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## Reforming Contempt of Court Regulation in Indonesia: Addressing Indirect Interference and Trial by the Press

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### Article

### Abstract

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Contempt of court refers to acts threatening the dignity, independence, and integrity of the judicial process. In Indonesia, the regulatory treatment of contempt of court remains fragmented and incomplete. Existing provisions, including those in the Criminal Code, primarily focus on direct disruptions during court proceedings, while failing to address broader, subtler forms of interference adequately. This regulatory gap contributes to legal uncertainty and inconsistent enforcement. A notable omission is the lack of clear mechanisms to regulate indirect contempt, such as trial by the press, in which excessive or prejudicial media coverage can influence public opinion, undermine the presumption of innocence, and jeopardise judicial impartiality. This research examines the urgent need for a dedicated and comprehensive legal framework governing contempt of court in Indonesia, addressing the philosophical foundations, the urgency of enacting a specific and impartial regulation, and the limited scope of indirect forms of trial by the press under Indonesia's national Criminal Code. Employing normative legal research, this study draws upon statutory analysis, conceptual exploration, and comparative legal approaches. As a result, a comprehensive contempt of court statute is urgently needed not merely to shield judicial officers from insult, but to safeguard the right to a fair trial, legal certainty, and the continuous, unhindered administration of justice as core elements of the rule of law. Such legislation should protect the integrity and authority of the courts in a way that reinforces democratic accountability and restores public confidence in the judiciary as an institution, rather than serving as a blunt instrument to silence criticism or privilege judicial dignity over systemic transparency.

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## INTRODUCTION

Acts that undermine the authority or dignity of the judiciary, or that oppose judicial power, are known as contempt of court.<sup>1</sup> Historically, contempt of court terms are found in the Common

<sup>1</sup> Oemar Seno Adji and Indriyanto Seno Adji, *Peradilan Bebas Dan Contempt Of Court* (Jakarta: Diadit Media, 2007), 197.

Law (Anglo-Saxon) and case law legal systems.<sup>2</sup> The concept of contempt of court developed in the medieval Kingdom of England,<sup>3</sup> during a time when there was a prevailing belief that the king possessed divine rights, and thus, the people were expected to submit to the king's authority.<sup>4</sup> Initially, this concept was known as contempt of the king,<sup>5</sup> as the highest authority at that time was the monarch. Consequently, any act that opposed the king's decision was considered an act of contempt for the king.<sup>6</sup> The king made laws, and the king was accountable only to God.<sup>7</sup> Over time, the term contempt of the king evolved into contempt of court, as judicial decisions came to be issued by judges as legal authorities.

According to Oemar Seno Adjie, there are five categories of acts that fall under contempt of court, namely:<sup>8</sup> first, misbehaving in court; second, disobeying court orders; third, scandalising the court; fourth, obstructing justice; and fifth, acts of contempt committed through announcements or publications, known as the sub judice rule.

The threat of contempt of court during court proceedings, particularly in the form of aggressive behaviour, is a common phenomenon in many countries, including Indonesia.<sup>9</sup> This issue is largely attributed to the low level of legal culture among the public and a lack of understanding regarding the significance of the judiciary and the importance of upholding the rule of law.<sup>10</sup> Several cases of contempt of court have occurred in Indonesia. One such incident occurred in 2025 involving Razman Nasution. In a courtroom in North Jakarta on February 6, 2025, a disruption occurred between Razman Nasution and his legal representative, who was represented by Advocate Hotman Paris Hutapea. The disturbance escalated when one of Razman Nasution's lawyers climbed onto the courtroom table.<sup>11</sup>

The resolution of contempt of court cases remains a significant challenge in Indonesia, as contempt of court is not explicitly regulated under a specific law and its legal treatment is partial and fragmented. Upon examination, the term contempt of court is found only in the explanatory section of Law Number 14 of 1985, which was later amended by Law Number 2 of 2009.<sup>12</sup> Although the concept of contempt of court appears in Law Number 14 of 1985

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<sup>2</sup> Ariehta Sembiring, *Contempt of Court Dari Penghinaan Mengalir Sampai Jauh*. (Jakarta: Jentera, 2015), 61.

<sup>3</sup> Syarif Nurhidayat, "Pengaturan Dan Ruang Lingkup Contempt of Court Di Indonesia," *Jurnal Ius Constituendum* 6, no. 1 (2021): 74, <https://doi.org/10.26623/jic.v6i1.2419>.

<sup>4</sup> Nurhidayat, "Pengaturan Dan Ruang Lingkup Contempt of Court Di Indonesia."

<sup>5</sup> Wahyu Wagiman, *Contempt Of Court Dalam Rancangan KUHP* (Jakarta: ELSAM, 2005), 4.

<sup>6</sup> Bambang Ali Kusumo and Abdul Kadir Jaelani, "Model for the Contempt of Court Criminal Policy in Realising Indonesian Judicial Independence," *International Journal of Innovation, Creativity and Change* 12, no. 12 (2020): 799.

<sup>7</sup> Brian Tamanaha, *On the Rule of The Law : History ,Politics, Theory* (Cambridge: Cambridge University Press, 2004), 29.

<sup>8</sup> Adji and Adji, *Peradilan Bebas Dan Contempt Of Court*.

<sup>9</sup> Larysa Nalyvaiko, "Specific Features of the Legal Regulation of Prosecution for Contempt of Court: Judicial Rules Established in Different Countries," *Cuestiones Politicas* 40, no. 74 (2022): 395.

<sup>10</sup> Nalyvaiko, "Specific Features of the Legal Regulation of Prosecution for Contempt of Court: Judicial Rules Established in Different Countries."

<sup>11</sup> Febby Mutiara Nelson, "Telaah Obstruction of Justice Dan Contempt of Court Dalam Perkara Hotman Paris Vs Razman Nasution," *HukumOnline*, 2025.

<sup>12</sup> Andi Hamzah, *Kejahatan Terhadap Penyelenggaraan Peradilan (Contempt of Court)* (Bandung: PT Alumni, 2017), 8.

concerning the Supreme Court, the term itself is not explicitly regulated in a dedicated statute.<sup>13</sup> Nevertheless, several provisions in the *Wetboek van Strafrecht* (Law Number 1 of 1946, the Indonesian Criminal Code) and in laws outside the Penal Code address contempt toward the judicial process. These provisions include Articles 210, 216, 217, 222, 223, 224, 225, 231, 232, 233, and 512 of the Penal Code. However, these articles do not specifically classify such acts as contempt of court. In fact, some of the provisions are not explicitly intended to protect judicial institutions from acts of contempt of court. Efforts to address contempt of court through criminal law are carried out by enacting legislation addressing contempt toward the judiciary. The ideal legal framework envisioned for this purpose is the National Criminal Code, established under Law Number 1 of 2023, which was officially enacted on January 2, 2023. However, this law will only come into effect three years after its enactment, on January 1, 2026.

