

Policy formulation crime contempt of court based on the national criminal code

Maulidza Diana Zulfa¹, Eko Raharjo², Maya Shafira³

University of Lampung, Indonesia¹⁻⁴

maulidzadiana28@gmail.com



Article History

Received on 11 February 2024

1st Revised on 4 March 2024

2nd Revised on 20 March 2024

Accepted on 22 March 2024

Abstract

Purpose: The aim of this research is to analyze the regulation of the Contempt of Court criminal acts based on the National Criminal Code, and to analyze the policy formulation of the Contempt of Court criminal acts based on the National Criminal Code.

Research methodology: This study is a type of Normative Juridical and Empirical Juridical research. Normative jurisdictional research is carried out based on legal materials such as legal theory, legal principles, and legislation related to research.

Results: Based on the results of research and data obtained when conducting interviews with several sources, the author believes that the Contempt of Court problem is closely related to criminal law policy (penal policy), especially at the formulation stage, namely, the stage of determining what actions will be made into criminal acts and determining sanctions.

Limitations: The Contempt of Court regulations in the previous Criminal Code, which is a colonial legacy, is still unclear and does not specifically regulate the Contempt of Court acts. Existing regulations in positive law regarding the Act of Contempt of Court are still being debated regarding the definition and classification of an act that is considered to undermine the authority and insult the judicial process.

Contributions: This study highlights the need for legal reforms that adapt to societal conditions. In an effort to enforce the law, as is the offense of the Contempt of Court in the National Criminal Code, which has undergone changes to suit the current situation of Indonesian society.

Keywords: *Contempt of Court, National Criminal Code, Policy Formulation*

How to cite: Zulfa, M. D., Raharjo, E., & Shafira, M. (2022). Policy formulation crime contempt of court based on the national criminal code. *Dynamics of Politics and Democracy*, 2(1), 37-48.

1. Introduction

Article 24 Paragraph (1) of the 1945 Constitution which states that "Judicial power is free power in administering justice for the sake of upholding law and justice." The Supreme Court is the judicial body with the highest position among the existing judicial bodies. A Supreme Court Judge must have good qualities and personality, be fair, professional and of course have experience in the legal field as stipulated in Article 24A of the 1945 Constitution. The judicial power in administering justice is vulnerable to actions that have the potential to undermine the institution of justice. Acts of insult against individuals and/or judicial institutions can be carried out verbally, in writing, and/or through physical actions. These acts of humiliation can occur inside or outside the court, and even the media participate in various efforts that undermine the authority of the court institution.

The position and authority of judicial power in Indonesia is regulated in Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power, which was subsequently amended by Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 concerning the Basic Provisions of Power Justice. The main changes in the Judicial Power Law concern the elimination of executive power

interference with judicial (judicial) power. The elimination of executive interference with the judiciary is also the result of the reform agenda of TAP MPR Number X/MPR/1998 in the legal sector. The current position and authority of the judiciary are regulated by Law Number 48 of 2009 concerning Judicial Power.

Based on Article 24, judicial power is the sake of upholding law and justice, whereas Law Number 48 of 2009 concerning Judicial Power states that judicial power is a free state power in administering justice for the sake of upholding law and justice based on Pancasila and the Constitution. The legal state of the Republic of Indonesia was implemented in 1945.

The judge's freedom is not unlimited, by showing an arrogant attitude about his power (arrogance of power) by using his freedom to justify any means. However, this freedom must be based on laws that originate from appropriate and correct statutory regulations, interpretation of the law through a justified approach, and the freedom to seek and discover the law (*recht vinding*). There is no complete freedom without responsibility, in other words it can be interpreted that the context of the judge's freedom (independence of judiciary) must be balanced with judicial accountability (Andrisman & Raharjo, 2023).

The interaction process in a legal court is a form of legitimation of various types of attitudes, including both individual relationships and social groups. When proceeding in court, there is a principle that examinations carried out in court are open to the public, unless the law states that the examination must be carried out in private. This can be seen in Article 153 Paragraph (3) of Law Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter abbreviated as KUHAP) which states "For the purposes of examination, the Chief Judge of the trial opens the trial and declares it open to the public except in cases regarding morality or whether the defendant is a child." This is confirmed by the provisions of Article 13 of Law Number 48 of 2009 concerning Judicial Power, which states that "all court examination sessions are open to the public, unless the law determines otherwise." With the enactment of this article, everyone can watch the proceedings in court, especially if the case currently underway in court is a matter that can attract the public's attention, of course this can increase the enthusiasm and curiosity of the public to watch the trial of the case.

