

## **PUBLIC TRANSPARENCY OF COURT IN INDONESIA AS A CONTEMPT OF COURT PREVENTION**

<sup>i\*</sup>Rizka Nurliyantika, <sup>i</sup>Neisha Ang rum Adisti, <sup>i</sup>Iza Rumesten RS

Fakultas Hukum Universitas Sriwijaya.

<sup>\*</sup>(Corresponding Author): rizkaliy@gmail.com

### **ABSTRACT**

*Public transparency in the courts, in particular, the case file information and decisions, often highlighted as it relates to the right to a fair trial. As an independent state agency, the court has a major role in the development of law, public policy, recognition and protection of rights, and state duty fittings retain national law. Public transparency also influences preventing Contempt of Court. Public transparency of an institution will be followed by increasing public confidence and low Contempt of Court. In Indonesia, there is no special legislation regarding the Contempt of Court. The term Contempt of Court simply stated in Penjelasan Undang-undang Nomor 14 Tahun 1985 Tentang Mahkamah Agung, butir 4 alinea ke-3. That its meaning is often misunderstood. While the Contempt of Court can be a result of the lack of public transparency. Indonesian constitution divides judicial authority in the field of justice are five general courts, religious courts, administrative courts, military courts, and the constitutional court. For that, it should be examined how an Indonesian court of public transparency effect on the prevention of Contempt of Court. Data is obtained from literature such as books, journals, previous research and check information updates on the official website.*

**Keyword (s):** *Contempt of Court, Court, Public Transparency*

### **BACKGROUND**

Historically, the absolute power of kings must be limited when they confront justice. There is a place where justice takes precedence and is applied to everyone, the court. In Indonesia it is called the Supreme Court of the Republic of Indonesia. Institutions in the constitutional system that hold judicial power together with the Constitutional Court and are free from the influence of other powers. below it is the general courts, religious courts, military courts and state administrative courts.

In the modern state administration system, the court is equal to the president and parliament. This emphasizes that every citizen is considered equal before the court. Because it is considered sacred, the court needs apparatus that upholds the sanctity. Then damaging his holiness deserves to be punished. According to the Black's Law Dictionary, contempt of court is any act which is calculated to embark, hinder, or obstruct the court in the administration of justice, or which is calculated to lessen its authority or its dignity. Including deliberately violating authority or thwarting judicial duties or carried out by parties in the case intentionally not obeying court orders.

Contempt of court existed before the XIII Century, but acts that demean the king's dignity, not the court or known as the Contempt of The King. At that time the king's power was very dominant and absolute and the concept of judicial independence was unknown. the rules are made by the king and the responsibility is only to God. But then many experts accelerated the courageous court and opposed the king if it contradicted existing norms.

The court is an official forum that has the legal authority to resolve disputes and seek justice. The court is a great, respected and authoritative institution so that many people in dispute become

reluctant and afraid to get information related to their case. The result is people feel dissatisfied with the decision or the performance of the agency. Therefore the court is required to commit to implementing public transparency of information related to it.

Public transparency has started in for the last twenty years. A paradigm shift occurs, from all closed information except those declared open to all open information except those declared closed. The openness of public information begins with Undang-undang No 25 Tahun 1999 Tentang Program Pembangunan Nasional which encourages freedom and transparency of information. Then Law No. 14 of 2008 on Public Information and its derivative rules. Within the Supreme Court, there is a Chief Justice Decree No. 1-144 / KMA / SK / I / 2011 explaining information in court services. This information consists of three categories, firstly information that must be announced periodically, secondly information that must be available at all times and accessible to the public and thirdly information that is excluded.

It is important to discuss how public transparency in courts in Indonesia can reduce the contempt of court. The research method is normative juridical with legislative approach, case approach and conceptual approach. The source is secondary data. Consists of primary legal materials, namely legislation and secondary legal materials, namely literature and research. The analytical method to obtain qualitative conclusions is juridical analysis.