Upon examination, Law Number 1 of 2023 contains no specific article that mentions the term contempt of court. Even offences involving contempt of court committed by the press, which fall under the category of indirect contempt, are not regulated within the chapter concerning offences against the judiciary. This is different from the legal systems of several other countries, which clearly include the term contempt of court in articles or statutory provisions related to criminal acts that obstruct the course of legal proceedings. Law Number 1 of 2023 only regulates matters related to direct contempt, specifically in connection with the live broadcasting of court proceedings.<sup>14</sup> The partial regulation of contempt of court across various laws, and the limited scope of its definition in Law Number 1 of 2023, have created legal uncertainty.

One form of indirect contempt of court arises from excessive media coverage of pending judicial decisions, a phenomenon commonly referred to as trial by the press. Trial by the press occurs when the media no longer merely reports on a criminal case but assumes quasi-judicial functions: searching for “evidence”, framing witness accounts, and ultimately steering the audience toward a conclusion about guilt before any final court judgment exists<sup>15</sup> The intersection between press freedom and the protection of the judiciary from Contempt of Court is inherently complex. They are two sides of the same coin that must be balanced with equal weight. While freedom of expression is a constitutionally guaranteed human right, it is not an absolute or 'unfettered' liberty. It must be exercised within the bounds of legal and social norms to ensure it does not undermine other pillars of society, specifically the judicial process, which operates under strict principles and codes of ethics to preserve the dignity of the court.

Consequently, there is a pressing need to define an ideal framework for press freedom that informs the public without encroaching upon the law or triggering Contempt of Court. Fundamentally, while every individual possesses the right to free thought and the expression of ideas, such expression must not infringe upon the rights of others nor disregard the social and

<sup>13</sup> T. Subaryah, “Contempt of Court in Indonesian Criminal Justice System,” *International Journal of Science and Society* 2, no. 3 (2020): 315, <https://doi.org/10.54783/ijsc.v2i3.177>.

<sup>14</sup> “Law Number 1 of 2023 on the Criminal Code” (n.d.).

<sup>15</sup> E Sipayung, R., Danil, E., Mulyadi, M., & Yunara, "The Implementation of the Presumption of Innocence in Law Enforcement Coverage by the Mass Media." *Ultimate Journal of Legal Studies*, 2023, <https://doi.org/https://doi.org/10.32734/ujls.v1i2.12829>.

legal norms of the community. In this context, the press must strike a delicate balance between the value of liberty and the necessity of accountability. Sensational narratives, emotive storytelling, and stigmatising labels push media coverage beyond information and into public sentencing, producing a trial by the public that can affect both defendants and victims.<sup>16</sup>

Philosophically, the concept of press freedom in Indonesia is rooted in Pancasila as the legal ideal (*Rechtsidee*), the state's fundamental norm (*Staatsfundamentalnorm*), and the basic norm (*Grundnorm*). This ideological framework serves as the compass for the Indonesian press, guiding its function, particularly in judicial reporting, to align with the national consensus. Since the founding of the state, Indonesia has remained committed to Pancasila as its primary source of inspiration, values, and national morality<sup>17</sup> "The values derived from the essence of Divinity, humanity, unity, democracy, and justice are further elaborated through the framework of Pancasila ethics.<sup>18</sup> Consequently, this framework fosters a manifest justice that is conceived through rigorous legal reasoning, administered with unwavering equity and integrity, and anchored in a profound sense of accountability. The synthesis of law and justice must be enforced through the lens of positive law to ensure legal efficacy that resonates with contemporary societal realities, fulfilling the collective aspiration for a secure and harmonious social order. Ultimately, the construction of justice must remain inextricably linked to the legal ideal (*Rechtsidee*) within the structural paradigm of a constitutional state (*Rechtsstaat*).<sup>19</sup>

Based on this background, the author is interested in raising the urgent need for a comprehensive legal framework to Address Indirect Contempt and Trial by the Press. To avoid duplication, this research will include a more detailed comparison with prior studies, in particular the research conducted by Bambang Ali Kusno entitled Model for the Contempt of Court Criminal Policy in Realising Indonesian Judicial Independence. The difference and novelty of the present study lie in its philosophical approach, which uses legal theories to develop new ideas for reconstructing contempt of court regulation, especially in relation to future trial by the press. The research questions address the philosophical foundation for the legal protection of the judiciary against contempt of court, the urgency of establishing a specific and impartial regulation of contempt of court, and the ideal normative framework for reconciling indirect contempt of court with the constitutional mandate of press freedom.

## RESEARCH METHODS

This research employs a normative legal research method that involves analysing statutory regulations, legal doctrines, and relevant legal concepts.<sup>20</sup> The research employs several approaches, namely the statutory, conceptual, and comparative approaches. The statute approach involves examining regulations on contempt of court in Indonesia, such as the former Criminal Code (KUHP), the National Criminal Code (Law Number 1 of 2023), and other

<sup>16</sup> R Verdadero, J., & Cawi, "Trial by Media: Role and Impact on the Administration of Justice.," *International Journal For Multidisciplinary Research*, 2023, <https://doi.org/10.36948/ijfmr.2023.v05i06.9987>.

<sup>17</sup> Serlika Aprita Nur Rohim Yunus, *Filsafat Pancasila* (Palembang: Refika, 2022).

<sup>18</sup> Nur Rohim Yunus.

<sup>19</sup> Ishaq, *Dasar-Dasar Ilmu Hukum* (Jakarta: Sinar Grafika, 2009).

<sup>20</sup> Taufik Firmanto, *Metodologi Penelitian Hukum: Panduan Komprehensif Penulisan Ilmiah Bidang Hukum* (Jambi: PT Sonpedia Publishing Indonesia, 2024), 75.

relevant laws, including the law on the Supreme Court and the Law on Judicial Authority. The conceptual approach is used to study the concept of contempt of court, including its categories such as direct and indirect contempt, and trial by the press. The comparative approach is applied to compare the regulation of contempt of court in Indonesia with its implementation in other countries, particularly those that follow the Common Law system (such as the United Kingdom) and the Civil Law system (such as Russia). The purpose of this comparison is to formulate a comprehensive, contextually relevant regulatory model for Indonesia while clearly identifying the similarities and differences in how this issue is addressed across different legal systems.

