

# A COMPARATIVE ANALYSIS ON THE CONCEPT OF CONTEMPT OF COURT ACCORDING TO THE PENAL CODE OF INDONESIA AND RUSSIA

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**Submission date:** 07-Jan-2023 12:49PM (UTC+0700)

**Submission ID:** 1989439746

**File name:** book\_chapter.rtf (220.94K)

**Word count:** 5868

**Character count:** 29572

# A COMPARATIVE ANALYSIS ON THE CONCEPT OF CONTEMPT OF COURT ACCORDING TO THE PENAL CODE OF INDONESIA AND RUSSIA

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## ABSTRACT

The title of this study is *An Analysis of Contempt of Court Concept According to Indonesian and Russian Criminal Law*. Using secondary legal materials, this normative research examines rules of laws and doctrines to identify (1) the concept of contempt of court according to Indonesian criminal code and (2) similarities and differences of such concept according to Indonesian and Russian criminal code. A descriptive comparative method was used by comparing rules of laws concerning the concept of contempt of court applicable in both countries. Regulations on contempt of court are arranged in the Criminal Code of Russian Federation (CCORF), which is the world's modern criminal code. Crimes against trial administration are stipulated in Chapter 31, consisting of 23 articles, of the second book of Criminal Code of Russian Federation. Indonesian and Russian criminal code, KUHP and CCORF respectively, regulates delicts related to trial administration. Hence, both Indonesian and Russian criminal codes categorize deeds that disrupt the running of trials into crimes or prosecutable actions according to law. However, CCORF is more specific than KUHP in elaborating contempt of court. Crimes related to the administration of court is specified in Book 31. In addition, the difference between the two codes also lies in the categorization of the crime and the consequent punishment for the perpetrator.

**Keywords:** Contempt Of Court; Court; Penal Code

## Introduction

According to Black's Law Dictionary, contempt of court<sup>1</sup> (abbreviated as *CoC*) is any action of insulting, hindering, and disrupting the court in its attempt to run its function to bring justice as well as degrading the authority and the dignity of the court. In historical perspective, the term contempt of court is known in Common Law System (Anglo Saxon) or case law. The tradition of contempt of court was born and grew through a concept recognized as early as the medieval century correlated with the British kingdom – whose king ruled with God-like rights. He was considered as the source of law and justice, whose power was delegated to legal apparatuses. In its essence, rules regarding contempt of law came from pure stream of justice doctrine<sup>2</sup>. Contempt of court roots from the thirteenth century. It was initially known as any action of hindering king's dignity, not the court's, and being equated with *Contempt of The King* because at that time king's power was so dominant and absolute.

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<sup>1</sup> Oemar Seno Adji and Indriyanto Seno Adji. *Contempt of Court is a definition or term used by countries that adhere to the Anglo-Saxon system to protect the judiciary bodies from acts that are considered to be able to degrade the dignity of the court*. Jakarta: Diadit Media, (2007), p.17

<sup>2</sup> Lilik Mulyadi. *Contempt of Court di Indonesia*. Bandung, PT Alumni, 2016, p.22

The period did not recognize the independence of court. Law was made by king; whose accountability was only to God. However, as time went by, scholars studied law, and they, particularly advocates and judges, accelerated the need for justice to oppose the king's decision considered contrasting the existing norms<sup>3</sup>. Following such development, contempt of court adopted more by countries practicing common law rather than civil law. For example, through *Contempt of Court Act 1981*, England protects the dignity of its court from contempt.

In Indonesia, there is no rules of law specifically managing contempt of court; in fact, there is only one law discussing the definition of contempt of court, that is Law number 14 of 1985 concerning the Supreme Court, as revised into Law number 2 of 2009 concerning the Supreme Court<sup>4</sup>. The definition of contempt of court is explained in the explanation chapter of Law number 14 of 1985<sup>5</sup> concerning the Supreme Court, which is in number 4 in sentence number 4, which reads: "Further, in order to guarantee the most conducive situation for court organization to enforce law and justice that regulate actions against any conduct, behavior, attitude and/or remark that can degrade and jeopardize the authority, dignity, and honor of judicial body known as contempt of court"<sup>6</sup>.

