

## Dimension Of Regulation And Law Enforcement In Contempt Of Court: Futuristic Study And Comprehensive Between Indonesia And Thailand

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### ABSTRACT

Social phenomenon that becomes public attention, related to the existence of act, behavior, attitude and remark made by justice seeker, legal practitioner, press or other various parties are causing threat to the court's prestige. Lots of cases qualified as Contempt of Court occur in Indonesia without the existence of strict sanction to give deterrent effect to the perpetrator. This act and attitude, either directly or indirectly has downgraded the dignity and prestige of court as an institution and its legal apparatus. This article is made based on the result of juridical-normative study, putting the legal comparison method upfront and in futuristic manner. Up to this day, the complete and integral provisions concerning the contempt of court is still spreaded in either rules and regulations for criminal law or criminal procedural law, hence, it is resulting into ineffectivity of legal enforcement for the Contempt of Court in Indonesia. The examination and decision on the Contempt of Court in Thailand is under the jurisdiction of the Court of Justice, it is regulated under criminal code of conduct and civil code of conduct. Each form of act qualified as Contempt of Court in Thailand is followed up by conduct according to the applicable legal procedures. Politically, law is necessary to specifically regulate Contempt of Court either in the laws itself or by insertion in Indonesian Criminal Code of Conduct. Expressed regulation is necessary both to protect the court's and judge's honor, and to protect "justice" from any type of insult.

**Keywords** : Contempt Of Court; Law Enforcement ; Regulation

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## INTRODUCTION

The 1945 Constitutional Law of the Republic of Indonesia states that Indonesia is a state of law. One of the characteristic of the state of law is the existence of judiciary body. Judiciary in Indonesia is divided into public and specific judiciary. Public judiciary is the judiciary meant for the public in general, either for civil or criminal cases, while the specific judiciary is made to adjudge certain type or group of cases. As the state of law, each citizen has the same position and protection before the law and the court. The same also applies in the legal regulations applied to achieve public order.

As a state with separation of power among the legislative, judiciary and executive, Indonesia is basing its judiciary authority in the judicial body as elaborated in the 1945 Constitutional Law, namely an independent authority free from the influence of government's authority. In relation to that matter, the laws must create guarantee for the position of judges.

Judiciary authority in Indonesia is held by the highest judicial body, it is the Supreme Court that holds authority over four judicial's environment, namely the Public Court, Religious Court, State Administrative Court and Military Court, besides judicial authority is also held by a Constitutional Court.

The tasks and functions of the court are actually both settling dispute and protecting a form of public order in the society. A nation can be categorized as civilized if it has a just law and has a good and sovereign court. Judicial authority is performed independently, free from various intervention that can impede the process of law, as elaborated in the Basic Principles on Independence of the Judiciary proposed by the the General Assembly of the United Nations in the Resolution 40/32 on 29<sup>th</sup> of November 1985 and Resolution 40/16 on 13<sup>th</sup> December 1985. The provision on the independency of judicial authority is also stipulated under the Beijing Statement of Principles of The Independence The Law Asia Region of The Judiciary, initiated in the the 6<sup>th</sup> Conference of the Head of Supreme Court on 19<sup>th</sup> of August 1995 in Beijing, it was further perfected in the 7<sup>th</sup> Conference of the Head of Supreme Court on 28<sup>th</sup> of August 1997 in Manila.

In general, the indicator of judicial power's independency can be divided into three, namely:

1. Institutional independence;
2. Judicial process' independence;
3. Judge's independence.

Independence of The Judiciary means that there must be a guaranteed protection for the the judicial process to make it free from all influence or pressure of threat from any party who potentially reduce the prominence of the principle. The independency of judiciary still has to be equipped with impartiality and professionalism of the respective field.