This paper necessitated the use of several research approaches due to its complex nature between the texts of functional legislation and the jurisprudential and judicial opinions and trends.<sup>21</sup> The legal materials used in this study include primary legal materials (statutes and regulations), secondary legal materials (books, academic journals, and related research), and tertiary legal materials (legal dictionaries, encyclopedias, and other supporting sources). Legal material is collected through library research, and analysis is conducted using a descriptive-analytical approach to formulate comprehensive, in-depth conclusions. In this paper, a micro comparison is made between Indonesia and several countries, including England and Malaysia, where contempt of court is comprehensively regulated. In addition, a comparison will also be made with Russia, which has regulations regarding contempt of court in its codification.

## ANALYSIS AND DISCUSSION

### The Philosophical Foundation of Legal Protection for the Judiciary Against Acts of Contempt of Court

A philosophical basis constitutes the fundamental philosophy or worldview (*view of life*) that serves as the foundation for ideals when drafting laws and regulations.<sup>22</sup> According to Purnadi Purbacaraka and Soerjono Soekanto, if a legal principle aligns with the adopted legal ideals (*rechtsidee*), it possesses philosophical force. The essence of the formal and material constitutional basis of a Law or Regulation is the philosophical element involved in the background of its formation. In the Preamble of the 1945 Constitution of the Republic of Indonesia (whether expressed or implied), the basic rules or norms within the articles, and the life of the society, all philosophical elements are "summarised" and "contained" within the values present in each principle of Pancasila.<sup>23</sup>

A philosophical basis is the fundamental philosophy or worldview that serves as the basis for ideals when channelling aspirations into a draft of Laws and Regulations. The philosophical basis of the Indonesian nation is Pancasila; therefore, in principle, no Law or Regulation shall be made, or shall be considered invalid, if it contradicts Pancasila as the

<sup>21</sup> Tareq Al-Billeh, "Legislative Controls for Disciplinary Penalties Imposed on Public Servants: A Comparative Analysis of Jordanian and French Legal Frameworks," *Sriwijaya Law Review* Vol. 9 Issue 1, January (2025): 139

<sup>22</sup> Laia, Sri Wahyuni, and Sodialman Daliwu, "Urgensi Landasan Filosofis, Sosiologis, Dan Yuridis Dalam Pembentukan Undang-Undang Yang Bersifat Demokratis Di Indonesia," *Jurnal Education and Development* 10, no. 1 (2022): 548.

<sup>23</sup> Edy Sony, S. H., et al, *Pengantar Ilmu Hukum* (Jakarta: CV Rey Media Grafika, 2024).

philosophy and the state foundation of Indonesia.<sup>24</sup> Pancasila consists of five principles, each possessing fundamental values relevant to law enforcement. The first principle, Belief in the One and Only God, emphasises the importance of morality and individual responsibility before God. The second principle, Just and Civilised Humanity, underlines fair and humane treatment. The third principle, The Unity of Indonesia, prioritises national unity and integrity. The fourth principle, Democracy Guided by the Inner Wisdom in the Unanimity Arising Out of Deliberations amongst Representatives, encourages public participation and transparency. The fifth principle, Social Justice for All of the People of Indonesia, focuses on the equitable distribution of welfare and social justice.<sup>25</sup> Judicial protection must be grounded in the values of Pancasila, ensuring that its application does not infringe on the rights of the parties involved in the legal proceedings.

From a philosophical perspective, legal protection for the judiciary is grounded in the concept of an independent judicial power. Judicial authority is a sovereign power of the state, exercised independently to administer justice and uphold the law and justice based on Pancasila and the Constitution of the Republic of Indonesia of 1945.<sup>26</sup> This independence does not imply that judges may act arbitrarily, but rather that they are free from any interference that could influence their decisions. Judges have a fundamental duty to explore, uphold, and understand the legal values and the sense of justice that prevail in society.<sup>27</sup>

In carrying out their duties and responsibilities, judges must be free from all forms of interference, whether from the executive branch, the legislature, the public, the media, or even from within the judiciary itself.<sup>28</sup> Maintaining public trust in the administration of justice requires not only that judges remain free from bias, but also that other parties involved in the judicial process act with impartiality.<sup>29</sup> As enforcers of the law, judges are tasked with adjudicating legal cases by examining, receiving, and deciding matters in accordance with the applicable laws. In addition, judges play a crucial role in ensuring legal certainty and protecting the public. Through their decisions, judges not only ensure that the law is applied correctly but also contribute to the realisation of a just legal state that benefits all segments of society. This role places judges as one of the main pillars of the Indonesian judicial system, constantly striving to uphold integrity and fairness in every decision rendered.<sup>30</sup>

Judges are regarded as bearing a profound responsibility and holding a highly respected position in the pursuit of justice, as reflected in the expression and belief that a judge is a

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<sup>24</sup> Edy Sony, S. H., et al.

<sup>25</sup> Asyifa Nur Atqiya, "Implementasi Nilai – Nilai Pancasila Dalam Penegakan Hukum Pidana Terhadap Tindak Pidana Korupsi," *Jurnal Hukum Dan Sosial Politik* 2, no. 1 (n.d.): 83.

<sup>26</sup> Sofyan Jailani, "Independensi Kekuasaan Kehakiman Berdasar Undang-Undang Dasar 1945," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 6, no. 3 (2015): 303, <https://doi.org/10.25041/fiatjustisia.v6no3.360>.

<sup>27</sup> Jailani, "Independensi Kekuasaan Kehakiman Berdasar Undang-Undang Dasar 1945."

<sup>28</sup> Nur Kholis, "Asas Non Diskriminasi Dalam Contempt of Court," *Legality : Jurnal Ilmiah Hukum* 26, no. 2 (2019): 210, <https://doi.org/10.22219/jihl.v26i2.7797>.

<sup>29</sup> John McGarry, "The Attorney General and Contempt of Court – Some Political and Constitutional Concerns," *Legal Studies* 44, no. 2 (2024): 354, <https://doi.org/10.1017/lst.2023.26>.