Contempt of court is a frequent case in Indonesia, committed by unlawful law enforcers and unlawful justice seekers, like in the District Court of Bantul where a mob of Pemuda Pancasila ran riot causing damages to the court's facilities. The incident is only one of the many cases<sup>7</sup> of CoC in Indonesia. Another one took place in the Constitutional Court of the Republic of Indonesia, where a person ripped a microphone off the desk and threw a chair in the courtroom. Another misconduct categorized as CoC is the excessive reporting of ongoing trial that put the presumption of innocence aside and wrongly apply the principle of right to know for the public, known as trial by the press. The unjust news made by the press may create public opinion that degrade the honor of the court as the only institution with the right

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<sup>3</sup> Ariehta Sembiring. *Contempt of Court dari penghinaan mengalir sampai jauh*. Jakarta: Jentera. 2015. p.78

<sup>4</sup> Wahyu Wagiman. *Contempt of Court dalam Rancangan KUHP*. Jakarta: Elsam. 2005. p.46

<sup>5</sup> Article 23. *Criminalization of obstruction of justice Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention; (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.*

<sup>6</sup> Neisa Angrum Adisti. *Contempt of Court*. Palembang: UNSRI Press. 2019. p.44

<sup>7</sup> Ida Keumala Jeumpa. *Contempt of Court: A Comparison Among Vary Legal Systems*. Kanun Jurnal Ilmu (2014). p.11

of trying cases. Destructive actions have been anticipated through Indonesian positive criminal law, although not being explicitly referred to as contempt of court. The absent of legal regulation concerning contempt of court has made the term interpreted too broadly and inappropriately. As an effort to prevent and overcome contempt of court, a draft concerning the matter, which is the draft of crimes on court organization and contempt outside the court. In addition, any conduct categorized as contempt of court is included in RKUHP (the Bill of Penal Code).

Criminalization of contempt of court is also regulated in the article number 23 of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, which requires the country members to criminalize any action belonging to the category of obstruction of justice or any of those that hinders the smooth running of the court. In addition, the criminalization of obstructing the court is regulated in Article 25 of the United Nations Convention Against Corruption.

In several countries, regulation concerning CoC has been clearly established, by either including it into the codification of penal code or specifically managing it into laws outside the codification. One of the countries that includes regulations about CoC in its codification is Russia. The country's penal code is codified in one book of criminal law, that is Criminal Code of Russian Federation (CCORF), one of the modern penal code in the world. Passed in Jun 13 1996, the code has been amended for several times; the last one was in 2012. The researcher is interested to study the differences of CoC concept between Indonesia's and Russia's penal code as the Russian's is one of the newest ones. The main purpose of legal comparison is to study foreign penal code, which finally the refinement of the national penal code. Based on the background, the researcher conducted a research entitled "A COMPARATIVE ANALYSIS ON THE CONCEPT OF CONTEMPT OF COURT ACCORDING TO THE PENAL CODE OF INDONESIA AND RUSSIA".

This research will answer the following questions.

1. How is the concept of contempt of court according to Indonesia's penal code?
2. What are the differences and similarities between Indonesia's and Russia's penal code?

### **Material and Methods**

This study uses normative method in analyzing secondary legal materials that examine rules of laws and doctrine, while descriptive normative approach was utilized by comparing criminal rules of law concerning the concept of contempt of court in Indonesia and Russia.

## **Result and Discussion**

### **1. The Concept of Contempt of Court According Indonesia's Penal code**

#### **a) Scope of Contempt of Court**

Contempt of court is basically any action that disrupts or prevent the smoot running of criminal trials, so it is considered as an offence against the administration of justice. The punishment of contempt of court is punitive in nature.<sup>8</sup>

According to the explanation of the Law of the Republic of Indonesia number 14 of 1985, which was amended into Law number 2 of 2009, the scope of contempt of court is as follows.<sup>9</sup>

- Action
- Behavior
- Attitude and/or utterance

Actions, behaviors, and attitudes that degrade the dignity of court is not limited only to active conducts but also to passive ones that are also considered as contempt of court for example deliberately not attending court's summons as a trial witness.

