

## Contempt of Court in Indonesia: The Meaning, Root of Problems and Its Alternative Solutions

Yayan Sopyan<sup>1✉</sup>

Sharia and Law Faculty, Universitas Islam Negeri Syarif Hidayatullah Jakarta – Indonesia

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### Abstract

The independent, transparent, and accountable judicial power is a *conditio sine qua non* for a democratic nation of law. Judicial power is executed through the judiciary to enforce the law and justice. Case trading, controversial decisions disrupting the sense of justice, are the causes of declining judiciary authority. This study uses a normative legal research method with the existing legislation approach as a positive legal norm. The cause of the contempt of court in Indonesia is due to internal and external factors. The internal factors are those including the powerless independence and impartiality of judges, declining authority, decision quality, and integrity. The latter are the community's attitudes such as selfish, permissive, unable to control themselves, and disrespect to the judiciary. The solution is the importance of improving the contempt of court law, restoring all decent functions of the judiciary, and educating the community to have legal awareness.

**Keywords:** contempt of court; legal awareness; judicial authority.

### Abstrak

*Kekuasaan peradilan yang independen, transparan, dan akuntabel adalah quanon sine conditio untuk bangsa hukum yang demokratis. Kekuasaan peradilan dijalankan melalui peradilan untuk menegakkan hukum dan keadilan. Perdagangan kasus, keputusan kontroversial yang mengganggu rasa keadilan, adalah penyebab menurunnya otoritas peradilan. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan peraturan perundang-undangan yang ada sebagai norma hukum positif. Penyebab penghinaan pengadilan di Indonesia disebabkan oleh faktor internal dan eksternal. Faktor internal adalah mereka termasuk independensi yang tidak berdaya dan ketidakberpihakan hakim, otoritas yang menurun, kualitas keputusan, dan integritas. Yang terakhir adalah sikap masyarakat seperti egois, permisif, tidak mampu mengendalikan diri, dan tidak menghormati peradilan. Solusinya adalah pentingnya meningkatkan penghinaan hukum pengadilan, memulihkan semua fungsi peradilan yang layak, dan mendidik masyarakat untuk memiliki kesadaran hukum.*

**Kata kunci:** penghinaan pengadilan; kesadaran hukum; kewenangan peradilan.

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## Introduction

Desrizal Chaniago, an Ex. Tomy Winata's Lawyer, had contempt of court by attacked two judges in the Central Jakarta District Court on July 19, 2019, Desrizal was disappointed his client's lawsuit was rejected by the judge. For his actions, Desrizal was sentenced to six months in prison by a panel of judges on December 17, 2019 ([metropolitan.kompas.com](#)). The horrendous event was when Hutomo Mandala Putra hired an assassin to kill the Supreme Court Judge Syafiuddin Kartasasmita, who had sentenced him to 18 months in prison and fined Rp30.6 B for the case of the Bulog land swap with PT Goro Batara Sakti.

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<sup>1</sup> ✉Corresponding Author: [yayan\\_sopyan@uinjkt.ac.id](mailto:yayan_sopyan@uinjkt.ac.id)

(Tirto.id). Tommy was found guilty as the mastermind of premeditated murder and was sentenced to 15 years in prison. At the level of the jurisdiction of the highest court, his sentence was reduced to 10 years. Ironically, when in Nusakambangan, he serviced his sentence for six years only (news.detik.com). Another tragedy struck M. Taufiq, the judge of Sidoarjo Religious Court, who was killed by Colonel (Marine) M. Irfan in the palimony dispute. When the verdict was completely read, M. Irfan stabbed his ex-wife, Mrs. Eka Suhartini, and then stabbed Judge M. Taufiq (nasional.tempo.com). On November 14th, 2013, the Constitutional Court building was full of protesters as the society acquired dissatisfaction feeling toward the Constitutional Court's decision led by Akil Mochtar on the results of the Maluku Provincial Election (republika.co.id). Additionally, Bantul District Court suffered the same condition as the group of Front Pemuda Pancasila acted anarchist, destroying a number of court facilities (news.detik.com). Years before the incident, on November 15, 2003, the NTT Larantuka District Court building was burned down by a mob. The same incident also happened in several places within the country: the Maumere District Court of NTT in 2006, the Temanggung District Court in 2011, the Depok District Court in West Java in 2013 and the Bantul District Court in 2018 (national.kompas.com).

Further cases still happen to contempt the court, such as Novanto in the case of "Papa asked for shares/*Papa minta saham*" and E-KTP, dodged the panel of judges's question by doing health comedy play in which he pretended to be sick (cnnindonesia.com). In other cases, Sultan Bhatogana, a former Chair of the House of Representatives Commission VII in the Corruption Case, was getting mad and challenged the panel of judges with inappropriate remarks (merdeka.com). O.C Kaligis also insulted the Religious Courts by claiming: "Religious court (PA) judges are stupid and PA must be dissolved" (sumbar.antaranews.com).

