in discussing the classification and form. Several forms of Contempt of court from the opinions of experts are as follows:

- a. According to Barda Nawawi Arie Contempt of court is the generic term, while the specific term is :¹⁷

- 1) Civil

Contempt' disobedience' to' the' judgements' and orders of courts or failure to comply with a rule or court order. For example, the witness is not present at trial without a valid reason, the defendant does not answer when asked by the judge (Article 175 of the Criminal Procedure Code right to remain in silence).

Civil Contempt is not an offense against the dignity of the court but is an act that does not respect the parties get power of attorney from the court and the perpetrator can be fined as compensation. A contempt can be categorized as civil if the action is in the form of disobeying a court order, not carrying out a decision or order to surrender land ownership or surrender of goods within a certain time, not submitting evidence requested by the court or not answering questions.

The main purpose of contempt is to give the offender the right to carry out a court order. The petitioner for the implementation of the contest of court is generally the party concerned. Here the judge's decision is in the form of restoring the right of the victor.

- 2) Civil Contempt Tending' to' Hinder or to Obstruct The Due Administration of Justice. Actions aimed at disrupting or obstructing the proper administration of justice. The penalty is imprisonment. Criminal contempt is an act that does not respect the court or its procedures or hinders the administration of justice or tends to cause the court to be dishonored. Criminal contempt may be subject to imprisonment as punishment.

RESEARCH METHODS

The research method is analytical descriptive in nature, namely describing the problems and facts that occur based on positive legal norms, namely the laws related to this research.

Method Approach with normative juridical namely using positive legal norms relating to Actions that Obstruct the Judicial Process (Contempt of Court) in the Criminal Law System in Indonesia.

Data analysis was carried out qualitatively, meaning without using numbers and statistical formulas.

Discussionactions That Hold the Contempt of Court in the Criminal Law System in Indonesia

In Law Number 1 of 2023 concerning the Criminal Code, especially Article 281, criminal acts against the judicial process (contempt of court) are punishable by imprisonment for a maximum of 1 year or a fine of up to 10 million rupiah. As for the actions included in the contempt of court offense, among others, are aimed at anyone who:

1. Disobeying a court order or judge's decision issued for the benefit of the judicial process;
2. Being disrespectful to judges or the trial or attacking the integrity or impartiality of judges in court proceedings; or
3. Unlawfully record, publish directly, or allow for publication anything that can affect the impartial nature of judges in court hearings.

Seeing the existing regulations in positive law regarding acts of contempt of court, there is still debate about the definition and classification which is an act that is considered to undermine the authority and humiliation of the judicial process. For this reason, an understanding is needed regarding contempt of court actions which are a reference for law enforcement officials, legal advisers and the public. In addition, the goal is to realize a dignified judicial process, which means not only protecting law enforcers but also protecting the parties involved in this judicial process.

In Law Number 1 of 2023 concerning the Criminal Code the provisions regarding Contempt of court are regulated by formal offenses, which focus on criminal acts or criminal acts as well as Articles which regulates this matter has been regulated separately in a separate chapter known as Crimes Against the Judicial Process and is classified in the sub-chapter regarding Contempt of Court criminal acts. judicial process in which the judiciary becomes an institution with no integrity.

The concept of "contempt of court" actually:

1. Contempt for justice Deputy Chief Justice of the Supreme Court (MA) Sunarto said that the public often misunderstands and is misled by the term "contempt of court". The term conveys the impression that what will be protected is the majesty of the court. In fact, according to Sunarto, this is not the case. "In fact, in the context of court, it is justice itself that is ridiculed, not the court as a body, not judges. By law, contempt of court can be interpreted as an act, behavior, attitude or speech that can undermine or undermine the authority, dignity and honor of the judiciary.

2. A series of Contempt of court cases

The Association of Indonesian Judges (IKAHI) noted that it was not just once or twice that there was contempt of court or contempt for justice. On November 15 2003, for example, the building of the Larantuka District Court (PN) in East Nusa Tenggara was set on fire by irresponsible parties. The same incident also occurred at the Maumere District Court, NTT in 2006, in 2011 it occurred at the Temanggung District Court, Central Java, in 2013 at the Depok District Court, West Java, and in 2018 it occurred at the Bantul District Court, DI Yogyakarta.

On 23 December 2008, unscrupulous prosecutors attacked a judge at the Poso District Court in Central Sulawesi shortly after the judge acquitted the defendant. "Finally, last July 18 at the Central Jakarta District Court, an unscrupulous advocate assaulted a judge who was reading out a verdict in a trial open to the public with his belt.

3. The insistence on establishing a Contempt of Court Law

There is no law that specifically regulates contempt of court. According to Supreme Court deputy chairman Sunarto, contempt of court is so far regulated in Articles 207, 212, 214, 217 and 218 of the Criminal Code (KUHP) and Articles 217-218 of the Criminal Procedure Code (KUHAP). A number of parties urged legislators to immediately form regulations on this matter because they were deemed urgent. The IKAHI Special Branch of the Supreme Court (MA) considers that it is important to immediately promulgate the Contempt of Court Law because of the many threats to the existence of judicial bodies or court apparatus during the process of adjudicating a case. The threat of this attack will not be reduced if it is not prevented through law enforcement.