Thus, independence of judiciary as legal enforcer must be connected with accountability, integrity of moral and ethics, transparency, supervision (control), professionalism and impartiality. Further consequence of the said accountability is the existence of supervision or control to the performance of judicial bodies either to the judiciary operation or to the attitude of its apparatus, so then the independency and freedom of the Judicial Authority shall not be misused and cause the "tirany in the judicial authority". There are lots of form and mechanism of the thinkable and doable supervision, one of which is through control or supervision through mass-media, including the press. Hence, accountability, integrity, transparency or supervision are the 4 (four) complimentary signs for the recognition of freedom and independency of Judicial Authority (Lotulung, 2003).

For the aforementioned, specific protection for the judiciary in the implementation of judicial authority is necessary as the reasoning of the existence of the laws or regulations related to the contempt of court, according to Bagir Manan, such reasons are: **first** to ensure the court decision is adhered and complied, **second** preventing any kind of interference or intervention against the legal proceeding, **third** guaranteeing honest judiciary (and impartial) ( Manan, 2013). Judicial authority (judiciary) is the weakest compared to the other state authority. This weakness is due to the lack of tools of implementation for the authority itself, for example the power to execute a decision. Without the help from the prosecutor as an executor (executive authority), a court decision in the criminal law is not executable, the same applies to the civil law in Indonesia, despite that the execution of civil case is made by bailiff from the court, support from the police (executive) shall be always needed in practice. Meanwhile, the judicial authority in the state administration practice is more prone to intervention, either through the legal policy made by the legislator, horizontal institution, people's power (mass organization, press media, including political party), through forming public opinion either during the trial or through the influence of parties with political interests, power or press deployment, anarchy in character, that happens in the judicial process both inside or outside of the court trial.

Superimposing the definition from the Black's Law Dictionary, Contempt of Court is defined as every act imputed as humiliating, impeding or infringing the court's tasks, or those decreasing its prestige or dignity. Such act is made by a person deliberately opposing or breaching the prestige of or failing the task of the court, or someone who become a party in a case adjudged by the court, hence he is deliberately complies to the valid court's order or failed in complying the order given to him.

As a part of the Judicial Authority, the court is a vessel containing rights and obligations for the justice seeker with the ideal role to convene judiciary to enforce the law and justice, the role of a court is also important as law order. In these several decades, court as a modern law institution has obtained trust from the society. It happens since the society has form a general view through the positive law, that a judiciary institution is a mechanism applied by a state to settle dispute. Regardless of this trust, court itself has not responded in sufficient implementation, this is seen from the court decision that arising problems instead of settling them. This condition triggered the occurrence of crisis in the court and cause low credibility and decrease of prestige for the court.

In the recent development, there are occurrence of phenomenon defaming dignity and prestige of the court along with its apparatus, particularly for the judge. The act and attitude shown by the justice seeker, legal practitioner, the press, social-political organization, Non-Governmental Organization (NGO) or other parties, in such way humiliating the court as above, directed to the judiciary process, officials or the court decision can be categorized as the "contempt of court".

In reality, Contempt of Court is not a recent phenomenon, it is a fact that a contempt has long been oftenly occurred to the court and its apparatus either inside or outside the court building. In 2003, for example, particularly on 15<sup>th</sup> of November 2003, the building of District Court of Larantuka was burnt by irresponsible parties. The same tragedy also happened several years afterwards in 2006 in the District Court of Maumere, in 2011 in the District Court of Temanggung, in 2013 in the District Court of Depok, and in 2018 in the District Court of Bantul. Attack to the judges and apparatus of the court was oftenly occurred. Handover of vehicle rode by a judge was occurred in Gorontalo in 2013. Long before the Judge Agung Safiuddin Kartasmita was shot to death at the time when he was riding his vehicle to go to his office to work. There was also countless number of deterrence to the bailiff during the execution process. In 2005, a judge was stabbed by one of the

disputing party in the proceeding room of the Religious Court of Sidoarjo. On 23<sup>rd</sup> of December 2008, an individual prosecutor attacked a judge in the District Court of Poso a moment after the judge released the defendant. Lastly, on 18<sup>th</sup> of July in the District Court of Central Jakarta, an individual advocate tortured a judge using his belt when the judge was reading the court decision in a session open for public.