The trial process has attracted public attention because it involves the quality and authority of the court. Justice seekers are enthusiastic about going to court to see a judicial process that reflects justice, but on the other hand, they act condescendingly and even fight to defend themselves in certain ways if their demands and desires are not met, so there is the potential for something to happen that hinders the judicial process because in any case, it will only two things happen: losing or winning, being granted or rejected, being punished, or being acquitted in a court proceeding. Based on these conditions, justice is not only guided by the wishes of the community, but judges in carrying out their duties must be in line with legal norms and based on the judge's beliefs so that justice can be obtained from a decision. Of course, the judicial process must be protected from interference in the form of pressure or intimidation originating from certain parties who are indicated to be able to reduce the process in the judicial institution.

Law No. 1 of 2023 concerning the Criminal Code (hereafter abbreviated as the National Criminal Code) was promulgated on January 2, 2023. The National Criminal Code will come into effect after 3 (three) years after the date of promulgation. The reform of the Criminal Code aims to obtain national criminal law with a modern paradigm. The Criminal Code is designed to adapt to circumstances, legal politics, and the direction of development of society, nation and state that respects human rights (Ananda Dwi Kartika, Septiana, Ariani, Kasmawati, & Nurhasanah, 2022).

The Contempt of Court in Indonesia has been found in the General Explanation of Paragraph 4 of the 4th paragraph of Law Number 14 of 1985 concerning the Supreme Court, which is now Law Number 3 of 2009 concerning the Second Amendment to Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court. Based on the general explanation of point 4 of Law Number 14 of 1985 concerning the Supreme Court above, the meaning of the Contempt of Court

is all actions, behavior, and/or words that can demean, undermine the authority, dignity, and honor of the judiciary. Thus, it can be understood that meaning is primarily focused on the authority, dignity, and honor of the judiciary. However, an institution is something abstract; these three things, namely authority, dignity, and honor, focus on the people who drive the institution, the results made by the institution, and the activity process of the institution.

The provisions of Article 218 of the Criminal Procedure Code state that every person in the courtroom must behave in accordance with court rules; if this is still not heeded, they will receive a warning, and if the warning is still not heeded, it is possible that they will be expelled from office. Courtrooms and prosecution can also be conducted.

The Contempt of Court in Indonesia continues because there are no specific regulations governing it. The contempt of court actions can occur at the stages of investigation, investigation, prosecution, examination at trial, and implementation of the decision. Regarding the Contempt of Court, there are still differences of opinion; some argue that the rules regarding the Contempt of Court should not be applied because they will only protect and make judges authoritarian (abuse of power), but the rules regarding the Contempt of Court already exist in statutory regulations. Indonesia, although not explicitly mentioned as a Contempt of Court. Another opinion stated the need for regulations regarding the Contempt of Court to protect judges from actions that could result in the loss of their independence in carrying out their duties. This desire regarding the existence of special regulations regarding judicial crimes is a response to criticism aimed at the judiciary and judicial officials, this criticism was responded to by judicial officials with "anger." However, criticism from these circles is based on dilapidated judiciaries and judicial officials in Indonesia (Aurora et al., 2023).

The essence of the polemics and differences of opinion can be qualified into several views regarding the existence of the Contempt of Court: first, there are groups who do not agree on the existence of Contempt of Court regulations; second, groups who agree on the existence of Contempt of Court regulations but do not agree that they should be formed in a law. Special laws; and third, there are those who agree to be regulated by special laws.

Insults that occur in the court environment during the trial process are not only verbal acts, but have also led to acts of violence and have been targeted not only at trial facilities, but have also led to trial judges and law enforcers.

Based on this statement, there are two important aspects that are the object of the Contempt of Court regulation: external judicial institutions and internal judicial institutions. Internal judicial institutions are officials who drive judicial institutions, their working processes of judicial institutions, and the results of their working processes of judicial institutions. Internal judicial institutions, including judges and other judicial institution officials, include prosecutors, police, legal advisors, justice seekers, witnesses, the press, and people present at the trial, either individually or in groups.