Besides those mentioned cases, there were uncommendable judges such as Iswahyudi Widodo and Irwan, who received bribes (news.detik.com), Wahyu Widya Nurfitri and Dewi Suryana, who was subjected to the KPK Special Operation (news.detik.com), and Yudhi who cheated at the same time using drugs and later was honorably fired by the President through Presidential Decree Number 86/P, 2019 in which he filed a lawsuit to the Administrative Court over the verdict (news.detik.com). Moreover, the Head of the Makassar Military Court, South Sulawesi, with the initial HM was sacked because of cheating (news.detik.com). The mentioned cases are a series of colossal dramas showing the chaotic face of Indonesian justice. All of them are behaviors that insult; demean the dignity, authority and honor of the judiciary.

In Indonesia, a judge is blasphemed, criticized, and threatened as if it were normal. The results showed that the chances of a Contempt of Court in Indonesia were quite large (Anita: 2018). Various analyzes on the causes of insults to the judicial institutions have emerged from the level of public confidence of judicial institutions in the nadir of concern (nasional.kompas.com). This judicial institution can no longer show its authority as an honorable, authoritative, and sacred institution where justice seekers fight for their rights

and obtain justice. The public perceived the judiciary is not a place to seek justice and law enforcement, but merely as part of an authority or power (Pangaribuan, 1999).

The Supreme Court and the Judicial Commission have tried to improve this condition by fixing the Supervision Information System to improve supervision and eradicate all forms of violations of the code of ethics and implement the whistleblowing system (nasional.kompas.com). Persuasive actions are carried out through enhancing the capacity of judges (Judicial Commission, 2013). Additionally, the repressive actions are carried out by establishing a Code of Ethics and/or Judges' Code of Conduct (KEPPH). Yet, this attempt shows insignificant results as well as the low performance of the judge.

In the midst of the improvement efforts, the community was further disappointed when the judges demanded to be the state officials who have their own privacy and exclusivity both for services and salary increases (beritasatu.com). They also request to be protected from people committing insults through the legal plan of contempt of court bill. This legal plan was then included in the 2015-2019 National Legislation Program (Prolegnas) as the DPR's proposal (news.detik.com). Likewise, the contempt of court material was included in the new draft of the law book of the criminal law.

## Research Problems

The problem stated in this research is whether maintaining the dignity and honor and authority of the judiciary requires a legal instrument through the Law of the Contempt of Court or in the Criminal Code. Also, is there any alternative solution that is more appropriate to restore the judiciary's dignity, honor, and authority? Hence, this case will be discussed further.

## Research Method

This research applied normative juridical method that depict law from the norm aspect (Moleong, 2010). This study is a library-based research using secondary data sources. Meanwhile, the adopted approaches are statutory approach, case approach, historical approach, comparative approach, and conceptual approach (Marzuki, 2009).

This descriptive research aims to provide the data as detailed as possible about humans, circumstances, or other symptoms (Soekanto, 1996). Based on its application, this study focused on these problems. Furthermore, the data analysis used in this study is a qualitative method to produce descriptive-analytical data. This means that the data generated from primary, secondary, and tertiary legal materials are thoroughly researched and studied.

## Discussion

### Judicial Power and Purpose of Justice

Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that judicial power is an independent power to administer justice to uphold law and

justice. Then, constitution's provisions were elaborated into Law Number 48 of 2009 concerning judicial power. This authority is carried out operationally by the Supreme Court and the subsidiary of this judiciary and by the Constitutional Court (article 24 paragraph (2) of the 1945 Constitution). Meanwhile, the most significant role to perform the judicial authority is the judge who implements law and justice through the verdict pronounced in the handled cases.

As an authorized official, the verdict is a statement by the judge, is pronounced at the hearing and aims to end or resolve a case or a dispute between the parties (Mertokusumo, 2000). Therefore, the judge must explore, follow, and understand the values of the legal value and sense of justice that present in the community, through a simple, fast and low cost judicial process. So, the purpose of a case process before a court is to obtain a judge's decision (Rasaid, 2003).

The reality on the society depicts something else where there are still many people do not accept and are disappointed with the court's decision. This attitude of unacceptability and disappointment is shed and expressed in an inappropriate way that disturbs and undermines the honor and authority of the judiciary. This attempt then is the cause of the contempt of court. Contempt of court can make constraint the trial process if seen from many cases that occur in Indonesia (Suriani, 2017).