The said vast number of occurrence categorized as “contempt of court” raise the urge to realize a separate and systematic regulation in Indonesia, since there has been no sufficient legal instrument yet to regulate and protect the dignity, nobleness and the prestige of the court from misconduct of various parties. The same also serve as the proof of threat against the existence of judiciary body and apparatus, of which, they shall need to perform their function better. The said threat will not subside if there is no prevention through an effective law enforcement. Both awareness and level of education alone shall not be sufficient to reduce the occurrence of contempt of court.

Indonesia is way behind compared to other countries in this regard. Contempt of Court Act was born around 188 years ago in the United States. Australia enact the Law concerning Contempt of Court as of 116 years ago. Other developed countries are already having similar Laws. India has owned the same as of 1971.

The absence of specific and clear regulation cause ineffective law enforcement, the indication shows that there are relatively small amount of people put to trial due to their act of “contempt of court”, regardless of the fact that there are lots of misconduct that might be qualified as such in Indonesia, either inside or outside of the court, either in criminal, civil or state administration cases. The Law concerning Contempt of Court is also important for the justice seeker. We will discuss further through this article, the contempt of court in Indonesia from the prespective of law enforcement and the urgency of its regulation in the future, by comparing with the contempt of court in Thailand.

## **RESEARCH METHOD**

As a legal research, this article is the essence extracted from the study made by the author during several years, on the contempt of court. The legal research was made in juridical-normative method using sources from secondary data, however, taking into account that in practice the contempt of court occurred a lot and we need further opinions from judges and other legal practitioner, we believe that we need further primary data to support the secondary data, thus, we use the comparative legal study method with Thailand to see how the regulation and law enforcement is running in other country based on the same legal system with Indonesia, namely civil law.

## **RESULT AND DISCUSS**

### **The History of Contempt of Court**

Contempt of Court is a legal mechanism firstly occurred in Common Law system with its case law, for instance in the United Kingdom and the United States. According to history, Contempt or insult is an act against each direct order from the king or each direct disobedience to the king or his order. Since 1742, the United Kingdom has applied the Contempt of Court with the existence of pure streams of justice doctrine considered as the basis to impose the Contempt of Court, further renewed in 1981 through the enactment of the Contempt of Court Act 1981. The United States firstly legislate the Contempt of Court in 1789.

The Contempt of Court is regulated with the purpose of guaranteeing and enacting the judiciary process, to make it free from intervention from various parties, including the parties involved in the judiciary process, mass media, or the court officer itself. Contempt of Court as a regulation is the form of legal remedy to defend public interest and the supremacy of law, in order to get a proper and just judiciary process, without interference, influence or intervention from other parties, either during the judiciary process at the court or outside the court building.

Overview to the Contempt of Court will show close relation with the enforcement of Ethic Code and the Code of Conduct for Judge, both are meant to protect judge's independency. The Contempt of Court also has the purpose to prevent intervention to judicial authority, either inside or outside of the trial process.

According to the Black's Law Dictionary, Contempt of Court is an act viewed as disgracing, impeding or infringing the court in manifesting justice, or seen as an act of decreasing court's prestige or nobleness. It is made intentionally by a person with the intent to injure the nobleness or prestige of the court or with the tendency to impede or waste the implementation of judiciary or made by a person who is within the authority of the court as the party handling the case or does not fulfill previous recognized subject-matters. Based on this, then it can be concluded that either the bailiff or the whole court officer may commit a Contempt of Court.

#### **Definition and (qualification) form of Contempt of Court**

The term or definition of Contempt of Court alone is deriving from the law tradition in the United Kingdom and other countries unified in the Common Law System family. During the middle age in the history and legal tradition of the Contempt of Court in the United Kingdom, there was a very strong connection with the structure of the United Kingdom as a monarchy. All people must submit to the king as the supreme authority. The king is a source of law and justice, which authority is delegated to the judges, hence, the Countempt of Court is seen as identical to the Contempt of The King.