Insults committed against a court can be in the form of direct insults, direct contempts, indirect insults, or indirect contempts. Direct contempt occurs when someone insults directly in court, while indirect contempt occurs when someone insults outside court.

There are two different types of court contempt: criminal contempt and civil contempt. Criminal contempt is an act committed by disrespecting the court or its proceedings, or causing the court to be disrespected. The perpetrator of this offense or the perpetrator of a criminal contempt committed against the court or judge may be subject to a fine or imprisonment as a result of his or her actions. Civil contempt is an offense committed against a party that has authority from the court; in other words, this offense is not committed against the dignity of the court. The perpetrator of this offense is subject to fine compensation for losses (Khan & Sultana, 2021).

As an example of a case related to the Contempt of Court in society, namely during the verdict trial in the murder case of a female student at SMPN 1, Kemplagi. The Judge Made stated that AB (15) violated

Article 80 Paragraph (3) in conjunction with Article 76C of the Republic of Indonesia Law Number 17 of 2016 concerning Child Protection. AB was found to be guilty of killing AE (15), a class 3 student at SMPN 1 Kemlagi. A student from Kemlagi Village/District, Mojokerto, was sentenced to seven years and four months in prison. In addition, AB is also required to undergo job training at the Blitar Special Children's Development Institute (LPKA) for three months. A commotion broke out in the child-friendly courtroom after the judge had read the verdict (Sari et al. 2022). The victim's parents, family, and neighbors entered the courtroom to protest the Made's decision. The victim's mother, YA, who was in courtroom from the start, immediately started crying hysterically. The victim's father, AU, also spoke with a high voice. One of the victim's family members dared to go up to the table and asked for an explanation. The police tried to calm him down and asked him to come down.

An example of the second case is that members of Brimob intimidated the public prosecutor and panel of judges who tried the Kanjuruhan tragedy case. The intimidation in question occurred during the 12th trial, which took place at the Surabaya District Court (PN) on Tuesday (14/2). The YLBHI admitted that they received information that intimidation against public prosecutors was not only verbal but also physical. YLBHI said that this intimidating act was proven to have an impact on the trial. During the expert examination, the prosecutor did not ask any question. Previously, dozens of Brimob members shouted and cheered in front of the Surabaya District Court courtroom in the Kanjuruhan tragedy. They even shouted at the public prosecutor when the trial was suspended. "Brigade, brigade, brigade, brigade!" Shouted dozens of Brimobitu. Rahmat Hary Basuki, a prosecutor, protested the actions of Brimob members to the defendant's lawyer. "I'm reporting it. This is no longer conducive," said Hary. The three defendants who were tried at that time were former Danki 1Brimob Polda East Java AKP Hasdarmawan, former Head of Ops for Malang Police Commissioner Wahyu Setyo Pranoto, and former Head of Samapta Malang Police AKP Bambang Sidik Achmadi (AD). Kartika & Medlimo, 2022).

For example, the Contempt of Court cases can also be carried out through the media or the press, where the media carries out trials that are indirectly carried out by the press (trial by the press), so that it can form various kinds of public opinion that corner a particular party because the public can conclude for themselves which party is guilty. Right and wrong: which party deserves to be acquitted or punished before the judge's decision. As in the 2016 cyanide coffee case, most people believed that JKW carried out a premeditated murder.

Actions that demean, insult, and obstruct the judicial process are considered criminal offenses by the Contempt of Court. The problem in Indonesia is that this matter has not been regulated firmly and clearly because it still raises pros and cons for classification as contempt, so it is deemed necessary to have more firm and clear regulations governing the Contempt of Court actions.

The rules and application of sanctions to perpetrators of the Contempt of Court (contemnor) are still implicit in the positive law (*ius constitutum/ius operatum*) in Indonesia. The lack of strict sanctions or punishment for perpetrators of Contempt of Court results in an increase and repetition of contempt of court acts and has the potential to be followed by potential perpetrators of contempt of court. Therefore, further action must be taken to prevent acts of court contempt. This is one of the factors that decrease public trust in judicial institutions, thereby allowing vigilante behavior (*eigen rechting*). Based on this, it is hoped that regulations governing the Contempt of Court will provide a new understanding to the public regarding the authority and dignity of the judiciary.