### **Origins and Meanings of the Contempt of Court**

Contempt of Court is a term used in countries that use the Common Law system (Jeumpa, 2014, Johny, 2009, Samanatinghar, 2017). While Indonesia implements the Civil Law in which it does not define the term Contempt of court (Asshiddiqie, 2015). The contempt of court tradition dates back to the British empire (Subarkah, 2017) in which the king was considered God's representative in the world, having the doctrine of "*the king can do no wrong*" (researchgate.net, 2020). The king could punish anyone who defied his orders as he had the highest authority and is the source of justice and law. Due to the limitation of manpower and mind, the king delegated his authority and power in the field of law to the judiciary. Any determined judgment and the order of justice is the king's provisions and orders. In contrast, a denial of judicial provisions and orders is also a denial of the king's provisions and orders. Thus, the term "Contempt of Court" is identical to "Contempt of the King", so that the dissidents would be severely punished (Wahyu, 2005). Bracton, a British law writer in 1260, as quoted by Keyzer, stated that "*there is no greater crime than contempt and disobedience, for all people ought to be subject to the king as supreme and to this officer*" (Mulyadi, 2015). The rule of contempt of court has been applied in Britain since centuries ago (Hasibuan, 2015). One proof of the severity of the contempt of court sentence was that of James Williamson in 1634 who threw stones at a judge carrying out his duties in the courtroom. James Williamson was sentenced to a severed hand in which his cut hand was hung at the entrance to the court as a warning to members of the wider community (Wahyu, 2005).

In a country adhering to common law, the court extremely relies on judges who have divine-level legal knowledge and high authority. It then is associated as a sacred place where anyone who enters there must uphold courtesy and manners. Sacred and respectful impressions are portrayed in history, specifically in Islamic History such as Umar Bin Khattab (584-644), Ali bin Abi Talib (599-661), Qadhi Syuraikh (593-697 AD / 78 AH), Abu Yusuf (735 or 739 AD) who were respected as a judge for their intelligence, accuracy and sharpness of their thinking. Likewise, Bao Zheng (999-1062) who was named Bao Qingtian (Bao the blue sky) is given a name of praise for being an honest official. In Indonesia, Judges Bismar Siregar and Artijo Alkotsar are the supreme Judges who are respected for their assertiveness.

Justice in a country that applies civil law uses the principle of *non-adversarial models* that do not allow the existence of contempt of court institutions (hukumonline.com). This system offers the judge to have enormous power in examining and adjudicating a case. So, if there are provisions regarding the crime of contempt of court, it is feared that it will further strengthen the judge's position in the trial process. As a result, there is no single institution or authority that can control the judge's performance in carrying out their duties.

The word Contempt of Court consists of two words: "*contempt*", which means a strong feeling of disliking and having no respect for someone or something or behavior that is illegal because it does not obey or respect a law court (dictionary.cambridge.org). While, "*court*" is a place where trials and other legal cases take place or the people present in such a place, especially the officials and those deciding if someone is guilty. So, the contempt of court means: behavior that opposes or defies the authority, justice, and dignity of the court. Contempt charges may be brought against parties to proceedings; lawyers or other court officers or personnel; jurors; witnesses; or people who insert themselves in a case, such as protesters outside a courtroom. Courts have great leeway in making contempt charges, and thus confusion sometimes exists about the distinctions between types of contempt. However, generally contempt proceedings are categorized as civil or criminal, and direct or indirect (legal-dictionary.thefreedictionary.com).

In the Black's Law Dictionary, it is stated: Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity. Ex parte Hobbrook, 133 Me. 276, 177 A. 418, 420. Committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given. Snow v. Hawkes, 183 N.C. 365, 111 S.E. 621, 622, 23 A.L.R. 183 (Black, 1968).

ELSAM defines the Contempt of court as an act carried out by a person who deliberately opposes or violates his authority or thwarts judicial duties or is carried out by someone by being a party to a case being tried, deliberately not obeying a valid court order (Wahyu, 2005). Whereas according to Badra, the Contempt of Court is the acts (not

committing acts) that interfere or disrupt the judicial process or prohibit community members from using the justice system in resolving their disputes (Arief, 1996).