## **DISCUSSION**

Building public trust in law and its enforcement is an important aspect in Indonesia as a rule of law. Law enforcement has lost its identity because of the abuse of authority. Testing by higher judicial institutions, appeals from the High Court and the Supreme Court of cassation, has been infiltrated by corruption, then how to return the law to its habitat. One way is to open the widest possible access to the public to take part in the justice system. Provide information needed for a fair trial.

The principle of justice that is open to the public gives the right to the public to see, hear and follow the course of justice. The purpose of this principle is good, namely to hold an objective judiciary. Public presence in the judicial process can provide psychological challenges for judges so that it is not arbitrary or biased. But the question is whether the presence of the community in court can create an objective decision. The facts show that many of the judges' decisions are controversial or disturb the sense of justice. Even though the trial was witnessed by the community. In the Baiq Nuril's case, convicted of violating the Undang-undang Informasi dan Transaksi Elektronik, the Supreme Court rejected the request for Reconsideration by that. The honorary teacher from SMA 7 Mataram had to undergo six months of imprisonment and a fine of five hundred million rupiahs in three months' confinement. This shows that the principle of open justice is not a guarantee to make an objective and fair decision.

Judges' deliberations in making and compiling decisions are not open. So that the public cannot follow and witness it. Even though many decisions are subjective in this process and other factors, including bribery. Regulated in the Guidelines for Information Services in the Court as excluded information.

### **Public Transparency through Information Openness**

There are several regulations supporting transparency and information services in court, first: Law No. 14 of 2008 on Public Information. This regulation is an optimization of public oversight of the administration of the state to realize good governance. The law which consists of 64 articles gives

every Public Agency an obligation to open access for every public information applicant to obtain information, except information that is excluded.

Second, Law No. 25 of 2009 on Public Service set the principles of good governance which is the effectiveness of government functions. Effective public services carried out by governments can strengthen democracy and uphold human rights, increase economic prosperity, social cohesion, reduce poverty, protect the environment, be wise in the use of natural resources, deepen trust in government and public administration.

Third, Chief Justice Decree No. 1-144 / KMA / SK / I / 2011 on Guidelines for Information Services in the Court. Is a revision of the Chief Justice Decree No. 144 / KMA / SK / VIII / 2007 on Information Openness in Courts by adding more information disclosure to the Courts.

Fourth, Chief Justice Decree No. 026 / KMA / SK / II / 2012 on Judicial Service Standards. It is based on building public trust and improving the quality of services provided by the Supreme Court and the judicial bodies under it. Also to fulfill the mandate of Law No. 25 of 2009 on Public Service, as well as the basis for the team in all judicial bodies in providing public services.

## **Law Enforcement Contempt Of Court**

Contempt of court first appeared in countries that adopted a Common Law System. England, regulate it in the Contempt of Court Act 1981. Everyone who violates criminal law must meet the following elements: the accused commits an alleged act, known as Actus-reus, and charged with violating the law by accompanied by evil intentions, Mens-rea.

Britain that adopts a strict liability system applies to 3 kinds of offenses, namely: public nuisance (disturbance of public order, blocking the road, emitting bad odors that disturb the environment); criminal libel; and contempt of court (violation of court rules). In 1742, the British imposed Contempt of Court by the doctrine of Pure Streams of Justice, which is considered as the basis of its validity. In 1981 an update was made with the adoption of the 1981 Contempt of Court Act. The United States first enacted Contempt Court in 1789. Regulate enforcement and ensure the judicial process runs without pressure from various parties, as well as court officials.