Litigation in court is an important last resort to determine whether a person has been proven guilty in the alleged criminal case. This is also closely related to other law enforcement officials or other parts of the judiciary, such as the police, prosecutors, lawyers, and even members of the public or those who seek or represent justice. The legal process was interconnected. Judges are not an isolated part of the judicial process.

The urgency of regulations related to the Contempt of Court as a legal product that strictly or specifically regulates it is very clear. Based on the background content that has been described, the author feels

interested in discussing in more depth the "Policy Analysis of the Formulation of the Crime of Contempt of Court Based on the National Criminal Code."

1.1 Problem Formulation

1. What are the current conditions regarding the regulation of Contempt of Court crimes under the Criminal Code?
2. What policy for formulating the crime of the Contempt of Court is based on the National Criminal Code?

1.2 Purpose of Writing

The aim of this research is to analyze the regulation of the Contempt of Court criminal acts based on the National Criminal Code, and to analyze the policy formulation of the Contempt of Court criminal acts based on the National Criminal Code.

2. Research methodology

This study is a type of Normative Juridical and Empirical Juridical research. Normative jurisdictional research is carried out based on legal materials such as legal theory, legal principles, and legislation related to research. Meanwhile, empirical juridicals were conducted through interviews. A qualitative analysis was performed.

3. Results and discussion

3.1 Regulation of Contempt of Court Crimes Based on the National Criminal Code

Criminal law, which regulates criminal acts, perpetrators of criminal acts, and punishment (sanctions), is the definition of material criminal law. The regulation of material criminal law in Indonesia is regulated by the Criminal Code, while the definition of formal criminal law regulates the implementation of material criminal law. Formal criminal law in Indonesia is regulated by the Criminal Procedure Code.

Renewing the Indonesian Criminal Code is essentially a form of effort to review and reform related criminal acts, accountability, punishment, and punishment, so that they are in accordance with the general socio-political, socio-philosophical, and cultural values of Indonesian society. Several articles contained in the National Criminal Code were changed, added, or deleted from articles in the old Criminal Code. There are also several articles in the Criminal Code that are currently maintained in the National Criminal Code.

Examining the effectiveness of the Contempt of Court regulations in positive law (*ius constitutum/ius operatum*), both material law and formal law, regarding the legal reform solution to the Contempt of Court regulation, its existence is considered quite important. Regulations regarding the Contempt of Court should naturally be regulated specifically in criminal law reform (National Criminal Code) and criminal procedural law reform (RUU KUHAP).

The absence of strict rules regarding the Contempt of Court implies that this discussion arises in the context of developing national law. Contempts of court cases that occurred in Indonesia include the fact that the public openly did not trust the judge's decision regarding a case suspected of being due to bribery or a political background, so that there were massive protests in front of the court, prosecutor's office, Corruption Eradication Commission (KPK), and the police so that a person can be punished or acquitted (Rahma, Triono, & AT, 2023). The term Contempt of Court has been officially confirmed in Law Number 14 of 1985 concerning the Supreme Court, which is now Law Number 3 of 2009 concerning the Second Amendment to Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court. in General Explanation point 4: "Furthermore, in order to further guarantee the creation of the best possible atmosphere for the administration of justice in order to uphold law and justice based on Pancasila, it is also necessary to create a law that regulates action against actions, behavior, attitudes and/or speech that can demean and undermine authority, dignity and honor of the judicial body known as Contempt of Court" (Medlimo, 2022).

Based on this explanation, it turns out that it requires the establishment of a special regulation regarding the Act of the Contempt of Court, which has not yet been realized to date. If we examine the explanation of Law Number 14 of 1985 concerning the Supreme Court, which is now Law Number 3 of 2009 concerning the Second Amendment to Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court, it states that the related aspects "Contempt of Court" includes actions, behavior, attitudes and/or words.

Listed in the General Explanation of Law no. 14 of 1985, which is now Law no. 3 of 2009, an action can be said to be a Contempt of Court if the action, behavior, attitude, and/or speech must contain elements or consequences that could attack or degrade the authority, dignity, and honor of the judicial institution.

These actions, behaviors, attitudes, and/or words are not only interpreted as active actions that can attack or degrade the authority, dignity, and honor of the judicial institution. For example, intentionally not carrying out an official's order based on the law (Article 216 of the Criminal Code) or not heeding the judge's summons as a witness (Article 224 of the Criminal Code), and so on.