### **Contempt of Court Regulations in Indonesian Law**

Indonesia has not yet had definitive, specific and complete regulations regarding contempt of court. The rules are scattered in several laws and regulations which all of them do not present the comprehensive and integral understanding and scope of the contempt of court. These regulations are:

1. In the book of Criminal Code, these regulations are partially distributed in several articles: in Article 207, Article 210 Paragraph (1) and Paragraph (2), Article 212, Article 216 Paragraph (1), Article 217, Article 220 and Article 317, Article 221 and Article 223, Article 224, Articles 231 and 232 and Article 233, Article 242 Paragraph (1) and Paragraph (2), Article 316, Article 393 bis, Article 420, and Article 522.
2. The law No.18 of 2003 concerning Advocates, particularly in Article 16 that regulates the Advocate's Immunity Rights as follows: Advocates cannot be prosecuted both civil and criminal in their professional duties in good faith in the interests of the Client's defense in court (Hasibuan, 2015).
3. The law Number 31 of 1999 and Law Number 20 of 2001 concerning Eradication of Corruption Crimes which are stated on Article 21, Article 22 jo. Article 29, Article 22 jo, Article 35, Article 22 jo, and Article 36.
4. The law Number 21 of 2007 about Eradication of human trafficking that is written in Article 20, Article 21, Article 22 and Article 23.
5. The law Number 35 of 2009 concerning Narcotics (Article 138, and Article 143)
6. The law Number 8 of 2010 on Prevention and Eradication of Money Laundering Crimes Article 87 Paragraph (2).
7. The Government Ordinance in Lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Crimes which has been stipulated as Law Number 15 of 2003 in Article 20, Article 21, and Article 22 (Nugroho, 2017).
8. The Jurisprudence, a decision of Purwakarta District Court Number 241/Pid.B/2006/N.PWK sentences a defendant to one year in prison for a convicted criminal act against the judicial authority and categorized it into Article 335 paragraph (1) of the Criminal Code (Suriani, 2017).

### **The Types of Contempt of Court**

According to Adji (2007), there are five constitutive forms of Contempt Of Court, which are,

1. Sub judice rule is the act of insult to the court carried out by means of notification or publication that is shown or statement both verbal and written which later become a matter of press and legal aspects to be able to influence a decision that will be sentenced by the judge (I Made, 2019)

2. Disobeying a court order is the action of not complying with court orders and/or demeaning authority, authority, or justice from the court.
3. Obstructing justice is the attempt to disrupt the judiciary, which affect perverting, disrupting the normal functioning and smoothness of a judicial process.
4. Scandalizing the court is the attacks to integrity and impartiality of the court based on the statement outside the court. It is often a publication that contains a broad field of the situation. Scandalizing the court is another type of misbehaving or disruption in court categorized as a mild insult to the court or attacks on impartiality during the process.
5. Misbehaving in court is not behaving well in court is any act of gestures or words that constitute obstacles or hold an obstruction of the normal and harmonious flow of proceedings in a court hearing.

### **Digging the Root Problem of Contempt of Court**

Globally there are two determinants of contempt of court (Abimanyu, 2017, Khairo, 2017): internal and external factors. The former is those within the judiciary itself and the external factors are those outside the judiciary.

#### **1. Internal Factors**

##### **a. Independence and impartiality of judges**

Independence is related to how judges are not subject to and influenced by other powers manifested in impartiality to examine, adjudicate and decide the cases. The impartiality of judges is not to a particular party or authority, but to law and justice based on the Pancasila and the 1945 Constitution. Independence manifested in impartiality to hold trials often becomes a critical point of the authority of the judiciary. Independence and commerciality have significant meaning for the judiciary that is strongly influenced by various factors, including executive power and corruptive behavior.

The intervention of executive power over judicative authority has occurred for a long period of time, particularly since the era of Orde Lama, then Orde Baru even until the new Reformation period. The executive intervention opened up opportunities for the abuse of power and the authorities' neglect of human rights (Suseno, 1993). Meanwhile, an independent judicial authority is an important instrument for democracy (Judicial Commission, 2013). Therefore, the court must be independent from the influence of anyone, including the executive parties. Additionally, corrupt behavior is "*the abuse of entrusted power for private gain*", or utilizing the entrusted authority for personal gain, both the benefits of power both material and immaterial.

##### **b. Declining authority of the Judiciary**

This factor was initially caused by a judicial institution's actions that distorted power, buying and selling cases or behaving unfairly, but has not been handled

properly, so that it gradually affects the level of public trust. Also, the declining authority of the judiciary is inseparable from the low quality of the judgment.

c. The quality of judgment

Judges' performance can be assessed from the implementation of their duties and functions which include examining, adjudicating, and deciding cases. If the judge's decision is able to provide justice, usefulness and legal certainty for the community will get a positive assessment. Conversely, if the verdict ignores the community's sense of justice, the judge's performance will be judged negatively. Judges will be able to produce decisions that reflect justice, usefulness and legal certainty if the judge has the capacity of legal knowledge in applying the law (*rechtstoepassing*), legal discovery (*rechtsvinding*) and law creation (*rechtsschepping*) (Judicial Commission, 2013).