From the etimologic point of view, the term of Contempt of Court is deriving from the word Contempt which means infringing, insulting, contemned, and the word Court which means judicial court. In short, Contempt of Court might be defined as an act infringing, insulting, contemning the judicial court. The term Contempt of Court in English has 5 meanings:

- a. Lack of respect accompanied by feelling of intense dislike,(noun,feeling);
- b. A manner that is generally disrespectful and contemptuous, (noun,attribute);
- c. Open disrespectfor person or thing,(noun,communication);
- d. A willful disobedience to or disrespect for the authority of court or legislative body (noun,act);
- e. The act of contemning or despising; the feeling with which is esteemed mean,vile,or worthlees,disdain,scorn (noun). ( Muladi, Arief, 1992)

In Indonesia the term and definition of Contempt of Court from the prespective of the rules and regulations were firstly made in the general elucidation of the Law Number 14 of 1985 concerning the Supreme Court, it stipulates that the criteria of Contempt of Court consists of assessment to the conduct, behavior, attitude and/or verbal words ( Seno Adji, 2007).The Elucidation of the Law Number 14 of 1985 concerning the Supreme Court explicitly requires the existence of specific law regulating this contempt of court. In 1987, Chairman of the Supreme Court along with the Minister of Justice has issued a Joint Decision Letter (JDL) of the Chairman of the

Supreme Court and the Minister of Justice (JDL – Contempt of Court) Number:KMA/005/SKB/VII/1987 and Number:M.03-PR.08.05 of 1987 concerning the procedure of supervision, enforcement and self-defence for the legal counsel.

The experts are using the common law (United Kingdom) system as the ground to determine the form or the qualification of the Contempt of Court, taking into account that the said system has regulated the Contempt of Court in a separate law (Contempt of Court Act 1981), it gives 2 form of qualifications: criminal contempt of court and civil contempt of court, this difference does not related to the type of sanction, since both are punishable by crime or fines, the difference is only in the type of conduct.( Manan, 2013)

The details on the criminal contempt of court and civil contempt of court is elaborated hereunder:

#### **a. criminal contempt of court**

Muladi defines the criminal contempt as every act that tends to impede the flow of judiciary administration, this might have double interpretation, **first**, it may be interpreted as the court administration in terms of management related to the organization, administration and financial regulation of the judiciary body and the **second**, is in terms of administration of justice covering the caseload management and the litigation procedures as well as practice in the framework of judicial power ( Muladi, 2002).

Barda Nawawi Arief, stipulates that a criminal contempt of court is a disrespectful act to the court or to the procedures of the court or the act of impeding the judiciary or tendency to disrespect the judiciary.( Nawawi Arif, 2007). He further states the classification or the shape of scopes from the criminal contempt of court as follow:

- 1) Interference before or inside the the trial court room;(contempt in the face of court, direct contempt or contempt in facie). This interference is occurring directly in the court room during the trial. The interference might be happening to every kind of judiciary, either for the ones made by the parties, visitors, press, or even the legal enforcer.
- 2) Acts affecting judiciary process for the fair trial; (acts calculated to prejudice the fair trial). The act considered as this type of contempt are the threat, intimidation, bribery or the act to influence the judges, and witnesses.
- 3) Acts humiliating or scandalous for the court; (scandalizing the court) it is actually included as contempt out of court yet aimed to decrease the prestige of the judge or the court. Scandalizing the court is made through distributing news on the disgraceful act or defamation of the judge's reputation, it has the purpose to try to disgrace the court in front of the public's eyes. Contempt by scandalizing is considered as a report decreasing the authority of the court and affect the purpose of court's existence.
- 4) Interfering the court's official; (**obstructing the court officer**), the interference or an act of threatening, hitting or attacking made against the judicial officer (judge, prosecutor or bailiff). The interference might be deriving from the parties directly or indirectly involved with the court.
- 5) Vengeance against the conduct made during the judiciary process; (revenge acts done in the course of litigations). This type of contempt usually directed to the witnesses. This vengeance is made by the parties sentenced with punishment by the court or unsatisfied with the court decision. Since those parties thought that they were sentenced due to incriminating report

made by the witnesses to the court. The act might be in the form of attack, threat or intimidation to the witnesses.