<sup>30</sup> Ribut Baidi and Aji Mulyana, "Peran Hakim Memperkokoh Integritas Peradilan Sebagai Benteng Penegakan Hukum Dan Keadilan Publik," *Jurnal Hukum Mimbar Justitia* 10, no. 1 (2024): 103, <https://doi.org/10.35194/jhmj.v10i1.4171>.

representative of God on earth.<sup>31</sup> In connection with the principle of judicial independence, several important objectives must be achieved. One of the primary goals is to serve as part of a system in which power is divided among the branches of government. Judicial independence is essential for three main purposes. *First*, an independent judiciary is necessary to protect individual freedoms. *Second*, it must function as a safeguard against arbitrary or oppressive actions by government officials.<sup>32</sup> *Third*, an independent judiciary must be able to legally assess whether laws or government actions are legitimate, thereby ensuring the proper functioning of the legal system. The high responsibility entrusted to judges reflects the ideal and expectation that judges should not only apply the law textually but also interpret and implement values of justice that are transcendent and deeply rooted in society's collective consciousness. Judicial freedom in upholding law and justice must be balanced with moral integrity, ethical conduct, transparency, accountability, and professionalism. When an act of contempt of court occurs, it is not merely an insult to the judicial institution but also a degradation of the sacred role of the judge as a representative of divine justice. Such actions can deepen a crisis of public trust in the judiciary.<sup>33</sup>

Legal protection against contempt of court is not only aimed at shielding the judiciary from external threats but also expected to enhance the quality of legal professionals within the judicial system as a preventive measure. In this context, law enforcement officers themselves may trigger contempt of court, whether through unethical behaviour, unjust rulings, or a lack of professionalism. Therefore, from a philosophical standpoint, protection against contempt of court must be balanced with efforts to strengthen internal quality and judicial integrity. External safeguards will not be effective without internal legitimacy. The establishment of the judiciary is a manifestation of the effort to realise the rule of law, making it an ideal instrument for enforcing legal norms and protecting the public's legal interests. The judiciary functions as the final stronghold for citizens in their pursuit of justice. For this reason, its integrity and authority are of critical importance and must be preserved.<sup>34</sup>

The primary philosophical foundation for protecting the judiciary lies in preserving its independence and impartiality, both of which are essential prerequisites for achieving justice. An independent, impartial, and high-integrity judiciary will naturally foster public trust, which, in turn, reinforces the position and legitimacy of judicial independence. This forms an interconnected cycle. Philosophically, legal protection against contempt of court is intended not only to punish offenders but also to break the negative cycle of distrust and disrespect toward the judiciary. Efforts to protect the judiciary aim to restore its moral and social foundations, which are vital to the existence of a rule-of-law state. Such protection enables

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<sup>31</sup> Rahmatyar Ana and Muhammad Roshiku, "Independensi Dan Integritas Hakim Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Fundamental Justice* 7, no. 3 (2023): 70.

<sup>32</sup> Ardyansyah Jintang, "Idealitas Konsep Kekuasaan Kehakiman Di Indonesia Untuk Mewujudkan Independence Of Judiciary secara Paripurna," *Jurnal Hukum Peradilan* 6, no. 2 (2023): 140–66.

<sup>33</sup> Jintang.

<sup>34</sup> Indah Nur Shanty Saleh, *Buku Referensi Sistem Peradilan Di Indonesia: Proses, Hak, Dan Keadilan* (Jambi: PT Sonpedia Publishing Indonesia, 2024), 89.

the judiciary to stand on its own and build trust among justice seekers, thereby allowing it to fulfil its role as the final stronghold in the pursuit of justice.<sup>35</sup>

The judiciary is often referred to as the final stronghold in enforcing the law. However, this stronghold is frequently breached by the personal interests of certain law enforcement actors, litigating parties, and even members of the public. Attempts to undermine the fortress of justice can generally be categorised into two main forms. First, the loss of judicial integrity, often due to material inducements or other motives that conflict with the principle of the judiciary's independence, ultimately undermines justice, legal certainty, and the usefulness of law. Second, the erosion of respect for judicial institutions stems from a lack of legal awareness, entrenched cultural attitudes toward the law, and the weakness of courtroom protocol and security systems.<sup>36</sup>

Protection of the judiciary is, in itself, an implementation of justice through legal safeguards. On the theory of justice, John Rawls asserts that justice is not only concerned with the moral character of individuals but also encompasses the mechanisms through which justice is achieved and the legal efforts that support this process. As an institution that should embody justice, the judiciary must be supported by adequate legal instruments and systems. Only then can the goal of impartial justice be realised through the judicial process.<sup>37</sup>

### **Urgency of a Specific and Impartial Regulation on Contempt of Court**

Normatively, criminal acts intended to interfere with the administration of justice, whether directly or indirectly, physically or psychologically, are known as contempt of court. The normative affirmation of the urgency of criminalising contempt of court is clearly stated in point four of the fourth paragraph of the General Explanation of Law Number 14 of 1985 concerning the Supreme Court, which states that:<sup>38</sup>

- a. There is an indication that issues within the judiciary, particularly concerning the authority, dignity, and honour of the judicial institution, have not been supported by the most optimal conditions, and therefore need to be further guaranteed, even though legislation concerning judicial bodies already exists;
- b. There is a desire to address this matter in a separate law (codified), even though guarantees for the administration of justice to uphold law and justice based on Pancasila have already been included in various laws and regulations.

Furthermore, in order to better ensure the creation of an optimal environment for the administration of justice in upholding the law and justice based on Pancasila, it is necessary to establish a law that regulates the handling of actions, behaviors, attitudes, and/or statements

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<sup>35</sup> Avivul Huda and Mila Novia Sprinda, "Malpraktik Dan Contempt of Court," *Jas Merah: Jurnal Hukum Dan Ahwal Al-Syakhsiyah* 3, no. 2 (2024): 141.

<sup>36</sup> Ardyansyah Jintang, "Idealitas Konsep Kekuasaan Kehakiman Di Indonesia Untuk Mewujudkan Independence Of Judiciary Secara Paripurna," *Jurnal Hukum Peraturan* 6, no. 2 (2023): 151.

<sup>37</sup> Jintang, "Idealitas Konsep Kekuasaan Kehakiman Di Indonesia Untuk Mewujudkan Independence Of Judiciarysecara Paripurna."

<sup>38</sup> Budi Suharyanto, "Academic Paper on Draft Law on the Prevention and Handling of Criminal Acts against the Administration of Justice," 2020, 356.

that may undermine and erode the authority, dignity, and honor of the judiciary, known as contempt of court.<sup>39</sup>

Based on the Supreme Court's explanation of the law above, Padmo Wahyono argues that the concept of contempt of court should be considered *an ius constituendum*, meaning it is a legal institution that should be established in a specific law to create a conducive environment for the proper administration of justice in Indonesia. Padmo Wahyono explains that the formulation contains two main issues. In legal and justice discourse, the concept of contempt of court plays a crucial role in maintaining the integrity and authority of the judiciary. Acts of contempt not only threaten the dignity and authority of the judicial institution but also undermine the foundation of public trust in the justice system and the independence of the judiciary.