In this case, Oemar Seno Adjie mentioned three categories of conducts considered as contempt of court. They are as follows.<sup>10</sup>

- 1) Disobeying a court order. Ignorance or incompilance with summons. The subjects here are litigants and witnesses.
- 2) The sub judice rule. It is a general rule that publications interfering the free and fair trial are forbidden. This also includes excessive reporting on cases to be tried or examined in court particularly before verdicts with permanent binding legal force.
- 3) Scandalizing the court. Judges are ordinary human, who make mistakes. However, they were given the mandate to examine and decide cases as well as enforcing law and justice. That is the first principle to be understood. Hence, mistakes in their decisions may present, as in Sengkon vs. Karta. However, it does not mean that people have the right to correct or evaluate the mistakes without the use of legal procedures. They have to go through legal processes and follow the existing rules or stipulations in addressing their dissatisfaction to the judgments that have been made by Board of Judges collectively.

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<sup>8</sup> Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*. Jakarta: Prenamedia Grup. 2011. p.55

<sup>9</sup>Andi Hamzah. *Kejahatan Terhadap Penyelenggaraan Peradilan (Contempt of Court)*. Bandung: PT Almunir. 2017. p.28

<sup>10</sup> Oemar Seno Adji dan Indriyanto Seno Adji, *Loc.cit.* p.21

The scope of contempt of court according to P. Asterley Jones and R.I.E. Card is broader; which detail is listed below.<sup>11</sup>

1. Contempt in the face of court
2. Scandalizing the court
3. Reprisal against jurors and Witness
4. Obstructing officer court
5. Conduct liable to prejudice the fair trial or conduct of pending or imminent proceeding
6. Publication which prejudice issue in pending proceedings

From the list above, we can see that publication which prejudice issue in pending proceedings is also a form of contempt of court; it is done by the media, in particular, and the public, in general.

Contempt of court can also be classified into direct contempt (or *contempt in factie*) and indirect contempt (or *contempt ex factie*). As the former is committed in the court room, the latter is committed outside the room, such as refusing court order or disgracing the court outside the trial.<sup>12</sup>

#### **b) Regulation about Contempt of Court According to Indonesia's Penal code**

In Indonesia there is no rule of laws that particularly addresses contempt of court. There is only one law, and it only mentions about the definition of contempt of court, that is Law number 14 of 1985 as amended by Law number 2 of 2009 concerning the Supreme Court. Rules regarding contempt of court is described in the explanation of Law number 14 of 1985 concerning the Supreme Court, in the fourth sentence in number 4.<sup>13</sup> There are several crimes that can be categorized into contempt of court as follows.

1. Law number 8 of 1981 concerning Indonesia's Criminal Law Procedure Code (KUHAP) contains rules as the implementation of the protection for criminal trial processes. Article 217 and 218 command that in their presence in the court room people must follow rules applicable in the court. Violators are subjects for expulsion, which can be followed by lawsuits if they make commotions in the courtroom, as it is considered as contempt of court. Nevertheless, KUHAP is a formal penal code that does not mention punishment, so it does not comprehensively protect the court from acts of contempt.

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<sup>11</sup> Andi Hamzah, *Op.cit.* p.33

<sup>12</sup> *Ibid*

<sup>13</sup> Sutanto Nugroho, R.B. Sularto, Budhi Wisaksono. *Pengaturan Tindak Pidana Contempt of Court Berdasarkan Sistem Hukum Pidana Indonesia*, Diponegoro: Law Journal, Volume 6 Number 2 (2017). p.35

2. Indonesia's Penal code (KUHP) contains articles administering conducts considered as contempt of court; they are articles number 207, 209, 211, 212, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 231, 232, 233, 242, 420, and 522.

**Table 1 Articles in KUHP concerning Contempt of Court**

No.	Article	Crime	Punishment
1.	207	Insulting authorities and public bodies	One year and six months of imprisonment or paying fine
2.	209	Giving gifts to officials with intent of changing their decision	Two years and eight months of imprisonment or paying fine
3.	210	Giving gifts or making promises to judge with intent to exercise influence to their decision on a case which has been submitted to their judgment	Seven years of imprisonment
4.	211	Resisting officials to perform or not to perform official exercises	Four years of imprisonment
5.	212	Resisting officials acting their official duties	One year and four months of imprisonment or paying fine
6.	216	Not obeying commands or demands issued under statutory provisions by officials qualified for supervision or by officials based on their duties	Three weeks of imprisonment or paying fine
7.	217	Creating commotions in the court room and not moving away after orders are given by or on behalf of the competent authorities	Three weeks of imprisonment or paying fine
8.	218	Intentionally gathering in a crowd and not moving away after the third order given by or on behalf of the competent authorities	Two weeks of imprisonment or paying fine
9.	219	Unlawfully tearing off or making illegible or damaging an announcement put up in public on behalf of competent authorities	One month and 2 weeks of imprisonment or paying fine
10.	221	Hiding somebody who is guilty for a crime	Nine months of imprisonment or paying fine