- 6) Breach of obligation by the court officer; (breach of duty by an officer of the court). Legal authority related to the justice procurement activity is performed by the court in this regard. In each state of law, each person has the right to access justice in case of a lawsuit. Therefore, each judiciary officer must act according to the applicable regulations. Breach of obligation by the "king officer" is "the oldest form of a contempt".
- 7) Breach made by an advocate (contempt of court by advocate). In performing his task, an advocate as a professional must always be responsible to respect and to act rightful as well as performing good conduct to the court officer, client, or the judiciary body itself. Contempt of Court made by an advocate might be performed through the creation of consensus with the opposing side from the party he is supposed to assist, despite that he must have already know that his conduct is harmful to the interest of his client; or trying to win the case, using his incentive to influence the witnesses, interpreter, investigator, general prosecutor, or judges in the relevant cases.

#### **b. Civil Contempt of Court**

Civil contemptis used to portray contempt caused by incomppliance to the orders given by the civil court. The breach made in the civil contempt is caused by a failure of a party in dispute to conduct or perform court decision in the spirit of giving benefit or profit to other parties. Thus, in this regard, the act is not opposing the prestige of the court, it is harmful to other parties instead, of which, a court might issue an order or stipulation to oblige the opposing party to execute its obligation upon the request from the party harmed. The perpetrator of the civil contempt is imposed by a forced sanction (coercive nature), the sanction will be stopped if the perpetrator is performing the court's order. Beside to protect the rights of the winning parties, the sanction is given to the perpetrator of the civil contempt in order to protect the effectivity of the arrangement of the court administration by showing that the court's order is indeed executed.

### **Comparison between the Law Enforcement of the Contempt of Court in Indonesia and Thailand**

#### **Contempt of Court in the practice of the law enforcement in Indonesia**

The constitution is explicitly regulating the necessity to protect and secure the judges particularly to perform the function of the judicial authority, we can see how the legal enforcement works related to the case on the Contempt of Court in the elaboration down below.

The first occurrence of case related to the contempt of court was happened in the District Court of Central Jakarta in Indonesia, it was made by Adnan BuyungNasutionduring the trial of H.R. Dharsono, the member of 50 Petition, he made a riot in the court and considered as insulting the court with his act of protest, when he defended H.R. Dharsono. Since then, there has been continuous occurrence of the contempt of court, based on the result of Research from the Consortium of the National Law Reform (KRHN), there were at least 30 times of insult to the court during September 2005 to February 2011. Most of the insult was in the form of violence, either inside or outside of the court. The result of the research elaborated a conclusion that the act of insult to the court is in a serious stage currently, since it has already included violence act in the court room instead of verbal act only. The insult grows from targeting court's property to the assembly of the judges.

Contempt of court might happen in all stage of examination of a case, starting from the preliminary stage, in the trial stage, or in the execution stage. As for the judiciary scope, it might occur in the public court, religious court, state administrative court, or in the examination process in the Constitutional Court. Aside from occurring in the court room, it is further emphasized that the contempt of court might occur outside of the court building, likewise, the perpetrator might be coming from the visitor, advocate, NGO, including the Press. (Afriana, 2018)

Some of the cases concerning the contempt of court were not or have not yet settled through trial process. One of which is in the case occurred in the Court of Industrial Relation in Jakarta, in 2012, the Vice Chairman of the District Court of Central Jakarta and one of the judges had no choice but to break down the door since hundreds of labor force to come in to the judge's room. Police apparatus were not able to stem the insistence. Other case in the District Court of Blitar in 25<sup>th</sup> of April 2016 confides that a visitor was using abusive words in the court room just because the judge suspended the trial. Further, a visitor in a trial in the District Court of Binjai, on 26<sup>th</sup> of March 2016 was chasing a member of the assembly, he claims for the retrieval of security deposit. A judge in the District Court of Cibinong received a threat of murder from text message and in the North Maluku in 2008, there was a bomb explosion in the residence of the Chairman of the High Court, the bomb destroyed car for service and the garage wall.