The court's tempt recognizes the terms civil contempt and criminal contempt. Civil contempt refers to actions carried out by parties who are given orders or powers of attorney from the court but do not carry them out, resulting in fines being incurred as compensation. Meanwhile, criminal contempt is a behavior that does not respect the court or obstruct the judicial process. Based on this, criminal contempt can be divided into two aspects: institutional and process. Institutionally, criminal contempt refers to the court, and in the process, it is interpreted as an act of obstructing, impeding, or disrupting the judicial process. Criminal contempt committed against a judge or court will result in a fine or imprisonment of the perpetrator.

The act of insulting the court is divided into two categories: direct contempt before the court (direct contempt or contempt in facie) and/or indirect contempt before the court (indirect contempt or contempt ex facie).

Oemar Seno Adji classified those included in the Contempt of Court as follows:

1. Acts of court contempt committed through publication or notification (sub-judice rule)
2. Disobeying the rules or court summons (disobeying court orders);
3. Obstruction of justice processes (obstructing justice)
4. Attacking the integrity and impartiality of the court (scandalizing court)
5. Disgraceful behavior in court (Alim, Triono, & Yudhi, 2023).

P. Asterlay Jones and R. I. E. Card say that what constitutes the Contempt of Court is as follows:

1. Contempt in the face of court/contempt in facie (contempt in front of the court)
2. Scandalizing the court (court scandal)
3. Reprisal against jurors and witnesses (reprisal against jurors and witnesses)
4. Obstructing officers of court (obstructing court officers)
5. Violation of the sub judice rule (violation of judicial rules)
6. Publication with prejudice issue in pending proceedings (publication with prejudice issues in pending proceedings)

Barda Nawawi Arief classifies criminal contempts as:

1. Insulting in the face or in the courtroom (contempt in the face of the court, direct contempt in the face)
2. Actions that have the aim of interfering with the impartial running of the trial and occur outside of court (act calculated to prejudice the fair trial indirect contempt ex facie)
3. Actions that bring scandals to court (scandalizing in court).
4. Obstructing court officials

5. Revenge for acts carried out during the litigation process (revenge for acts done in the course of litigation)
6. Court officials who violate their obligations (breach of duty by an officer of the court)
7. Lawyers who commit violations (contempt of the court by advocates).

Bagir Manan divides the actions that are classified as criminal contempt, including:

1. Defaming the court (scandalizing the court)
2. Interference with the ongoing trial process (interference with justice as a continuing process).
3. Directly insulting the court (contempt in face of court)
4. Deliberately interfering in the judicial process using certain methods (deliberate interference with particular proceedings)
5. Unintentional interference in the judicial process through publications that could be detrimental (unintentional interference by prejudicial publications).

A number of legal experts or Indonesian legal experts are of the opinion that the formulation of offenses in the Criminal Code, which are classified as violations of the administration of justice and Contempt of Court, are considered similar to this type of crime (Medlimo, 2022).

Andi Hamzah and Bambang Waluyo expressed their views, that: "Offenses against the administration of justice actually have a wider scope than Contempt of Court (ansich). It is not only insults that are committed when the trial begins, but also includes all violations in the judicial process (offense against the administration of justice). Contempt may occur at the stages of investigation, prosecution, and examination before a court hearing or even during the implementation of a court decision (execution). "And it turns out that in our Criminal Code there are many regulations regarding offenses related to the administration of justice."

The Criminal Code still recognizes the existence of the Contempt of Court, even though it is not explicitly mentioned. The material containing the Contempt of Court is not completely absent but is arranged separately and out of sequence. Based on this, it is concluded that the Criminal Code still guarantees respect of the courts and the smooth administration of justice. Contempt of Court regulations in Indonesia are found not only in the Criminal Code, but are also spread in KUHAP Articles 217-218, and several other statutory regulations such as:

1. Articles 21 and 22, Articles 29 and 22, and Articles 35 and 22, respectively. Article 36, Law Number 31 of 1999 Law Number 20 of 2001 concerning the Eradication of Corruption Crimes
2. Article 20, Article 21, Article 22, and Article 23 of Law Number 21 of 2007 Concerning Eradication of the Crime of Human Trafficking
3. Articles 138 and 143 of Law Number 35 of 2009 concerning Narcotics
4. Article 87 of Law Number 8 of 2010 concerning the prevention and eradication of money laundering crimes
5. Articles 20, 21, and 22 of the Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, which has been stipulated as Law Number 15 of 2003 and amended into Law Number 5 of 2018.