The characteristics of the Contempt of Court, first, the rules about the types in Indonesia are implicitly set out in the Criminal Code and Criminal Code Procedures. A description of the related chapters is as follows: a. Contempt. Crucial characteristics. According to R. Soesilo, article 207 of the Criminal Code guarantees that the instruments of state power remain respected. Insulting orally or writing is attacking honor and damaging a reputation. This humiliation was contained in the Draft of Criminal Code. b. Intentionally. Criminal offense Contempt of Court committed on purpose. There are several intentions in the theory of legal science. First, according to Mr. M.H. Tirtaamidjaja has three forms: 1) Intentionally as an intent (oogmerk). 2) Intentionally certainty (opzet bij zekerheidsbewustzijn). Believing that his actions have inevitable consequences and will occur other consequences. 3) Intentionally aware of the possibility (voorwaardelijk opzet, dolus eventualis). He does not believe that the effect will occur but has estimated the possibility of the effect.

Second, the current context of the Contempt of Court is absurd and unclear. It is often obscured and confronted with the principles of transparency, judicial control, and freedom of expression in the name of democracy and reform. The Contempt of Court Rule has initially been a concept to prevent the influence and intervention of the judiciary, increasingly shifting to control over judicial authority.

In judicial power, there is the principle of independence of the judiciary. It means that the course of the judicial process must be guaranteed to avoid the influence, pressure, threats from any party that has the potential to reduce the nobleness of the principle. This principle is universal and recognizes in various countries.

Type contempt of court often refers to the categorization according to Oemar Seno Adjie, namely: One, disobeying court orders. Waiver of subpoenas is often done by parties who feel inappropriate to be present in court. For example, those who have positions in government structures or high social strata of society. Whereas in Article 27 paragraph (1) of the 1945 Constitution, it is explained that:

“Segala warga negara bersamaan kedudukannya dalam hukum dan pemerintahan dan wajib menjunjung hukum dan pemerintahan dan wajib menjunjung hukum dan pemerintahan itu dengan tidak ada kecualinya.”

Ignoring a subpoena as a witness or disputing party, is a disregard for the law and government, is also a denial of the provisions of the 1945 Constitution. The State Administration official who was summoned to the court also ignored it because feeling inappropriate or other reasons that did not make sense. This action opposes the judicial authority, which is an institution of dispute resolution with justice by the concept of the rule of law.

Two, the sub judge rule. The United States interprets it as an unusual act before the court so that it can obstruct the judicial process. Contempt of court now, the meaning and understanding are not clear. The concept of humiliation is obscure and confronted with the principles of transparency, judicial control, and freedom of expression beyond moral boundaries in the name of democracy and reform. Contempt of court regulation which was initially a concept to prevent and not insult court institutions. Nevertheless, increasingly shifted by the idea of control over judicial power involving technical judicial, both formally institutionalized, and by the general public. Directly carried out by giving an opinion that should not be commented on because it is related to the technical trial until the final stage, namely the reading of the judge's decision.

Three, the sub judge rule. It has been argued that in addition to executive, legislative, and judicial branches of government in Trias Politica theory, there are also other forces beyond the powers that be a balancing of all this power, the independent press. Press transparency is a positive signal in the life of democracy, nation and state. However, it becomes a problem when the press starts to enter and become a counterweight to the news, which dramatically influences the judicial process.

Fourth, scandalizing the court. Judges are ordinary people. Get the mandate to decide and enforce the law with justice. Mistakes and errors in the verdict must be there. As happened in the case of murder with defendants Sengkon and Karta, who have served sentences, years in prison, later admitted the real perpetrators. But that does not mean because of these mistakes, everyone has the right to make corrections and evaluations without legal procedures. There are existing rules in the mechanism for dissatisfaction with decisions that have been deliberately taken by the Judges.

Generally, the law applied must meet three elements, is; legal principles, legal norms, and legal rules. Legal principles give birth to legal norms. For example, it is prohibited to interfere with property rights and subsequently will become legal rules, the principle of law, the principle of recognition of individual property rights. Then give birth to the rule of law for example article 362 of the Criminal Code:

“Setiap orang yang mengambil barang sebagian atau seluruhnya milik orang lain, dengan maksud untuk seolah-olah dimiliki, dengan jalan melawan hukum, dipidana karena pencurian”.