As for the contempt of court settled through trial, we can see them in the case occurred in the court room of the Religious Court of Sidoarjo, at the time when a divorce decision was declared and the marital property was divided, the former husband, which was a military member, went out of the court room and took a bayonet from his car, he went back to the room and right after the declaration of the decision was finished, the former husband stabbed his former wife with the bayonet, a Judge who tried to separate them was also stabbed by the same tools, both were died due to this event. In this case, the military member (defendant) was decided and proven as guilty for second degree of murder as elaborated in the Article 340 of the Criminal Code of Conduct (Case No. 85K/MIL/2006). There is other case in the Court in South Jakarta, where an advocate made a protest by slamming a book to the table, the trial was in riot and was not condusive, the case was processed as a minor criminal act (misdemeanor) elaborated in the Article 217 of the Criminal Code of Conduct (Case No. 06/PID.TPR/2011/PN.JKT.SEL). Other case in the District Court of Purwakarta tells us about a defendant who force a judge to perform a trial in an unpleasant manner, and he also insult the Judge before the Court, he was charged with alternative indictment: First, breaching First Article 335 Paragraph (1) of the Criminal Code of Conduct, or Second, breaching Article 310 Paragraph (1) of the Criminal Code of Conduct in conjunction with the Article 316 of the Criminal Code of Conduct. The assembly of judges in the Decision Number 241/Pid.b/2006/PN.PWK decided that the defendant is legally and convincingly proven as guilty of crimes against judicial authority; by forcing the judge to go on a trial and he was sentenced by a one-year imprisonment.

The latest case was happened in the District Court of Central Jakarta, on 18<sup>th</sup> of July 2019, it became the center of public attention, an advocate was making a dishonorable action by attacking the chairman of the assembly of judges and one of the member of the judges, the riots started when the assembly of judges was reading the court decision for civil dispute, before he was finished, the Advocate suddenly approached the relevant judge and was attacking with the belt he used. The perpetrator was immediately declared as defendant, the case is currently under trial process, and the advocate is threatened with several layer of articles, namely Article 351 paragraph (1) and Article 212 of the Criminal Code of Conduct.

Based on the elaboration above, we know that the law enforcement against the contempt of court as a criminal act has not been implemented in optimum manner, since normatively, the positive law in Indonesia does not have definitive, specific and complete regulation on the contempt of court and there has been no law clearly regulates its settlement. On the other hand, the lack of public trust to the judiciary institution is also one of the core problems on the occurrence of harassment to the court (Contempt of Court). This crisis of public trust is largely affecting the integrity and prestige of the court as the last resort to access justice. ( Gultom, 2006)

As for the reason on why the cases related to the contempt of court is unable to be settled through the trial process, despite that it has clearly downgrading the prestige of the judge: first, the settlement of dispute itself basically has the same nature with other regular case, in the end, the judge as the victim must create his own report, and go through time-consuming steps of examinations while he still has to deliver his tasks as a judge, second, most judges feel low or unease if they must be processed through trial, let alone appear face to face with the perpetrator third, no guarantee of security for the judge in performing his task, this rise fear for the judge to report the perpetrator, both for his own safety and his family's.

### **Contempt of Court in the practice of legal enforcement in Thailand**

The concept of the Contempt of Court in Thailand is different from Indonesia, every legal process in Indonesia is opened to the public, some cases on the "insult to the court" has been processed through the court, however some still unprocessed despite that it is clearly qualified as a contempt of court, this is due to the feeling of fear or even feeling of insignificance from the Judges themselves, they consider that these acts will subside on its own, so nothing should be done against it.