It is also stated in the law enforcement professional code of ethics and trial rules regarding the Contempt of Court norms, which aims to provide respect and maintain the authority of the judiciary.

Based on the results of the research, the author believes that apart from criminal trials, court contests can also occur in civil trials, religious courts, and industrial relations courts, especially at the stage that produces a judge's decision, namely, the examination stage at the appellate and cassation levels, making it possible for a Contempt of Court to occur.

It was found that differences in legal systems resulted in the Contempt of Court not being well known in Indonesia, but better known in the common law legal system. However, there are other terms that have the same meaning, namely crimes against justice.

Andi Hamzah is of the opinion that there are two groups of countries whose Criminal Code includes Contempt of Court, the first includes it in a separate chapter and the second includes it in scattered articles so that it is contained in several different chapters. Indonesia is one of the countries that includes the Contempt of Court in several scattered articles, and it is found in several different chapters in its Criminal Code (Akib, Triono, Tisnanta, Hukum, & Medlimo, 2023).

According to the 2022 Contempt of Court Research Academic Paper published by the Indonesian Supreme Court Legal and Judicial Research and Development Center, the following behavior can qualify as the Contempt of Court:

1. Misbehaving in court (behaving disgracefully and inappropriately in court)
2. Disobeying court orders (not obeying court orders)
3. Obstructing justice (obstructing the administration of justice)
4. Scandalizing the court (attacking the integrity and impartiality of the court)
5. Sub-judice rule (acts of court contempt through notification/publication).

There is still no definite form of the Contempt of Court action. In 2018, the Judicial Commission conducted a closed-perception survey among judges at the first level, which discussed what actions could be called or classified as acts of the Contempt of Court. The results, although still temporary, have been published on a limited basis in the Ethics and Law Clinic Training of Trainers class in Bogor as follows:

1. Misbehaving in court (making noise or trouble in court)
2. Disobeying court order (obstructing or neglecting a decision that has permanent legal force)
3. Obstructing justice (crowds causing disruption to the trial process).
4. Obstrating justice (threats/terror/intimidation).
5. Scandalizing court (defamation of the court or judge).
6. Obstrating justice (physical abuse by judges).
7. Misbehaving in court (damaging the court facility equipment).
8. Sub-judice rule (arguments that go beyond the limits of court proceedings or decisions that do not have permanent legal force).

The offense of insult/defamation contained in Article 207 of the Criminal Code, which is a gift from the Dutch government that was inserted in the *Wetboek van Strafrecht voor Nederlandsch Indie* (KUHP), is different from other offenses of insult/defamation, as in Article 310 of the Criminal Code. Article 207 states that insult/defamation is directed not only to individuals, but also at institutions (public bodies).

In general, in the Criminal Code, the offense of insult is regulated in Chapter XVI Book II, namely Articles 310–321 of the Criminal Code entitled insult. According to Article 319 of the Criminal Code, the offense of the general insult is a complaint offense unless the insulted person is an official who is at the time or because he is carrying out his legitimate duties under Article 316, and the penalty is increased by one-third. However, Article 316 of the Criminal Code was changed by the Constitutional Court, based on Decision Number 31/PUU-XIII/2015, to become a complaint offense.

Based on the results of research and data obtained when conducting interviews with several sources, and based on the theory of criminal law reform where there are considerations in the form of foundations that must be taken into account, the author is of the opinion that the Contempt of Court regulation in the Criminal Code which is currently in force, is still It has not yet clearly regulated or classified the types of acts that constitute Contempt of Court and strict sanctions have not been implemented, this is one of the factors that acts of Contempt of Court are still found in the trial process, either by justice seekers or even by law enforcement officials themselves.