In Indonesia, there are no laws and regulations that specifically address the contempt of court. The discussion is only contained in the explanation of Law No. 14 of 1985 on the Supreme Court Item 4 of the 4th paragraph:

“Selanjutnya untuk dapat lebih menjamin terciptanya suasana yang sebaik-baiknya bagi penyelenggaraan peradilan guna menegakkan hukum dan keadilan yang mengatur penindakan terhadap perbuatan, tingkah laku, sikap dan/atau ucapan yang dapat merendahkan dan merongrong kewibawaan, martabat, dan kehormatan badan peradilan dikenal sebagai *contempt of court*.”

Contempt of court in Indonesia has been regulated in Articles 207, 212, 214, 217, 218, 221, 223, 224 of the Criminal Code. Nevertheless, the actions regulated in these articles cannot be said to be officially understood. While cases of humiliation that occur in court are increasingly frequent, Indonesia has not yet made strict arrangements regarding this issue. Then we need a law that regulates it.

Contempt of court is not free from bad habits. It does not only occur inside the court but also during the trial. Examples, insulting judges, damaging objects inside or outside the court, chatting during the trial, using sharp objects and firearms, dressing improperly, bribery of judges, to not carrying out court decisions. Which cases often occur in the State Administrative Court. These things could be controlled by the presiding judge who presided over the proceedings at the time. If there is a dispute or commotion in the courtroom, the presiding judge can act decisively and reprimand even remove the rioters. The role of judges is enormous, considering that there are no specific regulations regarding the enforcement of contempt of court in Indonesia.

Identified into several groups of court insults in Indonesia that can cause changes to 3, is: relating to violating the law, related to violating the trial code of conduct, and related to changing the code of ethics of law enforcement. Cases of contempt of court in Indonesia often occur. It is performed by law enforcement or anarchist acts by justice seekers. One of them occurred at the Bantul District Court; an anarchist act carried out by the Pemuda Pancasila group who destroyed the court facilities. This incident is only a few examples of cases, many more cases that occur in Indonesia.

### **Public transparency and contempt of court**

The lack of public trust in the judiciary is the main problem of harassment of the judiciary. The crisis of public trust is very influential on the integrity and authority of the judiciary as the last bastion of justice. To erode the spirit of the rule of law as mandated in article 1, paragraph 3 of the 1945 Constitution. As a follow-up to law enforcement is an attempt to realize the ideas of justice, legal certainty, and social benefits become a reality.

Law enforcement is the process of manifesting creativity. As an effort to the functioning of legal norms and guidelines in legal relations in social and state life. It is also an effort to realize the ideas and legal concepts that people expect to become a reality. Several factors affect law enforcement, according to Soerjono Soekanto:

First, legal factors. In the practice of law enforcement, there can be a conflict between legal certainty and justice. The cause is the concept of justice, which is abstract, while legal certainty is a procedure that has been determined normatively through legislation. A policy or action that is not entirely based on law can be justified as long as the policy or action is not contrary to law. The implementation of law does include not only law enforcement but also peace maintenance because the implementation of the law is a process of harmony between the values of the method and the pattern of real behavior aimed at achieving peace.

Second, law enforcement factors. The function of law, mentality, or personality plays an essential role in law enforcement officials if the rules are ethical, but the inferior quality officer then issues. Third, supporting facilities. Almost every court is equipped with an integrated service center. The public and justice seekers can ask questions or take care of their cases centrally. Nevertheless, some courts, the clerk that there was only one person while the long queues. It is not supported by sufficient staff. Fourth, community factors. Law enforcers from the community aim to achieve peace in the community. Some members of the community have legal awareness, but the quality varies. There are good and less functional. This factor is an indicator of the functioning of each law. Fifth, cultural factors. Cultural functions to regulate human beings can understand how they should act and determine their attitude when dealing with others. Thus, culture is mainline of behavior that sets rules about what must be done and what is prohibited.