One of the most important matters in the legal enforcement of the contempt of court in Thailand, is that there is no need of report, in case there is an act qualified as a contempt of court occur before the court at the time of proceedings, the judge might consider and immediately declare a sentence either ordering the perpetrator to get out of the court room or in case the situation is dangerous, the judge might ask for assistance from the police, however if the contempt of court does not occur directly at the time of proceedings, then the victim still has to make a report, since the police does not have any authority related to the case of insult to the court.

The same applies when the decision is imprisonment, the judge might declare a decision without the need of examination to the perpetrator, or to give chance to the perpetrator to defend himself. This can be seen from the Decision of the Supreme Court No. 4617/2547 of 2004, which states that a decision on the contempt of court does not have to be issued through normal process as the handling of examination in other criminal cases. Likewise, in the Decision of the Supreme Court No. 635/2559 of 2016, it is stated that the settlement of contempt of court through trial is not a general trial as referred in the Criminal Procedural Law provisions, therefore, it does not need investigation process, including examination to the witnesses, since the inquiries are only deriving from the facts, thus the defendant does not need to put under oath or accompanied by legal counsel.

There are several matters that we must consider in handling the contempt of court in Thailand, the Judge who issue a decision of the contempt of court must be different with the one handling the initial case, the latter judge must also be able to separate the main case with the relevant case of contempt of court, and he must not have any conflict of interest; furthermore, the Judge must take discreet and sharp-witted consideration to produce a fair decision. Different with

the nature in Indonesia, there were several cases in Thailand where the judges within the trial proceeding of certain case finds that the witnesses were not giving correct testimonial, even if this might already be qualified as an act of contempt of court, yet as author has researched, there has no single witness imposed by this charge, instead, they are threatened to be charged with the act of false testimony, to process this charge, one must go through the investigation, examination of witnesses etc., from the start, often times, the Record of Proceedings of Court from the main cases are excluded from taken as an evidence. This comparison with Thailand is opening the horizon of thoughts on what step Indonesia would have taken if the contempt of court can directly be processed as it is in Thailand, it would be very great, moreover if this complies to the fast and affordable principles.

In declaring decision to the perpetrator of the contempt of court, judges in Thailand are rather imposing sanction in the form of fines instead of imprisonment. It is different with Indonesia, where the judges always try to choose imprisonment for all kind of crimes, although there is alternative charge of fines, they consider that imprisonment will create higher deterrent effect, despite of the fact that such kind of charge does not lower the rate and variety of the crimes.

### **The Urgency of Contempt of Court Regulation in Indonesia: A Futuristic Study!**

Indonesia still separate the provisions on the contempt of court in the rules and regulations, although the term of contempt of court has officially expressed in the general explanation of the Law Number 14 of 1985 concerning the Supreme Court. Different with this, Thailand has already had its own regulation on the contempt of court in the Criminal Code of Conduct, it is in the III<sup>rd</sup> Title concerning Act of Crim related to the judiciary arrangement, it consists of two Chapters, the 1<sup>st</sup> Chapter writes about act of crime for judiciary official (there are 26 Articles, from Article 167 to Article 199) and Chapter 2, concerning Crimes in the field of judiciary, there are six articles from Article 200 to Article 205.

The government has already fulfilled this necessity to renew the regulation on the contempt of court by issuing the Draft Law (RUU) on the Insult to the Court, it has been registered in the National Legislation Program (Prolegnas) of 2015-2019 and this Draft Law on the Contempt of Court has been made as one of the priorities, one of the initiator is from the DPP-Indonesian Judges Association. Nonetheless, up to this date, the RUU referred has not yet been validated.