11.	222	Preventing or obstructing forensic postmortem examination	Nine months of imprisonment or paying fine
12.	223	Setting free or assisting those who are by virtue of judicial verdicts has been deprived of their liberty or aiding them in their escape	Two years and eight months of imprisonment
13.	224	Disobeying statutorily obligation as witnesses	Eight months of imprisonment
14.	225	Disobeying lawful commands to produce documents which are alleged to be false	Nine months of imprisonment
15.	231	Destroying, damaging, or making useless articles that have been seized under statutory provision	Four years of imprisonment
16.	232	Breaking, removing, or damaging seals with which articles by or on behalf of the competent authorities are put under seals, or frustrates in any other way the closure affected by such seals	Two years and eight months of imprisonment
17.	233	Setting free or providing assistance during the escape for a person whom by the order of public authorities in pursuant to legal verdicts has deprived from his liberty	Four years of imprisonment
18.	242	Making a false testimony under oath, orally or in writing, personally or by special proxy	Seven years of imprisonment
19.	420	As a judge, accepting a gift or promise by which his decision in a case is influenced	Twelve years of imprisonment
20.	522	As an expert or interpreter, unlawfully staying away from legal summons as a witness	Paying fine

**Source: KUHP (Indonesia's Penal Code)**

There is no article in Indonesia's penal code that specifically mentions contempt of court, but there are those who can be classified as it. The articles do not comprehensively



administer the previously mentioned matters concerning the scope of contempt of court, such as publication which prejudice issues in pending proceedings, which is called trial by the press. Contempt of court related to the press does not explicitly arranged in KUHP. The protection from trial by the press is stipulated in the Law of the Republic of Indonesia number 40 of 1999 on the Press in article 5 section 1.

3. Law Number 40 of 1999 on the Press

Article 5 section 1 explains that national press has the obligation to report events and opinions with respect towards religious norms and moral norms possessed by the public, completed with the presumed innocent principle. The national press in broadcasting information must not judge or conclude a case before binding legal force is exercised (*Incrach van gewijs*), especially on pending proceedings. The failure to comply will result in, according to article 18 section 2, the obligation of the company to be charged with a fine of IDR 500 million at the maximum.

4. Article 138 of Law Number 35 of 2009 for Narcotics Cases

In the event of narcotics cases, Article 138 of Law number 35 of 2009, which reads “Any person who obstructs or complicate the investigation and prosecution and examination, a criminal act case of narcotics and/or of Narcotics Precursor in front of the trial court, shall be punished with imprisonment of 7 (seven) years and a maximum fine of IDR 500.000.000,00 (five hundred million rupiah)”, can be used.

Regulations concerning contempt of court in Indonesia is not specific in any law or any special chapter in the codification (Indonesia’s Penal Code). The effort to protect courts in Indonesia is done by establishing laws through the formulation of regulations concerning contempt of court in RKUHP and in a bill concerning contempt of court. The administration of articles concerning contempt of court in RKUHP is clearer and well directed as it clearly explains about offenses related to contempt of court.

**2. Similarities and Differences in the Concept of Contempt of Court between Indonesia’s and Russia’s Penal code**

**a) Regulation about Contempt of Court According to the Criminal Code of Russian Federation**

Regulations about contempt of court is administered in Russia’s positive penal code, the Criminal Code of Russian Federation (CCORF). It is the world’s modern penal code.

Crime against court organization is elaborated in Chapter 31 of Book 2, which consists of 23 articles.<sup>14</sup>

1. Categories of conducts stipulated in article 294 of CCORF are as follows.

- Interference in any form in the functioning of the court, for the purpose of obstructing the carrying out of justice.<sup>15</sup> The crime shall be punishable with a fine in an amount of up to 200 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 18 months, or by compulsory labor for a term of up to two years, or by arrest for a term of up to six months, or by deprivation of liberty for a term of up to two years.
- Disturbance in the activity of a procurator, investigator, or a person conducting inquests. This crime shall be punishable with a fine in the amount of the wage or salary, or any other income of the convicted person for a period up to eighteen months, or by compulsory works for a term of up to two years, or by arrest for a term of up to six months, or by deprivation of liberty for a term of up to two years.<sup>16</sup>

This article specifically administers the offense of obstructing the carrying out of justice and preliminary investigation. This offense is in the category of carrying out of justice, including disturbance to investigation and prosecution.