Therefore, some parties hope that legislators will create stricter and clearer regulations to regulate the criminal act of the Contempt of Court. The urgency of regulations regarding the Contempt of Court can be viewed from philosophical, sociological, and juridical aspects. The philosophical aspect related to the regulation of the Contempt of Court is that there is an interest in drafting a law that strictly regulates

the Contempt of Court in order to guarantee the creation of the best possible atmosphere for the administration of justice by maintaining judicial power so that it remains free, independent, and independent of uphold law and justice based on Pancasila. The sociological aspect related to the regulation of the Contempt of Court is that in the current developments and conditions in Indonesia, it is deemed necessary to emphasize the regulation of the Contempt of Court; with strict regulations, the public will be educated to respect the judiciary.

3.2 Contempt of Court criminal offense formulation policy based on the National Criminal Code

Policy formulation is part of the political enforcement stage of criminal law. The formulation stage is the stage of criminal law enforcement in the Abstract. In general, there are three stages that have been determined in the political enforcement of criminal law: the formulation, application, and execution stages. The formulation stage is the first stage, which is crucial for subsequent stages. The formulation stage determines the actions that will be determined or converted into criminal acts.

The formulation stage is a strategic stage of various operational/functional processes and criminal law concretization. This strategic position has the consequence that weaknesses in criminal law formulation policies will affect criminal law enforcement and crime prevention policies. However, both the application and execution policy stages still play an equally important role. The formulation, application, and execution stages must be interconnected and complementary to realize fair law enforcement (Alim, 2023).

Implementation of criminal law politics in accordance with current and future circumstances and conditions, including reforming criminal law. A policy approach must be adopted when implementing criminal law reform because reform is only part of a policy step. Based on the description of the meaning of "renewal," it can be stated that criminal law reform is defined as an effort or method to replace existing criminal law with a better criminal law, which is in accordance with justice and the development of society. Considering that criminal law, seen from a substantive aspect, is a legal system consisting of material criminal law, formal criminal law, and criminal implementation law, criminal law reform certainly includes these three criminal law subsystems. Thus, it can be stated that aspects of criminal law reform include, namely, material criminal law or substantive criminal law, formal criminal law or criminal procedural law and criminal implementation law (Zahrani, Nurmayani, & Deviani, 2022).

In line with this, planning in dealing with crime uses the theory of criminal law enforcement at the formulation stage, which covers three main problems of the structure of the criminal law system: the formulation of criminal acts/criminalization and threatened crimes, criminal responsibility, and punishment. In the formulation stage, legislation is formed by legislators regarding an action that is determined to be a criminal offense through the criminalization process. The act of Contempt of Court with the sub-judice rule type (insulting the judiciary carried out by means of notification or publicity), which was previously not regulated in the Criminal Code, has undergone a criminalization process because it is seen as endangering or detrimental to a legal interest, so that insulting the judiciary is carried out in this way. notification or publication is considered a criminal act, as regulated in the National Criminal Code.

The articles contained in the National Criminal Code that regulate the act of Contempt of Court are arranged in sub-chapters that are interpreted as criminal acts against the judicial process, including interference and misdirection of the judicial process; obstructing the judicial process; damaging buildings, courtrooms, and court trial facilities; and witness protection and victim.

Through what has been explained above, the author is of the opinion regarding the differences in the regulation of the Contempt of Court in the National Criminal Code and the previous Criminal Code. First, it lies in the arrangement or distribution of articles in the National Criminal Code; articles regarding the Contempt of Court have been arranged in a special chapter. In Chapter VI, the title Criminal Acts Against the Judicial Process is divided into four parts, whereas in the previous Criminal Code, the articles regarding the Contempt of Court were distributed in various separate chapters.

Second, the regulations regarding the Contempt of Court acts in the National Criminal Code articles relating to fines have been classified into categories that have been determined based on the type of criminal act committed, while the regulations regarding the Contempt of Court acts in the previous Criminal Code articles do not categorize fines. Third, the implementation of the rules for Contempt of Court in the article of the National Criminal Code regarding the act of publishing the trial process directly without permission; mentioning the identity of the reporter, witness, victim, or other things that provide the possibility of knowing the identity; and informing the whereabouts of the witness and/or victim. being protected in a temporary or new residence, whereas the previous Criminal Code did not regulate these matters.