These factors, when related to the contempt of court, legal factors cannot be blamed because there are no specific regulations regarding contempt of court. Community factors are very important. This community is the people who interact directly with the courts and the public in general and can be divided into two general categories: factors of the knowledge society and people's satisfaction factor.

The element of ignorance and mistrust of society also cannot be forgotten. From the element of ignorance, it can be assumed that people who do not understand the law so feel cheated, do not believe and do contempt of court. Some contempt of court cases was carried out by lawyers. One of the cases was the beating of a judge in the Central Jakarta District Court by lawyer Tomy Winata, businessman Desrizal, when reading the court's ruling.

By knowing information related to a case, that is when the community is satisfied. Updates in Sistem Informasi Penelusuran Perkara (SIPP), for example. From research in the Palembang Religious Court, published SIPP is faster than in the Palembang District Court appeal. This allows abusive acts towards the court to occur more in the Palembang District Court than the Palembang Religious Court. When the community is satisfied, trust now arises. Trust is an indicator of reduced contempt of court in Indonesia. Public transparency is a preventive effort by the judiciary.

## CONCLUSION

Contempt of court is nothing new in Indonesian justice. It exists and develops as the court system advances. The non-fulfillment of people's right to a judicial process, contempt of court is likely to occur. While the Contempt of Court Act is still a National Legislation Program, contempt of court is paid back to the articles in the Criminal Code just as repressive.

On the other hand, there is a Public Information Openness Act, which requires Public Agencies to open access for every applicant for public information except for specific information. It can be a preventive measure for the court to reduce the contempt of court. People who get information about a particular case quickly and entirely will tend to be more positive and accepting. The acceptance is a form of satisfaction in obtaining information that results in public trust in the institution. When people trust the court, the contempt of court decreases.

## REFERENSI:

- Barda Nawawi Arief. (2013). *Perbandingan Hukum Pidana*. Jakarta: Raja Grafindo Persada. p. 39.  
Budi Suhariyanto.(2019). *Urgensi Kriminalisasi Contempt of Court untuk Efektifitas Pelaksanaan Putusan Peradilan Tata Usaha Negara*. Jurnal Konstitusi Volume 16 Nomor 1. p.195.

- E. Sundari. (2003). *Menciptakan Lembaga Eksaminasi Sebagai Social Control Terhadap Putusan Pengadilan yang Independen, Obyektif dan Berwibawa*, Jakarta: ICW. p. 31.
- Gultom, Binsar. (2006). *Pandangan Seorang Hakim Penegakan Hukum Di Indonesia*. Medan: Pustaka Bangsa Press. p. 30.
- Lilik Mulyadi. (2016). *Contempt of Court di Indonesia*. Bandung: PT Alumni. p. 9.
- Mudzakir. (2003). *Eksaminasi Publik Terhadap Putusan Pengadilan: Beberapa Pokok Pikiran dan Prospeknya ke Depan*, Jakarta: ICW, p. 93.
- M. Yeri Hidayat. (2003). *Keterbukaan Informasi Publik (KIP) Syariah?*. access 12 September 2019. <http://pa-sijunjung.go.id/v2/index.php/18-artikel/136-keterbukaan-informasi-publik-kip-syariah>
- Nur Kholis. *Asas Non Diskriminasi dalam Contempt of Court*. Legality. Volume 26 Nomor 2. p. 227-228.
- Oemar Seno Adji. (2007). *Peradilan Bebas dan Contempt of Court*. Jakarta: Diadit Media. p. 257.
- Romli Atmasasmita. (1996). *Perbandingan Hukum Pidana*. Bandung: Mandar Maju. p. 56.
- Sembiring, Ariehta. (2015). *Contempt of Court dari Penghinaan Mengalir Sampai Jauh*. Jakarta: Jentera, p. 61.
- Soerjono Soekanto. (2004). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Raja Grafindo Persada. p. 42.
- detikNews.com. *Pengacara Tomy Winata Pukul Hakim, MA: Contempt of Court*. 19 July 2019.