2. Article 295 of CCORF regulates cases concerning the encroachment on the life of a person administering justice or engaged in a preliminary investigation. The criminal shall be punishable by deprivation of liberty for a term of 12 to 20 years with restriction of liberty for a term of up to two years, or by deprivation of liberty for life, or by capital punishment. This article specifically stipulates about the victim of the crime, that is parties related to the judicial process, in other words law enforcers on duty.

3. Article 296 of CCORF, which deals with threats or forcible actions in connection with the administration of justice or preliminary investigation, stipulates that defendants prosecuted for the threats of murder against law enforcers and their relatives in court and concerning the execution of court's judgement shall be punishable with a fine in an amount of 100 thousand to 300 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two years, or by deprivation of liberty for a term of up to three years. If the same deed is related to the

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<sup>14</sup> *Criminal Code of Russian Federation*

<sup>15</sup> CCORF describes it as. *Interference in any form in the functioning of the Court, for the purpose of obstructing carrying out of justice*

<sup>16</sup> CCORF describes it as. *Interference in any form in the activity of a procurator, investigator, or a person conducting inquests for the purpose of obstructing the all-round, full, and objective investigation of a case*

threat against law enforcers in relation with court's judgment, in the next section it is explained that it should be punishable with a fine in an amount of up to 200 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 18 months, or with compulsory labor for a term of up to two years, or by arrest for a term of from three to six months, or by deprivation of liberty for a term of up to two years.<sup>17</sup>

4. Article 297 of CCORF specifically stipulates that contempt of court Shall be punishable with a fine in an amount of up to 80 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period up to six months, or by compulsory works for a term of up to 480 hours, or by arrest for a term of up to four months.
5. Article 298 of CCORF, which stipulates defamation against judge, juror, prosecutor, investigator or person conducting inquest, bailiff, and court official, was abolished.
6. Article 299 of CCORF stipulates that bringing innocent people to criminal liability shall be punished with five years of imprisonment.
7. Article 300 of CCORF stipulates that illegally releasing a person from criminal liability shall be punished with deprivation of liberty for two to seven years.
8. Article 302 of CCORF stipulates that compulsion to give evidence shall be punished with imprisonment or deprivation of liberty for two to eight years.
9. Article 303 of CCORF explains that the crime of falsifying evidence shall be considered as grave crime or special grave crime and can bring serious consequences and punishable with three to five years of imprisonment.
10. Article 304 of CCORF stipulates that provocation of a bribe or commercial graft shall be punishable with a fine in an amount of up to 200 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 18 months, or by compulsory labor for the period of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without such, or by deprivation of liberty for a term of up to five years, with disqualification from holding specific offices or engaging in specified activities for a term of up to three years, or without such disqualification.

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<sup>17</sup>Kathryn Hendley. *Contempt for Court in Russia: The Impact of Litigation Experience*. Review of Central and East European Law 42 (2017). p.9

11. Article 305 of CCORF stipulates that the crime of giving unjust judgement, decision, or any other juridical act shall be punishable with deprivation of liberty for a term of three to ten years.
12. In Indonesia, offenses mentioned in Article 306 of CCORF, i.e. false denunciation, is stipulated in Article 220 of KUHP, but the Russian penal code elaborates it into by way of engineering false evidence. If the false denunciation is related to grave offense, the penalty will be even more severe.
13. Article 307 of CCORF stipulates that providing false testimony shall be punishable with a fine in an amount of up to 80 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to six months, or by compulsory works for a term of up to 480 hours, or by corrective labor for a term of up to two years, or by arrest for a term of up to three months.
14. Article 308 of CCORF stipulates that witnesses or victims who refuse to give testimony Shall be punishable with a fine in an amount of equal to minimum wage or salary, or by compulsory works for a term of up to one month for 120 to 180 hours, or by one-year corrective labor, or by arrest for three months.
15. Article 309 of CCORF regulates the crime of bribery or compulsion to give testimony or for evade giving testimony or for mistranslating.
16. Article 310 of CCORF deals with the disclosure of preliminary investigation data.
17. Article 311 of CCORF deals with disclosure of information about security measures applicable to the judge or other people participating in a criminal trial. This is the protection for judge, juror, or any other court officials, victim, witness, and so on.<sup>18</sup>
18. Article 312 of CCORF deals with the concealment or transfer of property subject to confiscation under a court's judgement.
19. Article 313 of CCORF deals with the escape from a place of confinement, arrest, or custody
20. Article 314 of CCORF deals with the crime of evading the order of deprivation of liberty, which is punishable with a 2-year of imprisonment at the maximum.
21. Article 315 of CCORF deals with the crime of not executing court's consideration, decision, or any other juridical act.
22. Article 316 of CCORF stipulates that concealing crimes shall be punishable with a fine in an amount of up to 200 thousand rubles, or in the amount of the wage or salary, or any