Therefore, it is considered that lawmakers have no other choice but to enact a contempt of court law in the near future if the rule of law principles are to be implemented properly. "Don't let the court apparatus work for too long without guaranteeing adequate protection. Don't allow the losing party to disobey the court's decision for too long so that justice seekers have difficulty getting their rights according to the court's decision.

Provisions in general criminal and administrative measures alone are not enough. That's where separate rules are needed regarding the context of court. "Apart from the wider scope of contempt of court, sociologically, there are facts or remarks that humiliate or humiliate courts and judges.

However, along with the insistence on making a contempt of court law, the court environment must be able to become a legal institution that is trusted by the public. These events should be viewed from the perspective of the "consequences" that events could have had.

Some of the public are of the opinion that sometimes courts are not really a place to seek and find justice. This assumption arose because of a number of previous events. For example, there were cases of judges and other court officials who were tried and convicted of accepting bribes.

Another incident, there are arrears of cases that are not terminated in accordance with the principle of simple and fast. Therefore, it is important to

strengthen public trust. This is to reduce the number of contempt of court and to foster the public's desire to maintain and protect the honor of the court and judges from all forms of harassment. "The presence of contempt of court provisions is only a means. Without a strong will and determination from the court to maintain its honor, provisions such as contempt of court cannot prevent harassment of courts and judges.

CONCLUSION

1. In Law Number 1 of 2023 concerning the Criminal Code, especially Article 281, criminal acts against the court process (contempt of court) are punishable by imprisonment for a maximum of 1 year or a fine of up to 10 million rupiah. The actions included in the offense of contempt of court, among others, are aimed at anyone who: Does not comply with a court order or a judge's decision issued for the benefit of the judicial process. Being disrespectful to judges or the trial or attacking the integrity or impartiality of judges in court proceedings; or Unlawfully record, publish directly, or allow for publication anything that can affect the impartial nature of judges in court hearings.
2. The environment of the court body must be able to become a legal institution that is trusted by the public. These events should be viewed from the perspective of the "consequences" that events could have had. Some of the public are of the opinion that sometimes courts are not really a place to seek and find justice. This assumption arose because of a number of previous events. For example, there were cases of judges and other court officials who were tried and convicted of accepting bribes. Another incident, there are arrears of cases that are not terminated in accordance with the principle of simple and fast. Therefore, it is important to strengthen public trust. This is to reduce the number of contempt of court and to foster the public's desire to maintain and protect the honor of the court and judges from all forms of harassment.

SUGGESTION

1. The presence of contempt of court provisions is only a means. Without the court's strong will and determination to uphold its honor, provisions such as contempt of court cannot prevent harassment of courts and judges.
2. The insistence on making the contempt of court law, the environment of the court body must be able to become a legal institution that is trusted by the public.

REFERENCES

- Abu Ayyub Saleh, Lecture Materials on the Criminal Justice System Main Contempt of Court. UKI Paulus Legal Studies Postgraduate Program Makassar, Makassar, 2013 .
- Achmad Ali, Revealing the Law, Prenadamedia Group, Jakarta, 2015.
- Andi Hamzah and Bambang Waluyo, Offenses Against Contempt of Court Violations. Sinar Graphics, Jakarta, 2018.
- Andi Hamza. Crimes Against the Administration of Justice (Contempt of Court).PT. alumni. London, 2017.
- _____. Indonesian Criminal Procedure Code. Sinar Graphics, Jakarta, 2017
- Andi Sofyan, Criminal Procedure Code An Introduction, Rangkang Education, Yogyakarta, 2013.
- Anita Afriana, et al. Contempt of Court : Law Enforcement and Regulatory Models in Indonesia. Journal of Law and Judiciary, Volume 3 Number 3, November, Padjadjaran University, Bandung, 2018.
- Binsar Gultom, The View of a Law Enforcement Judge in Indonesia, Pustaka Bangsa Press, Medan, 2016.
- Lilik Muljadi, Percentage: "Urgency of Setting Contempt of Court in a Philosophical, Juridical, and Sociological Perspective", Jakarta, August, 2020.
- Luhut MP, Advocate and Contempt of Court, Djtangan, Jakarta, 2014.
- M. Rasyid Ariman, Syarifuddin Pettanase and Fahmi Raghieb. System Indonesian Criminal Court. Unsri Sriwijaya University, 2017.
- Moeljatno, Criminal Law Principles, PT. Rineka Cipta, Jakarta, 2015.
- Neisa Angrum Adisti, Rizka Nurliyantika, and Taslim. Textbook Contempt Of court.Sriwijaya University Palembang Unsri Campus: Unsri Press, 2020.
- Oemar Seno Adji and Indriyanto Seno Adji. Free and Contempt Justice Of Court.Diadit Media, Jakarta, 2017.
- Romli Atasasmita. Contemporary Criminal Justice System. Kencana Prenada Media Group, Jakarta, 2010.
- PAF Lamintang, Fundamentals of Criminal Law. New Light, Bandung, 2014.

Sareh Wijono M. The Urgency of Forming Laws Regarding Contempt of Court, To Uphold the Dignity and Authority of the Judiciary, *Journal of Law and Judiciary* Volume 4 Number 2, July 2015.

Tri Andrisman, *Criminal Law, Principles and Basis of Indonesian Criminal Law*, University of Lampung, 2019.