It is difficult to argue with the quality of the judgment. Judicial institutions often give unfair rulings, as if the law is sharp downward but dull upward. A series of cases proves this phenomenon, such as cases of powerless people like Mbok Minah, Flip Flops Thief, Prita, or Baiq Nuril where the court sentenced them with a firm verdict. Unfortunately, for the cases such as the BLBI Corruption, Century Bank, Hambalang case, E-KTP, Narcotics, Illegal Logging, even illegal fishing, the law is almost powerless to reach the perpetrators.

d. The Integrity of the judge

Judges are *the man begin the gun* in court, therefore, the integrity of judges becomes an important aspect because it can guarantee the independence of judicial power from the influence of the authority of other state institutions and any party. It requires judges who have moral integrity, expertise, and abilities (Judicial Commission, 2013).

According to Muqoddas (2013), among many problems in the judiciary that attract the public spotlight, the judge's poor integrity fosters the practice of the judicial corruption. The number of judges who have low integrity and bad behavior make people disappointed with the judiciary. It cannot be denied, when many judges who were caught red-handed accepting bribes because of the sale of cases, drug abuse, adultery or other disreputable behavior, have reduced public confidence in the judiciary to the lowest level. but it cannot be denied that law enforcement also has the potential to take actions that can undermine the honor and authority of the judiciary (Artaji, 2018)

2. External Factors

External factors of determinants of contempt of court come from the community, both directly and indirectly related to the judiciary. The attitude of the justice seekers community becomes the determinant of the realization of the judge's authority. The attitudes of the people who demean the judiciary even by committing dishonorable actions is certainly inseparable from a number of decisive things:



- a. Egoism is the attitude of willingness to win alone without thinking to give in and assume the victory is an achievement and prestige in life. Thus, for the egoist person, victory is something that must be fought for.
- b. Permissive is the attitude, view, and stance that allows the ways of life, behavior, actions, as well as those that violate ethical principles, norms, and regulations are permissible. People can have a good life, but they also can achieve it through crimes. Ethically well behaved people are welcome, yet the poor behaviour people are not prohibited. Hence, based on the permissivity views, the good and bad doings are the same. In addition, the ethical principle for good or bad life does not exist (Mangunhardjana, 1997).
- c. Self-uncontrollable is the attitude that someone should present in front of the court. The person knows how to manage their emotions to avoid hash action when facing situations that can suppress his emotions. A person with good self control will always be stable in every situation and condition.

When the law is underestimated, anything can happen. Theoretically, the law must not be indiscriminating anyone. Yet, the fact shows that many legal cases that involve diverse groups are precisely disrupted by chaos resulting in injustice. The trial process was damaged - the defendant also did not fulfill the summons, witnesses, and visitors acted up, the panel of judges was blasphemed, bad behavior of the judiciary, and also the anarchic destruction by irresponsible mobs.

- d. Disrespect and loss of respect for the judiciary are the judiciary's attitude as an accumulation of the community disappointment in the judiciary institutions to uphold justice. It is not unrequited as it is a reaction given by the public to judiciary measures. Moreover, this problem is not properly handled by stakeholders (the Supreme Court), which then gradually erodes public trust in the judiciary.

The disappointment to the quality of decision by unqualified judge and other external factors that influence the judge, both powers and bribery of the judge have resulted in number of cases of contempt of court. Furthermore, the permissive attitude of the community worsens the chaos of the judiciary. The perspective of victory that is considered as achievement and prestige in life has pushed the people to bribe law enforcement agencies.

Moreover, any verdict mentioned by the judges and considered unfair cannot be justified by anarchic actions. All society elements should be able to control emotions and bring case decisions that are considered irrelevant to the appropriate level of justice, so that the contempt of court action does not need to occur. To achieve this level of understanding, it is necessary to educate society about the law. The government should perform it seriously and continuously.

### **Is Contempt of Court Law Required?**

There are two different opinions about the urgency to establish law of the contempt of court to protect the judiciary. First, the pro groups which are the Supreme Court and

the House of Representatives as they propose the Contempt of Court Bill. Among the judges, there are also two groups: those who support and reject the plans. The results of the Supreme Court and Development Research shows of the 611 questionnaires, 260 judges do not approve the Contempt of Court law to be separately regulated in specific acts (Hasibuan, 2013).

The arguments developed by this group state that judicial institutions are not authoritative, harassed and have no dignity. To return the judicial institution to this position, there should be a specific rule to protect it (Mulyadi, 2015). Additionally, in some countries the contempt of court act to protect judges and judicial institutions have been established. According to Alexander Hamilton, as quoted by Susi Dwi Harijanti, it is stated that judicial power is the weakest branch of power, therefore protection is needed through the constitution (Julijanti, 2008).