Not only is it regulated by the Supreme Court's law, but several articles in Indonesia's positive law can be categorised as contempt of court. These articles are scattered across various laws and regulations in Indonesia, namely:

**Table 1: Partial Regulation of Contempt of Court Categories in Indonesian Legislation**

Laws	Articles/Relevant Provisions	Description/implications
<b>Law No. 1 of 2023 on the (New) Criminal Code</b>	Articles 278–299 of the Criminal Code (Chapter VI on Criminal Acts Against the Judicial Process)	Criminal acts of insult under the Indonesian Penal Code generally fall into two main categories: general insults and specific insults. <sup>40</sup> This provides more specific regulation concerning judicial proceedings; however, the full scope of contempt of court is not yet reflected in Law Number 1 of 2023. Contempt of court committed by the press is regulated only in relation to direct contempt (live broadcasts). There is no regulation concerning indirect contempt.
<b>Law Number 14 of 1985 on the Supreme Court</b>	General explanation, point 4, paragraph 4	Introduced the term contempt of court for the first time in Indonesian legislation. <sup>41</sup>
<b>Law Number 48 of 2009 on Judicial Authority</b>	Article 1, point 1.	Affirms the principle of judicial independence as a constitutional foundation.
<b>Law Number 40 of 1999 on Press</b>	Article 3 paragraph (1), Article 5 paragraph (1)	Although not directly regulating contempt of court, these provisions are relevant to trial by press, which is categorised as a form of contempt of court. <sup>42</sup>

*Source: Summarised by the Author*

Based on Table 1, the regulation of judicial contempt in Indonesia remains partial and fragmented, lacking a comprehensive, unified legal framework. There are inconsistencies in how contempt of court is addressed across different laws and regulations. Furthermore, the

<sup>39</sup> Suharyanto, "Academic Paper on Draft Law on the Prevention and Handling of Criminal Acts against the Administration of Justice."

<sup>40</sup> Muhammad Reza Winata et al., "Criminal Legal Policy and Unconstitutionality on Contempt of Ruler or Public Body," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020): 79, <https://doi.org/10.25216/jhp.9.1.2020.71-98>.

<sup>41</sup> Opik Rozikin, "Contempt of Court in Indonesian Regulation Contempt of Court Dalam Peraturan Perundangan Di Indonesia," *JCIC - Jurnal CIC Lembaga Riset Dan Konsultan Sosial*, no. 25 (2019): 10.

<sup>42</sup> Muhammad Ridwan, *Trial by The Press Terhadap Jessica Kumala Wongso Dalam Kasus Pembunuhan Wayan Mirna Salihin Ditinjau Dari Asas Presumption Innocence*. (Yogyakarta: Universitas Gadjah Mada, 2017), 43.

concept is generally explained only implicitly and is not concretely regulated within the substantive content of these legal instruments. This results in a lack of legal certainty in both the prevention and handling of contempt of court cases.

This situation stands in stark contrast to the regulation of contempt of court in several other countries, particularly those that adhere to the Common Law system. In such countries, contempt of court is regulated in a way that directly protects the authority and dignity of judges.<sup>43</sup> For instance, in the United Kingdom, the regulation of contempt of court is comprehensively and specifically codified in the Contempt of Court Act 1981. The United Kingdom offers a more detailed and explicit approach to the regulation of contempt of court compared to Indonesia's Criminal Code. Differences are also evident in the classification of offences and the criminal sanctions imposed on offenders. Furthermore, a notable feature of the UK's legal framework is the application of strict liability for criminal contempt of court, as explicitly provided for in its legislation.<sup>44</sup>

Provisions regarding contempt of court are formulated in the positive criminal law of Russia, which adopts the civil law system, namely the Criminal Code of the Russian Federation (CCORF). The Criminal Code of the Russian Federation is considered one of the most modern criminal codes in the world. Crimes against the administration of justice are regulated under Chapter 31, Book II of the CCORF, which consists of 23 articles. The Criminal Code of the Russian Federation provides a more comprehensive and in-depth regulation of criminal acts, the scope of regulation, and more specific provisions on contempt of court than Indonesia's positive law.<sup>45</sup> Additionally, the concept of contempt of court is clearly articulated in a dedicated chapter, which also addresses press freedom to prevent such acts. Criminal law protection of the judiciary in Russia is marked by the establishment and strengthening of its positive law. This includes reinforcing the authority of the judiciary by formulating criminal law norms to protect law enforcement officers and the integrity of judicial institutions.<sup>46</sup>

In the Malaysian legal landscape, there is a notably stringent adherence to the *sub judice* rule. Journalistic reporting or public discourse perceived as having the potential to prejudice ongoing proceedings or to cultivate bias against the accused or the prosecution is strictly categorised as *contempt of court*.<sup>47</sup> This prohibitive framework remains in effect from the pre-trial phase until the exhaustion of all legal remedies, primarily to safeguard the administration of justice from undue external pressures. Beyond specific litigation, Malaysia also maintains the doctrine of 'scandalising the court,' which criminalises expressions that erode public confidence in the judicial institution, regardless of any pending case. This particular facet frequently creates friction with press freedom norms, as legitimate critiques can at times be interpreted as contemptuous. Procedurally, such actions are typically initiated either *suo motu*

<sup>43</sup> Tolib Effendi, *Sistem Peradilan Pidana: Perbandingan Komponen Dan Proses Sistem Peradilan Pidana Di Beberapa Negara* (Yogyakarta: Media Pressindo, 2018), 185.

<sup>44</sup> "Contempt of Court Act 1981" (n.d.).

<sup>45</sup> "Criminal Code of Russian Federation" (n.d.).

<sup>46</sup> Sergeeva Angelica Anatolyevna, "Genesis and Prospects of Legal Regulation of the Liability Institution for Contempt of Court," *Law Journal* 1 (2022).