While the RUU concerning the Insult to the Court (Contempt of Court) still has uncertain progress of validation, on the other hand, the validation of RUU for the Criminal Code of Conduct which should have taken place in early September 2019, is delayed due to various conditions. The RUU for the Criminal Code of Conduct has made several renewals of regulations related to the contempt of court, it shall be regulated under Chapter VI concerning the Criminal Act against the Judiciary Process, which consists of several parts namely:

- First part, concerning Interference and Misdirection of the Judiciary Process, (Article 281 and Article 282)
- Second part, Impeding the Judiciary Process, (Article 283 until Article 296)
- Third part, Destruction of Building, Court Room and Court Trial's Equipments (Article 297 paragraph (1) until paragraph (4))
- Fourth part, Protection of Witness and Victims, (Article 298 until Article 303)

The regulation on the Contempt of Court which applied the whole time is only implicitly regulated under the Criminal Code of Conduct. In practice, this has risen unfairness and uncertainty of law. The certainty of law obliged the creation of general regulations and principles applied for the

public. It aims to create secure and peaceful environment for the public, on that note, the regulations must be strictly be enforced and executed. There are three pillars necessary to manifest the certainty of law, namely the rules and regulations, agency and legal institution, which are all channeled through institutional decision. The most important requirement to manifest the legal certainty is the existence of clear law or rules and regulations, to prevent multi-interpretation.

Clear regulation is necessary as one of the pillars of the effective and efficient law enforcement in order to manifest the legal certainty, that is why we still need an incrimination against the act of harassment to maintain the prestige of the judge. It is important to perform this incrimination against the said acts and it is only possible through clear regulation and procedures. We will need the role from the law in the development to ensure that the change is delivered in an orderly manner. The laws or court decision might help to execute the change in order, since, either the change or the order are both considered as the purpose of developing society, therefore, we cannot ignore the law in the process of development. In this regard, law is considered as the tool of social engineering.

In the context of legal development, this research shows that a renewal of law is necessary to adjust with people's need. In order to enforce the law, the author sees that the time has come for Indonesia to have a separate regulation on the Contempt of Court, bearing in mind that this is in line with both needs of the judges and the society. Considering that the act categorized as Contempt of Court is expanding, to the extent that all acts or deeds principally infringing the safety, and psychological or physical composure, then a separate regulation on the Contempt of Court is necessary, as it must be included in the special crime, or in other words, it is not integrated in the Criminal Code of Conduct.

As a state, Indonesia has the main principle underlying the civil law system, binding force is manifested through regulations in the form of laws that is systematically arranged in a certain codification or compilation. In relation to the main value of law that is simultaneously is the purpose law's existence, the basic principle on this legal system is the certainty of law. Overviewing from the politics of law, it is urgent to enact a regulation on the contempt of court in the future, whether it shall be comprised in a special law or completely elaborated in separate Chapter of the Criminal Code of Conduct, the most important matter is to put endeavor to create new legal principles, using justice, expedience, and legal certainty as the basic value, with the vision of the renewal of law (*iusconstituendum*), provided that it shall pay attention to legal order at all times. The scope of the contempt of court as a regulation must be able to guarantee the dignity and prestige of the court.

## **CONCLUSION**

The law enforcement against the contempt of court as criminal act has not yet been implemented in optimum manner, there are lots of cases that can be categorized as a contempt of court in Indonesia, yet it is not or has not yet been settled through the court, since, normatively, the positive law in Indonesia does not have definitive, specific and complete regulation on the contempt of court and there has been no law clearly regulates its settlement. This is resulted into ineffective law enforcement against the contempt of court, it also causes injustice and impediments on the legal certainty. The comparison with the provisions in Thailand shows that the qualification of insult against the court stipulated under the Criminal Code is the same as the act of contempt of court in the Civil Code. To examine and decide cases related to the Contempt of Court in Thailand, is under the jurisdiction of the Court of Justice, there is small number of cases, the sanction imposed is effective and the law enforcement is good, people's respect to the king has more or less, affect the

awareness of the same to the judiciary institution. Overlooking from the politics of law, it is urgent to immediately create a separate regulation or complete provisions on the contempt of court in the Criminal Code of Conduct, nonetheless, the most important matter is to put endeavor to create new legal principles, using justice, expedience, and legal certainty as the basic value, with the vision of the renewal of law (*iusconstituendum*), provided that it shall pay attention to legal order at all times.

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