

Law Enforcement Efforts Against Contempt Of Court As The Judge's Shield In Indonesian Justice System

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Abstract: The contempt of court basically is one of criminal offenses against the administration of justice, which as a whole deals with the criminal justice system. The contempt of court cases that occurred in Indonesia, but the enforcement of the law against the contempt of court is an issue that is never-ending. The provisions of contempt of court are necessary to ensure the position, trust authority and integrity of the court in the judicial process, including all matters relating to the judicial process. Guarantee that once the public interest to take action against any violation as an endorsement of the judicial process, the rights of the public to ensure a fair trial, and protecting privacy. On the other hand, there is also a public interest that can't be ignored in any democratic society, namely the right to freedom of speech and expression. A manifestation of contempt of court is a speech, writing, pictures or other expressions that can be categorized as a contempt of court. In other words, contempt of court is a restriction of the right to freedom of speech, opinion and expression. How to limit the collision of the purposes of enforcing the provisions of contempt of court with the right to freedom of speech, freedom of opinion and expression. Preparation of deeds category and procedures for enforcement of contempt of court must be specifically and carefully.

Index Terms: Contempt of Court, Human Rights, Legal Protection

1 INTRODUCTION

The law of contempt of court is sufficiently clear and unambiguous to operate effectively in this jurisdiction. In particular, it will be argued that there is an urgent need for legislative intervention. The basic principles of the doctrine of contempt and the leading cases have been exhaustively set out elsewhere and will not be repeated here. Most criminal contempt of court cases involve a balance between the right of a fair trial on the one hand and the right of freedom of expression on the other. Often the speech value being protected is low. Judiciary process in Indonesia recognize the principle of open court and opened to the public unless proceedings against decency and children cases as a defendant, as provided in Article 153, paragraph (3) Indonesian Criminal Procedure Code (or commonly known in Indonesia as KUHAP) *juncto*. Article 13 paragraph (1) of Law Number 48 Year 2009 regarding Judicial Power. Based on that rules, each person can attend, see and follow Judiciary process in order to make it sure what decision to be reached. Examination of the court session open to the public sometimes invite the attention of the public, especially if the case involves an officer or under the spotlight of the public so that it looks very crowded court was filled by people who wanted to watch the trial, only frequent visitors encountered many trials both the parties directly involved in the case as well as regular visitors to create an action that does not respect the proceedings. Such actions can be categorized as an insult to the court (Contempt of Court). The term 'Contempt of Court' in

Indonesia can be seen in the General Elucidation of Law Number 14 Year 1985 regarding the Supreme Court which stated that to better ensure the creation of the best possible atmosphere for the holding of Justice to enforce law and justice based on Pancasila as the philosophy of the state (*filosofische grondslag*). The contempt of court based on practically approach is actually not new thing in Indonesia. However, various measures are increasingly frequent since the reform era freer. Contempt of court is an act that must be observed in Indonesia, this is because the act of contempt of court could hinder the trial process. The measures target of contempt of court at the moment is no longer on the court building as an institution, but more than that also to the court officials (judges, prosecutors, court clerks and legal counsel substitute), witnesses, and the defendant. Harassment or insult to the court (contempt of court) that have occurred in Indonesia is not yet fully resolved. This can be seen in the increasing acts contempt of court in Indonesia, this was due to lack of traction on law enforcement officers and government in tackling the case of contempt of court had happened day by day. The provisions contained in the Indonesian Criminal Code chapter is not decisive because it does not clearly explain the action or actions aimed at making court of law enforcement for the perpetrators of contempt of court can not be implemented optimally. This should be of particular concern for the Indonesian government, especially so that the ideals of the founders of this country who want Indonesia as a state of law can be realized well.