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<sup>18</sup> Andi Hamzah. *Op.cit.* p.34

other income of the convicted person for a period of up to 18 months, or by compulsory labor for a term of up to two years, or by arrest for a term of up to six months, or by deprivation of liberty for a term of up to two years

The Criminal Code of Russian Federation has strictly and specifically regulated the objects or the victims of the crime, which are the court, trial process, and parties involved in trials.

#### **b) Similarities and Differences of the Concept of Contempt of Court between Indonesia and Russia**

According to Oruncu, legal comparison is a discipline of law to find the similarities and differences as well as identifying any relationships that later on is used to derive solutions. *“Comparative law is legal discipline aiming at ascertaining similarities and differences and finding out relationship between various legal system their essence and style looking at comparable legal institution and concept and trying to determine solutions to certain problems in this system with definite goal in mind, such as law reform etc.”*<sup>19</sup> The method being used is by finding similarities and differences in the criminal codes of the countries being compared. The similarities concerning the concept of contempt of court between Indonesia’s and Russia’s criminal code are as follows.

First, both KUHP and CCORF regulates offenses related to the carrying out of trial. Both codes categorize conducts related to the obstruction of trial into crimes and prosecutable cases according to the law.

Second, regarding legal subjects or perpetrators of criminal acts related to the administration of justice, the Indonesian Criminal Code and the Russian CCORF can be carried out by law enforcers, advocates, litigants, and the public in general. Both criminal codes do not specifically address the Contempt of Court by the press (excessive publication of cases that have not been legally binding). In Indonesia, Contempt of Court is only implicitly regulated in the law on the press.

Third, regarding the scope of Contempt of Court, both KUHP and CCORF include direct contempt of court (contempt in the courtroom) and indirect contempt of court, such as disobeying judge's decision or court order.

Fourth, several crimes related to the administration of justice inside and outside KUHP are also regulated in CCORF; they are as follows.<sup>20</sup>

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<sup>19</sup> Romli Atmasasmita. *Perbandingan Hukum Pidana Kontemporer*. Jakarta,: Fikahati Aneska. 2009. p.77

<sup>20</sup> *Ibid.*

1. Article 307 of CCORF is partly administered in KUHP as the offense of false oath.
2. The offense stipulated in Article 308 of CCORF is also stipulated in Article 224 of KUHP, that is concerning witness, expert, and translator failing to attend the court's summons, not concerning the refusal of giving testimony.
3. The regulation as stipulated in Article 309 of CCORF has not been arranged in both KUHP and RKUHP. Furthermore, bribery to private party is not (has not been) considered as a prosecutable case. However, the perpetrator can be prosecuted using the law for incitement or compulsion to give false testimony.
4. As article 316 is limited to grave crimes, Article 221 of KUHP refer to it as "crime", not violation concealment committed by a person. Prosecution shall not take place following blood or in-law relationship until the third degree (nephew or niece). CCORF refers to this as close relative.

In legal comparison, in addition to identifying similarities between two objects being compared, differences between the two are also explored. The differences in terms of contempt of court between KUHP and CCORF are as follows.