The contra groups are legal experts, legal practitioners and academics. The Indonesian Advocates Association (PERADI) which states that the Contempt of Court bill is not necessary to be formed as the fear of this act will impede the advocate's motion in defending their clients under the pretext of contempt of court. Thus, the provisions regarding the Contempt of Court are sufficiently regulated in the main act which protects the court and there is no need to be a separate law. The Supreme Court's reason for forming the Contempt of Court Bill is not appropriate as it appears to increase the judge authority through the contempt of court act (Hasibuan, 2015). According to Hasibuan, a paradigm should be comprehensively built to uphold the law and justice freely and independently because the Contempt of Court Bill does not make judges become authoritative, yet they should be authoritative without it (Hasibuan, 2015). Meanwhile, Sunarto, Deputy Chief Justice of the Supreme Court, said that in fact the justice itself is ridiculed in the contempt of court, neither the court as an institution nor the person as a judge (national.kompas.com).

Otto further explained that the Contempt of Court Bill could have been created, nevertheless it requires preconditions: a comprehensive change in the legal system and an increase in the professionalism of judges, prosecutors, police, advocates, journalists as well as intensive counseling for justice seekers (Hasibuan, 2015). Similarly, to that of Otto, Jimly Asshiddiqie said that he agrees with the Contempt of Court Bill, but after enforcing the 'rule of ethics' both state officials such as judges/prosecutors and lawyers/advocates who also have rules of ethics (Asshiddiqie, 2015).

ELSAM, as quoted by Jimly, judges have enormous power in examining and adjudicating cases in the justice system of Indonesia. Suppose special provisions are composed on the criminal acts to protect the criminal process (*criminal contempt of court*), in that case, it is feared that it will further strengthen the position of judges in the judicial process. As a result, there is no single institution or authority that can control judge's performance in carrying out their duties. ELSAM instead proposes a law that reforms the judiciary and its officials with the existence of the Act to restore the dignity and authority of the judiciary (Asshiddiqie, 2015).

Based on those mentioned factors, it is considered that the existence of the contempt of court law is a dilemma, such as "eating simalakama fruit" which means there is no win situation where all the possible solutions have a terrible or undesirable outcome. On particular point, the provision specifically regulating criminal acts against contempt of court is a good effort to uphold the judiciary's authority, which is currently considered no longer respectable in the eyes of the public. However, this provision will become a boomerang for the community, if there are provisions regarding the crimes of contempt of court solely to strengthen the position of judges or other judicial officials who incidentally already have a strong position in the judicial process (Wahyu, 2005). Nonetheless, there must be a clear and appropriate solution to solve this complicated problem in any circumstances.

### **Defining alternative solutions**

The idea of arranging a Contempt of Court in the form of a separate law becomes a dilemma. According to the author, it is not a good alternative solution at least in the near future. The author agrees with Otto and Jimly who stated that the Supreme Court should make improvements. Several efforts can be implemented to restore the dignity of the judiciary, including:

1. **Eliminating Executive Interventions to the Judiciary**

To eliminate executive intervention in the judiciary, it is possible that the concept of *separation of power* was conceived by Montesquieu (1689 -1755), that is, a system of authority separation must be independent, both the function (task) and the completeness apparatus to implement the law (Supriyanto, 2004). Before the Reformation era, the judges of Supreme Court possessed their career positions proposed by the House of Representatives (DPR) to the President (with proposing candidates are suitable with the expectation of the President) without going through strict selection. President Abdul Rahman Wahid tool progressive measuresto release executive dominance over the judiciary, one of which was the election of several justices from the non-career path, especially those from academic backgrounds through a strict fit and proper test process by DPR (Judicial Commission, 2013). However, there are still concerns that politicization will also occur from the selection process carried out by the DPR (Crouch, 2010). Unfortunately, the impact of executive intervention on the judiciary is still being felt today.

To increase the judge's independence and impartiality, the function of justice must be dissociated from other elements, besides the judiciary. Up to now, the judicial function is not focused on law enforcement because its concentration is divided on several things. According to Luhut, this occurrence happens as the judges' position was not neutral, for example in case of placing the judges as part of Muspika division; thereby it equates judges as part of the bureaucracy. Judges are positioned under executive coordination and law enforcement matters become the coordinating matters, even

though judges should be in different roles. The huge number of forums results in the public perception that judges are part of the executive (Pangaribuan, 1999).

2. Restore the Authority of the Judiciary

According to Bagir Manan, an approach to restore the public trust is to improve the quality of the judiciary. Public trust in the justice system will automatically increase when the better judiciary presents and the potential of contempt of court will decrease. Without the will and determination of the court to maintain its honor, provisions such as contempt of court cannot prevent harassment of the court and the judge (national.kompas.com).