2 METHOD OF RESEARCH

The type of research used in this paper is a normative research. As according Soekarno and Mamudji who stated that normative research is conducted legal research by examining the material library or a mere secondary data in the form of positive legal norms between legislation and international regulations. Beside to conducting interviews with sources, the data being used include secondary data consisting of primary law materials in the form of laws and regulations, tertiary law materials in the form of reference books, opinion of experts, and the outcomes of previous research, as well as tertiary law materials in the form of

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language dictionaries. The analysis method applied in this paper starts with the abstraction of primary law materials, secondary law materials and tertiary law materials, leading to understanding law enforcement efforts against contempt of court as the judge's shield in Indonesian Justice System.

3 RESULTS AND DISCUSSION

3.1 Contempt of Court in Indonesian Justice System

Over the preceding three years, Indonesia's Supreme Court abolished as unconstitutional several insult provisions: Arts. 134, 135 and 136 (insulting the President or Vice President) and Arts. 154 and 155 (prohibiting public declarations of "feelings of hostility, hatred or contempt" toward the government and broadcasting such feelings). However, a number of provisions remain with criminal penalties for insult and defamation. Based on theoretical study, has been known for some various models including the Criminal Justice System as well as adopted in the civil law system. More operational concept details about how to complete a criminal case. According to Michael King, who identifies six models of Criminal Justice System, namely, (1) due process models, (2) crime control models, (3) medical models of diagnosis, prediction, and treatment selection, (4): bureaucratic models, (5) the status of passage models, (6) power a model called the "Model King". Each model has a starting point and different purposes. In the end, Packer then simply divide the model into two models of Criminal Justice System just that due process and crime control model of a model called the "Model Packer". Because "Model King" in particular the third to sixth form more in specific cases for certain things because it is in a much more applicable description refers to the "Model Packer". *First*, "Packer Model" stating that a pragmatic approach to answer the central question whether a Criminal Justice System is good then it requires an assessment of two things: first, whether: "the criminal process is a high-speed or a low speed instrument of social control," or "a series of specific assessments of its fitness for handling particular kinds of antisocial behaviour".

3.2 Crime Control Model System

The value of Crime Control Model system based on the proposition that "the repression of the criminal conduct is by far the most important function to be performed by the criminal process". Therefore, a Criminal Justice System with Crime Control Model models always use a method of emphasis offender or "the repression of the criminal conduct" and it was done primarily aimed more at "the efficiency". Therefore, "the criminal process operates to screen suspect, determine guilt, and secure appropriate dispositions of persons conviction of crime committed by (a) "de-emphasize adversary aspect of the process", (b) the presumption of innocence (a presumption of guilt), especially before" the "suspect" becomes a "defendant". The presumption of innocence is simply "the consequence of a complex of attitudes, a mood and not as" the opposite of the presumption of the innocent". In other words, the presumption of innocence in this check is a byproduct or a sub-culture of the operationalization Crime Control Model models. Facts can be established more quickly through interrogation in a police station than through the formal process of examination and cross-examination in a court. Therefore, that concept will operate successfully on these presuppositions must be an administrative, almost a managerial. Seeing how the

presumption of innocence is placed is an important indicator of the value system espoused notice. The presumption of innocence in fact is a direction to Officials about how they are not to proceed not a prediction of the outcome. However, the presumption of guilt, is purely and simply a prediction of the outcome. The presumption of guilt is descriptive and factual; the presumption of innocence is normative and legal. As described above presumption of innocence in this check is a byproduct or a sub-culture of the apparatus for the operationalization of the Crime Control Model. The criminal process has been and will probably continue to be an important forum in the struggle over civil rights. It's meaning that coercive uses of the criminal process police brutality; attests on inadequate grounds, excessively high bail, or the denial of bail of access to counsel, prejudiced tribunals--have focused and continue to focus attention on the problem of adequate challenge in the process.