<sup>47</sup> "Disobeying Court Orders—A Comparison—A Comparative Analysis of the Civil and Analysis of the Civil Contempt of Court Doctrine and of the Image of the Common Law Judge."

by the bench or through the intervention of the Attorney General, with sanctions ranging from fines to incarceration, remaining subject to judicial discretion to prevent a 'trial by media' that could compromise the impartiality of witnesses or the judiciary.<sup>48</sup>

In the USA, the First Amendment's protection of press freedom is very broad. In indirect contempt cases involving the press (including scandalising and sub-judice), the US Supreme Court applies the "Clear and Present Danger" test. This standard requires that punishment be imposed only if the publication poses a very serious and imminent threat to the ongoing judicial process. This makes criminal contempt of the media nearly impossible, providing the widest scope for criticism of the judiciary.<sup>49</sup> In contrast to the Indonesian framework, the jurisdictions under review adopt a more comprehensive approach by distinguishing between direct and indirect contempt of court. Notably, the regulations governing indirect contempt by the press do not infringe upon media freedom, provided it can be demonstrated that the reporting poses a clear and present danger to the judicial process. The apparent difference with the Indonesian legal system is that indirect contempt is explicitly regulated in the countries used as comparisons. Furthermore, the concepts and benchmarks defining what constitutes indirect contempt are explicitly defined to avoid restricting press freedom. This can serve as an idea for Indonesia's future legal reforms.

In Indonesia, several legal provisions fall under the category of contempt of court or are related to such violations. These provisions are scattered and partial. This fragmented, non-comprehensive regulatory approach to defining contempt of court results in legal uncertainty. The lack of legal certainty and inconsistent enforcement stems from this fragmented system. This indicates that although there is an acknowledgement of the need for protection, there is still no integrated, structured strategy. Such conditions reflect either a lack of legislative priority or difficulties in reaching consensus regarding the scope and sanctions for contempt of court. Ultimately, this hampers both preventive and enforcement functions. Legal uncertainty arises because existing laws and regulations lack uniform, clear, and integrated definitions and classifications. This can lead to confusion and inconsistency in law enforcement. Law enforcement officers, especially judges, face challenges in interpreting provisions that were not specifically designed for contempt of court. Judges struggle to identify, qualify, and consistently take action against contemptuous conduct. This classification issue is not merely academic or theoretical. It has a real impact on how judicial protection functions in practice.

The urgency of establishing a *lex specialist* regulation for Contempt of Court has become a critical issue.<sup>50</sup> Indonesia, which adopts the Civil Law system, traditionally emphasises comprehensive legal codification. However, Contempt of Court, as a concept rooted in the Common Law tradition, is not explicitly recognised and is currently regulated in a fragmented manner across various laws in Indonesia. The need for a dedicated law on Contempt of Court arises from the fact that current regulations are non-specific and partial, leading to enforcement challenges and the ongoing occurrence of acts that undermine the judiciary. Although the new

<sup>48</sup> Shukriah Mohd. Sheriff, "Sub Judice and Gag Order: The Recent Development in Malaysia," *IIUMLJ* 30, no. 1 (2022).

<sup>49</sup> Elisha. Hanson, "Supreme Court on Freedom of the Press and Contempt by Publication," *Cornell LQ* 27 (n.d.): 165.

<sup>50</sup> Anatolyevna, "Genesis and Prospects of Legal Regulation of the Liability Institution for Contempt of Court."

national Criminal Code (KUHP) has attempted to incorporate Contempt of Court into its codification, judicial institutions continue to advocate for a specialised law strongly. This suggests that the codification efforts within the new KUHP may not yet be perceived as sufficiently comprehensive, specific, or adequate to address the full scope and complexity of Contempt of Court offences. There is concern that overly general provisions within the codified law may weaken law enforcement effectiveness or fail to encompass all forms of contempt that threaten the authority and dignity of the courts. This presents a significant challenge in Indonesia's criminal law reform efforts: balancing the principle of comprehensive codification with the need for *specialised* regulations to address highly specific, sensitive, and uniquely characterised issues such as Contempt of Court. The crucial question that arises is whether the new KUHP is sufficient to provide adequate protection, or whether a *lex specialist* is still necessary to ensure optimal safeguarding of judicial independence and dignity.

The urgency and rationale behind establishing a specific law regulating Contempt of Court are of great importance for protecting judicial processes, all parties involved in the judiciary, and the legal officers operating within it. In several cases, Contempt of Court arises from dissatisfaction among justice seekers with court decisions, as well as from the absence of a dedicated regulation that explicitly governs it. As a result, sanctions imposed on perpetrators are not yet firm, which fails to deter and inadvertently sets a negative example for the public. As a state governed by the rule of law, Indonesia is obliged to guarantee equal treatment and individual rights in the exercise of its fundamental freedoms. Considering this as a condition *sine qua non*, it follows that authorities must not act arbitrarily toward individuals. There is also a shared restriction on the exercise of power, which is flexible depending on the situation, with the law serving as the primary limitation. The conclusion is that in a rule of law state, both the government and individuals possess rights and responsibilities that are protected by law. Justice in this context lies in the legal protection provided to all parties, meaning that it is not only the justice seekers who must be protected, but also the judicial institutions, including all legal professionals involved, as well as the judicial process itself. Therefore, Contempt of Court must be properly understood so that the scope regulated by law is accurate and effective.

Legislation prohibiting contempt of court should clearly define the legal subject and object involved, along with sanctions that are not lighter than those stipulated in Article 310 of the Criminal Code, because contempt of court is an insult to a judicial institution or a specific official exercising judicial power.<sup>51</sup>

The law governing contempt of court is intended to uphold and ensure an effective judicial process. This means protecting the conduct of a fair trial and preserving the court's authority and dignity. To maintain a balance between freedom of expression and the independence of the judiciary, the provisions on contempt of court should include clear limitations on what constitutes contempt and what does not, even though in practice it may be difficult to draw a

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<sup>51</sup> Centre for Legal and Judicial Research and Development of the Supreme Court of the Republic of Indonesia, "Academic Paper on Contempt of Court Research," 2002.

clear distinction.<sup>52</sup> The main goal of law enforcement is to establish and maintain social order. In achieving this, cooperation between the community and the judicial institutions is essential. This is in line with Cicero's dictum, *Ubi Societas Ibi Ius*, which means where there is society, there is law. From a philosophical point of view, law is a product of society. A nation is considered civilised when it upholds just laws and has a competent and independent judiciary.<sup>53</sup>

The regulation is a legal effort to protect the public interest and uphold the rule of law, ensuring that judicial proceedings are carried out properly and appropriately. What is at stake is not only the rights of the parties or the dignity of the judiciary itself, but something more fundamental, namely, the enforcement of the foundations of legal supremacy.<sup>54</sup> Given the current judicial system, where contempt toward the courts frequently occurs in both criminal and civil cases, and where the law does not clearly regulate such conduct, there is a need for specific legislation on Contempt of Court. In applying the principles and systems of justice, judges as enforcers of the law through the courts do not operate free from obstacles and challenges. Often, during the administration of justice in the process of receiving, examining, adjudicating, and resolving cases, there are behaviours, actions, attitudes, and statements that can undermine the authority, dignity, and honor of the judiciary, which may reduce the independence of judicial power and fall under the category of Contempt of Court. By establishing comprehensive contempt of court regulations, this aims to avoid risks to the guarantee of a fair trial, reduce the impact of media influenced public opinion on democratic justice, and reduce the potential for abuse of contempt of court regulations if they are not carefully drafted.