**Table 2 Differences in the Concept of Contempt of Court between Indonesia's and Russia's Penal Code**

No.	Indonesia's Penal Code	Russia's Penal Code
1.	Crimes related to the carrying out of justice are not specially regulated in one chapter. The articles are scattered in two books, i.e. book two concerning crime and book three concerning violation. There are also crimes that are stipulated in laws outside KUHP.	Crimes related to the carrying out of justice are specially regulated in one book, that is Chapter 31 of CCORF concerning Crimes Against Public Justice.
2.	There is no article inside and outside KUHP that explicitly regulates contempt of court.	There is an article in CCORF that explicitly regulates contempt of court, that is article 297.
3.	There are several articles in KUHP regulating the carrying out of justice, but they do not specify that the objects or the victims of contempt of court are law enforcers and juridical bodies. As Article 207, 211, 212, and 216 mention that the	Book 31 of CCORF explicitly regulated that the object and the victim of contempt of court is both law enforcers and parties related to juridical processes.

	victims of contempt of court are officials, public bodies, or the authorities, judge or law enforcer on duty are not specifically mentioned. Here officials and public bodies can be interpreted as judge and other law enforces related to juridical processes.	
4.	There are several articles concerning contempt of court not stipulated in KUHP, such as taking the life of judge, police officer, or prosecutor carrying out his duty in court. General articles, instead of those particularly stipulating contempt of court, are used in such a case, that is Article 338 of KUHP concerning murder.	Article 295 of CCORF stipulates the encroachment of the life of a person carrying out a trial or initial investigation.
5.	The crime of escaping from confinement, arrest, or custody is not stipulated. Nevertheless, Article 223 of KUHP stipulates matters about any person who with deliberate intent sets free a person who by public authority or by virtue of a judicial verdict has been deprived of his liberty or aids him in his escape.	Escaping from confinement, arrest, or custody is stipulated in Article 313 of CCORF.
6.	KUHP mentions that crimes related to the carrying out of justice can be categorized as felony (the articles are contained in Book 2 of KUHP) and violation (contained in Book 3 of KUHP)	According to CCORF, crimes related to the carrying out of justice can be categorized according their severity; they are <ol style="list-style-type: none"> <li>1. Little gravity crimes (the punishment is imprisonment less than two years)</li> <li>2. Average gravity crimes (punishable with imprisonment from wo to five years)</li> <li>3. grave crimes (punishable with five</li> </ol>

		to ten years of imprisonment) 4. Especially grave crimes (punishable with more than ten years of imprisonment)
7.	The punishment for the perpetrators of contempt of court is imprisonment and fine. If the crime falls into the category of violation stipulated in the Book 3, the punishment shall be confinement.	The possible punishment is a fine in the amount of the wage or salary, or any other income of the convicted person for a certain period, compulsory works for a certain period, corrective labor for a certain period, or arrest for a certain period. There are also articles stipulating the punishment of liberty deprivation for either a certain period or for life. There is one article that stipulate capital punishment, that is the article concerning the encroachment of the life of law enforcers or any other parties involved in juridical processes.

Based on the similarities and differences described above, the Criminal Code of the Russian Federation regulates more specifically and comprehensively about the concept of the Contempt of Court. Specificity can be seen from the legal subject, object (victim), and crime that have been regulated.

Comparative analysis as in this study can be used to update the penal code regarding Contempt of Court. Furthermore, whether or not Contempt of Court in the future needs to be included in the codification of law or in written laws outside the codification can be considered (*ius constituendum*).

### **Conclusion**

1. Contempt of Court is basically all actions that aim to disrupt or hinder the carrying out of criminal justice, so it is an offense against the administration of justice, which is the contempt in the face of court. The scope of the contempt of court is scandalizing the court, reprisal against jurors and witness, obstructing court officer, conducting liable to prejudice the fair trial or conduct of pending or imminent proceedings, and publication prejudice



which issue in pending proceedings. There is no article in KUHP that can specifically be defined as contempt of court, but there are several articles in it that can be classified as contempt of court. In addition, it does not have articles that fully regulate the matters previously described regarding the scope of the contempt of court.

2. Contempt of Court is stipulated in the Criminal Code of the Russian Federation (CCORF), a modern-day penal code in the world. Crimes against the administration of justice are listed in Chapter 31 of Book II of the Criminal Code of the Russian Federation, consisting of 23 articles. KUHP and CCORF regulate offenses related to the administration of justice. Hence, they categorize acts that interfere the carrying out of justice into crime, or punishable conduct according to the law. CCORF is more elaborate and specific in terms of contempt of court compared to KUHP. Crimes related to the administration of justice are described specifically in book 31. The difference also lies in the categorization of crimes and punishment imposed on the perpetrators.

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# A COMPARATIVE ANALYSIS ON THE CONCEPT OF CONTEMPT OF COURT ACCORDING TO THE PENAL CODE OF INDONESIA AND RUSSIA

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