3.3 Due Process Model

Value system in the due process model is an approach that is likely to put in a central aspect that is adversary process. The starting point of the emphasis in the due process model is the agreement that the process has, for everyone subjected to it. In other words, in the Due Process Model the ideology of due process is far more deeply impressed on the formal structure of the law than is the ideology of crime control. Due Process Model rejecting ways that are informal and non-adjudicative fact finding because such things will probably happen mistakes. In the same time, due process model actually assumes that the reability and efficiency are not polar opposites but rather complementary characteristic, due to the process which always ensures quality control of the Due Process Model is a model could have implications for the lower quantitative output. According to Packer, whether arrest for investigation and prevention should be made hypocritically and deviously, or openly and avowedly. Obviously, the answer is openly and avowedly, where the arrest for investigation and prevention decisions should be made independently by a magistrate in deciding whether to issue a warrant. Once a suspect has been arrested he should be brought before a magistrate without unnecessary delay, which is to say as soon as it is physically possible to do so, once the preliminary formalities of recording his arrest have been completed.

3.4 Inhibiting Factors of the Contempt of Court as the Judge's Shield

One of the main problems facing the law of contempt in this jurisdiction is identifying which courts have jurisdiction in respect of it. There is no doubt that the High Court has full jurisdiction over civil and criminal contempt, but the position is not so clear as regards the District Court. One view is that because the High Court has full jurisdiction to deal with the issue, that excludes the inferior courts. In the same vein people argue that as the High Court has jurisdiction to grant judicial review remedies, inferior courts cannot grant such things as a permanent stay on criminal cases. Meanwhile, commentators and the Law Reform Commission have left the question open. In fact the question is even more complicated than it may seem. Suppose the Circuit Court hears a *de novo* appeal from the District Court in a civil matter. During the course of the appeal a breach of the District Court order is committed by one of the litigants. In fact the question is even more complicated than it may seem. Suppose the Circuit

Court hears a *de novo* appeal from the District Court in a civil matter. During the course of the appeal a breach of the District Court order is committed by one of the litigants. In another approach, according to Satjipto Rahardjo, law enforcement with moral values born from the concept of Rule of Moral. The essence of the Rule of Moral are the basic values of Pancasila which has been living in Indonesian society that communalism, as *musya-warah*, the principle of kinship, harmony, and balance as described in the Table 1 below.

Table 1. *The principle difference between the values of the Rule of Law and the Rule of Moral.*

Issues	Rule of Law	Rule of Moral
1	Conflict resolution	Reconciliation
2	Based on the Law/ Legislation	Based on morality and Justice itself
3	<i>Procedural/Administrative</i>	<i>Empathy</i>
4	<i>Legal justice</i>	Substantive Justice
5	<i>Bureaucracy.</i>	<i>Commitment.</i>

Based on the Table 1 above, its clear that the articulation of the values of Indonesian people are packed in the doctrine of Rule of Moral or harmony legal paradigm by Rahardjo's model, or commonly known as the Rule of Law. This raises the further question as to whether it is ever permissible to imprison someone either where the *mens rea* of the 'offence' is unclear or where no *mens rea* is required. Again, a Contempt of Court Act could provide some much needed clarity here. Before it is permissible to imprison someone for contempt one would have thought that the law pursuant to which that is occurring would have to be clear and well-defined. It is therefore discouraging to note that contempt of court is an area where almost no two lawyers or commentators can agree on many of the most fundamental aspects

4 CONCLUSION

Contempt of court on Indonesia Justice System is a form of criminal offenses that occur in the ongoing trial process, and carried out by the defendant or his family or a group of people who attended the course of judicial proceedings (offenses against the administration of justice) that overall related to criminal proceedings (criminal justice system). The notice provisions of the legislation that exists as positive law, especially in the Law No. 1 Year 1946 concerning Criminal Law, some various aspects are still needed refinement and discussion (criminalization) as well as *Misbelating* court; *Vehandalizing* the court; Sub justice rule; and Obstructing justice. Based on the research results regarding contempt of court as the main issue, the establishment of the Law concerning Contempt of Court is what we needed at the moment. As noted, preparation of the law must be construct carefully as long as not violated the right to freedom of speech and the right to freedom of expression, including freedom of the press, as a constitutional rights..

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