### **The Ideal Normative Construction for Reconciling Indirect Contempt of Court with The Constitutional Mandate of Press Freedom**

One type of contempt of court, according to Oemar Seno Adji, is press-related contempt, known as the sub judice rule. According to Oemar Seno Adji,<sup>55</sup> acts of contempt of court committed through announcements or publications are attempts to influence the decision a judge will make through actions, attitudes, or, especially, written or oral statements that later become media issues with legal implications. In its development, the sub judice rule is interpreted as a publication that prejudices issues in pending proceedings, or, as commonly known, trial by the press. The press is considered to have committed trial by the press when its coverage of a suspected criminal case from the investigation stage to trial proceedings results in the accused being cornered or publicly judged in a way that undermines their ability to receive

<sup>52</sup> Sareh Wiyono M., "Urgensi Pembentukan Undang-Undang Tentang Penghinaan Dalam Persidangan (Contempt of Court) Untuk Menegakkan Martabat Dan Wibawa Peradilan," *Jurnal Hukum Dan Per* 4, no. 2 (2015): 260.

<sup>53</sup> Siti Zulaichah, "The Importance of Designing Legislation on Indonesian Contempt of Court Act: Legal Practitioners' Perspective," *Borobudur Law Review* 5, no. 1 (2023): 15–30, <https://doi.org/10.31603/burrev.6584>.

<sup>54</sup> Idea Islami Parasty, "Efektivitas Majelis Kehormatan Hakim (MKH) Dalam Menegakkan Kode Etik Dan Pedoman Perilaku Hakim (Studi Kasus Keputusan Majelis Kehormatan Hakim (MKH) Nomor 04/MKH/XII/2012 Dan 03/MKH/VI/2013)" (Universitas Islam Indonesia, 2014), 45.

<sup>55</sup> Syarifah Masthura, "Kajian Yuridis Terhadap Contempt of Court Di Depan Pengadilan (Studi Di Depan Pengadilan Negeri Medan)," *Jurnal Mercatoria* 4, no. 2 (2011): 122.

a fair and impartial trial.<sup>56</sup> "Trial by the press" refers to a one-sided adjudication through writing or speech that is biased, often intentionally amplified through mass media, without presenting all the facts. This causes the report or statement to be unbalanced and ultimately acts as if it were a court decision itself.<sup>57</sup> The phrase "trial by the press" is a metaphor for the press's impact, in which the press appears to function like a judicial body when reporting on ongoing legal cases through print, online, or live media. This leads the public also to judge the case before a verdict is officially reached.<sup>58</sup> Trial by the press can therefore be seen as a form of unilateral adjudication where the media presents only one side of the story. The result is a public opinion that presumes the suspect, or defendant is guilty even though no final and binding court decision has been issued (*In Kracht Van Gewijsde*).<sup>59</sup>

During its development, actions categorised as trials by the press have occurred several times in Indonesia. Some examples of trial by the press are as follows:

**Table 2: Examples of Trial by Press Cases in Indonesia**

Cases	Description
Syahrul Yasin Limpo was the 28th Minister of Agriculture during President Joko Widodo's administration. He served from October 23, 2019, until his term ended on October 6, 2023.	This constitutes a violation by the press as it goes against the principle of the presumption of innocence. While the press is granted freedom to report as part of its duties, it must still respect legal and ethical boundaries.
The murder case of Wayan Mirna Salihin at Olivier Café is a clear example of Trial by the Press, which was evident from the excessive coverage by various television stations and media outlets.	Several private and national TV stations openly broadcast the court proceedings while exaggerating the case, leading to the spread of numerous hoaxes even before a verdict was reached.
	There were approximately 56 online news reports—excluding coverage through print media and radio—that portrayed Jessica Kumala Wongso as the murderer of Wayan Mirna Salihin, effectively judging her before the court did.

**Source:** Summarised from reports in electronic and print media

If we examine the examples of contempt of court by the press outlined in the table above, none have been resolved through legal proceedings; rather, they have been treated merely as ethical violations. As a state based on the rule of law, Indonesia is obligated to ensure equal treatment and the protection of individual rights, including the freedom to exercise basic human rights. When the judiciary is deprived of adequate protection, it inevitably loses its independence.<sup>60</sup> In a legal state, both the government and individuals hold equal rights and

<sup>56</sup> Amir Machmud NS, "Mengartikulasikan 'Trial By the Press' Dalam Kemasan Pemberitaan Media Yang Berorientasi Kemaslahatan," *Masalah-Masalah Hukum* 45, no. 1 (2016): 45, <https://doi.org/10.14710/mmh.45.1.2016.41-48>.

<sup>57</sup> Guruh Marda, Zul Karnen, and Caskiman Caskiman, "Trial By the Press Dalam Fenomena Pemberitaan Kasus Terorisme Di Indonesia," *Jurnal Magister Ilmu Hukum* 8, no. 1 (2023): 72, <https://doi.org/10.36722/jmih.v8i1.1881>.

<sup>58</sup> Ni Putu Noni Suharyanti, "Perspektif HAM Mengenai Penerapan Asas Praduga Tak Bersalah Dalam Kaitannya Dengan Pemberitaan Di Media Masa," *Advokasi* 5, no. 2 (2015): 123.

<sup>59</sup> Nirmala Sari, "Trial By the Press Terhadap Proses Peradilan Tindak Pidana Korupsi Dalam Perspektif Asas Praduga Tidak Bersalah," *Rio Law Jurnal* 1, no. 1 (2020): 1.