Judging from the theory of criminal law enforcement, which contains three powers or authorities, namely the formulation, application, and execution stages, the author expresses his opinion that the formulation stage regarding the legal basis governing Contempt of Court acts of this type has been regulated in the Criminal Code; then, at the application stage, the application of statutory rules that regulate a criminal act to be applied in a reality or case, which is then used by investigators as a benchmark for the criminal act committed. In the application stage, the investigation is conducted by law enforcement officials such as the police and the prosecutor's office to collect data and evidence regarding the criminal act committed. This is different from cases in general, in which there should be an execution stage as the final stage of a case. It was found in several cases of the Contempt of Court that the perpetrator was not followed up strictly in the legal process but was only reprimanded or warned because the Contempt of Court regulations contained in the Criminal Code were said to have not clearly classified the types of acts that could be considered Contempt of Court (Medlimo, Septania, Hapsari, Zuleika, & Agustin, 2022).

Based on the results of research and data obtained when conducting interviews with several sources, the author believes that the Contempt of Court problem is closely related to criminal law policy (penal policy), especially at the formulation stage, namely, the stage of determining what actions will be made into criminal acts and determining sanctions. What will be worn when the act is violated, so that this matter is closely related to the criminalization process because there are differences of opinion or views regarding the existence of Contempt of Court: first, there are groups who do not agree on the existence of Contempt of Court regulations; second, groups who agree on the existence of Contempt of Court regulations of Court, but did not agree that it should be established in a special law; and third, there were those who agreed that it should be regulated in a special law. There are no rules that apply explicitly regarding the Contempt of Court; therefore, there is injustice and legal uncertainty in their application. Legal certainty requires the application of generally accepted rules or regulations to create a peaceful and safe situation in society; therefore, these regulations must be strictly enforced and implemented. Every applicable regulation must be in accordance with the community needs.

Regarding the issue of the Contempt of Court in Indonesia, behavioral norms that are established as legal rules should bear in mind the interests that must be protected, especially regarding intervention from other parties. Thus, the existence of the Contempt of Court in Indonesia becomes specific and clear between norms of behavior and criminal law (formulation of offenses), which are closely related and still do not forget the very important principle of legality as one of the tasks of criminal law to carry out its function, namely regulating people's lives. to create and maintain public order. Therefore, the results of this study highlight the need for legal reforms that adapt to societal conditions. In an effort to enforce the law, as is the offense of the Contempt of Court in the National Criminal Code, which has undergone changes to suit the current situation of Indonesian society.

4. Conclusion

The contempt of court regulations in the previous Criminal Code, which is a colonial legacy, is still unclear and does not specifically regulate the Contempt of Court acts. Existing regulations in positive law regarding the Act of Contempt of Court are still being debated regarding the definition and classification of an act that is considered to undermine the authority and insult the judicial process. Contempts of court actions that occur during the trial process are not only carried out by justice seekers, but can also be carried out by law enforcement officers. This is because, among other things, there are

no special procedures and strict sanctions or accountability for the perpetrators; what happens in practice is simply reminding or removing the perpetrators from the trial because there are no clear rules.

The formulation policy for the criminal offense of the Contempt of Court is the formulation of provisions for a criminal act that is considered to undermine authority and insult the judicial process. The Contempt of Court in Indonesia, which is regulated in the previous Criminal Code and the National Criminal Code, has not been specifically regulated in a special legal regulation as mandated in Law no. 14 of 1985 concerning the Supreme Court, which is now Law Number 3 of 2009 concerning the Second Amendment to Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court because there are several views regarding the existence of the Contempt of Court, including groups who do not agree with the existence of a Contempt of Court regulation, groups who agree with the existence of a Contempt of Court regulation but do not agree that it should be established in a special law, and groups who agree that it is regulated in a special law.

Policy formulation is closely related to the criminalization process, namely, determining what acts are included in the criminal act of the Contempt of Court that are considered to endanger the legal process; for example, the offense of the Contempt of Court concerns the sub-judice rule (insulting the judiciary carried out by means of notification or publication). Previously, it was not regulated in the previous Criminal Code but has been regulated in the National Criminal Code, which will apply because it adapts to community needs and existing conditions. There is a need to understand the Contempt of Court actions, which is a reference for law enforcement officials, legal advisors, and the public.

In the National Criminal Code, the provisions regarding the Contempt of Court are regulated by formal offenses, which focus on criminal acts or crimes, and the articles that regulate this matter have been regulated separately in a special chapter with the title Criminal Acts Against the Judicial Process and are qualified in the sub-chapter regarding acts. criminal offense of the court's Contempt.

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