3. Improve Decision Quality

To improve the quality of judges, the three intelligences of judges must be improved and optimized. Judges are central figures in the judicial process which are required to have 3 intelligences: Intelligence Quotient (IQ), EQ (Emotional Quotient), and SQ (Spiritual Quotient). These intelligences are immensely crucial for judges to balance their personality, service and social relations, so that the nobility and dignity of judges will be always maintained (Judicial Commission, 2013). If a judge possesses these three intelligences, it will provide benefits both for himself and the community in law enforcement.

Improving the quality of judges will enhance the standard of decisions. To increase the quality of judges, the Judicial Commission and the Supreme Court may have to recruit judges through a participatory, accountable, and objective process, *the right man on the right place*, and it should be transparent (Judicial Commission, 2013). Followed by an increase in the capacity of judges, it is necessary to be continuously developed such as the education of prospective judges, the ongoing judge education program, school scholarships, and specialty training and certification for judicial technical personnel (Judicial Commission, 2013).

Increasing the education standard of the judges can be achieved by standardizing a minimum qualification of education from bachelor to master degree. Additionally, in conducting recruitments the committee must prioritize the quality of judges rather than quantity. To guarantee quality of the chosen judges during the selection process, it is important to involve other parties who have competence in the knowledge of law such as academics and legal practitioners. Furthermore, it is also necessary to manage the fit and proper investigative test of the track record of prospective judges to be appointed so that the quality of judges is maintained as the United States involves the participation of the *American Bar Association* in the federal judge selection process that is considered to have a positive impact in the recruitment process (Abraham, 1993). Similarly, Thailand implements the process by acquiring the information from certain people around prospective candidates such as village heads, neighbors, school principals etc (Judicial Commission, 2013).

The consideration of judges to make decisions in judiciary is one of the main pillars in maintaining their authority. The judge's decision is a product yielded in an open trial

to the public which possesses the important meaning for justice seekers. The decision of judges is valuable to the defendant or parties to obtain legal certainty about their status, on the other hand, it is like the crown and the peak of reflecting the values of justice, ultimate truth, human rights, the real application of law or facts in qualified and factual manner, visualization of the ethics, mentality and morality of the judge (Mulyadi, 2014).

The Supreme Court has crucial task to acquire an honest, independent, courageous judges who are liberated from influences both inside and outside parties. It is due to the significance of the judges to implement the justice and law enforcement based on the individual who run the justice. An interesting statement by Taverne stated "... *give me an honest and smart judge, then even with bad laws and regulations, I will produce a fair decision ...*" (Judicial Commission, 2013). This statement implies that an honest and intelligent judge becomes an absolute requirement to uphold law and justice. Furthermore, in this current situation, being honest and smart is not enough as other values such as having unimpeachable integrity and personality, being honest, fair, professional, devoted and having good character, and being experienced in the field of law are also important. (Judicial Commission, 2013)

When judges have high credibility and are supported by a system providing the freedom and independence of judges and their institutions, the public trust in the judicial and institutional functions of the court might increase as the society feel content that their cases can be processed as their beliefs to obtain the justice in accordance with their expectations (Johny, 2009). In addition, there is another factor that must be addressed immediately, the low quality of the judge's decision. This factor is possibly influenced by the imbalance of the number of judges and cases. According to data from the Supreme Court, the Supreme Court still lacks approximately 4,858 judges (news.detik.com).

#### 4. Increase the Integrity of Judges

The integrity of judge becomes a critical point as it can guarantee the independence of judicial power from the influence of other state institutions and any party. The judiciary system requires judges who have moral integrity, expertise and outstanding abilities (Judicial Commission, 2013). According to Muqoddas (2013), among the many problems in the judiciary that attract public attention is the poor integrity of judges so it fosters the practice of judicial corruption. Many judges who have low integrity and bad behavior result in disappointment of the community to the judiciary. It cannot be denied that the practice of injustice such as being caught red-handed accepting bribes because of the sale of cases, drug abuse, adultery and other atrocious attitudes has reduced the judiciary's level of public confidence to the lowest level.

The Judicial Commission's establishment is inseparable from the malfunction of the Supreme Court as the supreme power in carrying out an effective supervisory and recruitment function of the judge (Judicial Commission, 2013). The existence of the Judicial Commission as a new institution in the Indonesian constitutional system is

regulated in article 24B of the 1945 Constitution, as a system of *checks and balances* in the judicial power system. This means that the independence of the judiciary must be balanced with its partner, the judicial accountability. The implementation of this constitutional mandate creates the Law Number 22 of 2004 concerning the Judicial Commission. However, the presence of the Judicial Commission also seems to be incompletely accepted by the Supreme Court, so that its function is not optimal. Some parties perceive perturbation by the Judicial Commission's authority because their power and comfort are interrupted. This law has become a judicial review three times; one of them was filed by 31 persons of Supreme Judges (Decision of the Constitutional Court No. 005/PUU-IV/2006).

The monopoly of authority is the centerpiece of this dispute in which the authority to appoint, dismiss, and other judicial administration issues are centralized in one institution (Judicial Commission, 2013). Through the Constitutional Court Decree No. 005/PUU-IV/2006 MK, the Constitutional Court narrowed the understanding of judges and the object of supervision conducted by the Judicial Commission (Judicial Commission, 2013). By this decision, the Law No. 22/2004 is replaced with the Law No. 18/2011.

Even though the new law has been delivered to the system, the Judicial Commission is still unable to carry out complete supervision of the judge behaviors. One of the proved cases is the 2019 report of Judicial Commission where of 130 sanction recommendations for judges, only 10 (7.69%) are responded by the Supreme Court (news.detik.com). The biggest obstacle is the implementation of *Jiwa Korsu*, the spirit of defending fellow corps (*esprit de corps*) in the Supreme Court, hence they can protect and cover up their mistakes and if being sentenced, it is not balanced with their acts (Judicial Commission, 2013). Moreover, the practices of corruption, collusion and nepotism to promote the positions or mutations of judges within the Supreme Court are still ongoing as it is highlighted by Bagir Manan, a former Chief of the Supreme Court who states that promotion or transfer of positions still strongly needs *S3* element: *Sowan, Sungkem and Saji* (visiting, flattering officials, and bribing) in the Supreme Court (Judicial Commission, 2013).

Therefore, a multi-layered supervision system may be needed, so the optimal supervision can be reached. The supervision mechanism carried out by the Supervisory Division of the Supreme Court and the Judicial Commission, but it also should involve the community participation. Furthermore, the rule of ethics for judges has been established and consistently implemented, namely the Joint Decree of the Chief Justice of the Republic of Indonesia and the Chair of the Indonesian Judicial Commission No. 047/KMA/SKB/IV/2009 and 02/SKB/P.KY/IV / 2009 concerning the Code of Ethics and the Code of Conduct for judges. Meanwhile, the public reports on judges' behaviour must receive significant attention and be taken seriously by the Supreme Court to restore public confidence of the judiciary.

5. Community Education.

The public still has a wide variety of meanings and perceptions of the law, and there is a tendency to be misguided in mistaken understanding. This fallacy will affect the respect and compliance of the community to the law.

Restoring the good name (rehabilitation) of a judicial institution in the community perspective is not a straightforward attempt, yet it can be possibly performed. Public distrust of the judiciary can endanger the integrity of the nation if it is neglected because society tends to be vigilant and chaos will occur. The Supreme Court must make specific efforts to reinstall the public trust in the Judicial Institution. Therefore, it is extremely important to make comprehensive betterment such as transparency and public accountability. Every improvement or positive change must be published and completely informed to the public to show that the judiciary has transformed into a better institution. The most significant requirement in education to the community is giving a good example by a leader. It becomes the most complicated part as lots of current leaders from low to highest levels cannot be role models for the public in obeying the law.

It is necessary to foster public awareness to jointly provide oversight of judicial outputs, especially the decisions of judges. Suppose there is a decision that is considered contrary to the community's sense of justice (a controversial decision). In that case, the public can file an objection and apply pressure to the judiciary system to examine that controversial judgment. This effort is performed to ensure the judge decision to remain in the corridor of applicable law and guarantee an equitable decision of judges.

## Conclusion

Contempt of court arises because of public dissatisfaction with court decisions. Two factors cause this dissatisfaction: the factors come from the internal institutions as there are interventions, declining authority, poor quality of court decisions, low integrity of judges, and weak independence and commerciality of judges. Meanwhile the external factors are due to attitude of the community such as selfishness, permissiveness, being unable to control themselves and having no respect the judicial institution.

## Suggestions

To maintain the dignity and authority of the judiciary from being the harassment, the specific legislation governing the contempt of court is not necessary, but it is sufficient by properly implementing the existing rules in the Criminal Code. Additionally, the most important factor is the serious effort to improve the judiciary institution to be more qualified, accountable and transparent. The responsibility to maintain and preserve the authority of law enforcement is not only expected from the law enforcement institutions such as the judiciary, but it is also by cooperating and community participation. Thus, the clean, honest and authoritative court can be established.

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