<sup>60</sup> Joseph J Chused, "Washington University Law Review Public Comment as Contempt of Court," *Washington University Law Review* 16, no. 1 (1930): 48.

responsibilities safeguarded by law.<sup>61</sup> Justice lies in ensuring legal protection for all parties, not only for justice seekers but also for the judiciary itself, including all legal professionals involved, and the legal process through which justice is pursued in court. Therefore, contempt of court must be clearly and accurately defined so that the scope regulated by legislation is appropriate.<sup>62</sup> The narrow scope of trial by the press, as defined in Law Number 1 of 2023, poses a significant challenge for law enforcement in Indonesia.

Trial by the press or contempt of court committed by the press, which is categorised as indirect contempt, is not regulated under the chapter on contempt of court. This differs from several countries around the world, which explicitly mention contempt of court in articles or legislation regarding criminal acts that interfere with court proceedings. Such actions by the press are contrary to the presumption of innocence principle and the principle of an open and impartial trial. The presumption of innocence is a fundamental principle in the criminal justice system. According to Law Number 48 of 2009, this principle is stated in Article 8, Paragraph (1). The application of the presumption of innocence to the press means that the media is not allowed to broadcast excessively by reporting or publishing the personal data of suspects before the judge issues a ruling finding the defendant guilty. The press may report and publish coverage of court proceedings (unless otherwise specified by law). However, in doing so, the media must respect courtroom order and may not violate the principles of criminal procedure law.<sup>63</sup>

Trial by the press aims to shape public opinion by creating a subjective, tendentious perception that someone is guilty, based on facts gathered by the press.<sup>64</sup> This contradicts the principles outlined in the UDHR and Article 14 Paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia through Law Number 12 of 2005 on the Ratification of the ICCPR, stating that everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law.<sup>65</sup> The essence of indirect trial by the press lies not in its overt manipulation but in its ability to shape public opinion. This is what distinguishes it from direct forms of trial by the press. However, it must be proven that the public opinion formed eventually translates into direct influence or intimidation that may affect a judge's decision.<sup>66</sup> The facts show that the issue is not direct physical or verbal disruptions in court, but rather the formation of broader, more subtle public sentiment. The widespread and unmeasurable force of public opinion is what translates into contempt of court by the press.

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<sup>61</sup> Chused, "Washington University Law Review Public Comment as Contempt of Court."

<sup>62</sup> Machmud NS, "Mengartikulasikan 'Trial By the Press' Dalam Kemasan Pemberitaan Media Yang Berorientasi Kemaslahatan."

<sup>63</sup> Vivin Nurviana, "Asas Praduga Tak Bersalah Dalam Kebijakan Hukum Pidana Di Indonesia," *Jurnal Studi Hukum Pidana* 2, no. 48 (2022): 3–4.

<sup>64</sup> Abdullah Mahfud, "Tinjauan Trial by the Press Dalam Hak Asasi Manusia Dan Hukum Islam" (UIN Syarif Hidayatullah Jakarta, 2019), 43.

<sup>65</sup> Mahfud, "Tinjauan Trial by the Press Dalam Hak Asasi Manusia Dan Hukum Islam."

<sup>66</sup> Janet Steele, "'Trial by the Press': An Examination of Journalism, Ethics, and Islam in Indonesia and Malaysia," *International Journal of Press/Politics* 18, no. 3 (2013): 349, <https://doi.org/10.1177/1940161213484588>.

In Law Number 1 of 2023, trial by the press is regulated in Article 280, paragraph (1), letter c, which governs interference with and misleading of judicial proceedings. The article states: "Any person who, during a court session, broadcasts the trial proceedings live without the court's permission shall be subject to a fine of up to category II."

Further clarification of each point in Law Number 1 of 2023 is as follows: Live streaming refers to the direct broadcasting of court proceedings. Journalists and reporters are still permitted to write stories and publish them after the court session has concluded.

Article 280 paragraph (1) letter c of the national Criminal Code regulates sanctions for actions that undermine the integrity of law enforcement officers and court officials, including broadcasting court proceedings live. The official explanation accompanying Article 280 paragraph (1) letter d explicitly clarifies "that broadcasting court proceedings live is to be interpreted as live streaming".<sup>67</sup> This explanation further states that "the provision does not limit journalists or reporters from writing news and publishing it after the court session".

In a narrow sense, the definition of "publishing court proceedings live" as "live streaming" regulated in Article 280 paragraph (1) letter c creates a very limited scope and does not cover indirect forms of trial by the press, such as excessive reporting on cases that have not yet obtained permanent legal force, and which may influence public opinion.<sup>68</sup>

Article 280 of the National Criminal Code does not encompass the broader, subtler, and cumulative forms of indirect media influence. This article focuses solely on imposing sanctions for direct disruptions in the courtroom and does not address the broader, more significant influence of the media across various platforms. The definition of "live" as "live streaming" in the explanation of Article 280 limits the scope of the article.<sup>69</sup> The clarification that it does not restrict post-trial reporting further reinforces the interpretation that the article is narrowly confined to what occurs during court sessions (direct contempt). This means that any media action influencing public opinion before or during the trial, but not through live streaming (for example, daily news reports, investigative articles, commentary programs, or social media discussions), falls outside the direct scope of this article. This represents a clear and significant gap in addressing forms of indirect trial by the press, as media influence extends far beyond live courtroom broadcasts.

The regulation of contempt of court must be comprehensive and have a clear, comprehensive scope, including provisions on indirect trial by the press. Trial by the press can undermine judges' impartiality because widespread public pressure and opinion can make them feel compelled to either consider or deliberately ignore public sentiment in their judgment. This external influence directly threatens judicial independence and the overall integrity of the judicial process.

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<sup>67</sup> "One Example of a Case That Implemented a Ban on Live Streaming Even Though Article 1 Paragraph d of Law Number 1 of 2023 Article 280 Has Not yet Come into Effect Is the Kanjuruhan Case Trial. To Protect the Mental Health of Witnesses, Especially the Victims," n.d.

<sup>68</sup> Agnes Floresto Nugraini Nugroho and Slamet Suhartono, "Analisis Pasal 280 Ayat (1) Huruf d Undang-Undang Nomor 1 Tahun 2023 Terhadap Kesesuaian Dengan Kebebasan Pers," *Jurnal Cendekia Ilmiah* 3, no. 5 (2024): 2468.

<sup>69</sup> Nugroho and Suhartono, "Analisis Pasal 280 Ayat (1) Huruf d Undang-Undang Nomor 1 Tahun 2023 Terhadap Kesesuaian Dengan Kebebasan Pers."

Law serves as an instrument to protect the judiciary from acts of contempt of court. According to Philipus M. Hadjon, in the theory of legal protection, law functions as a means of protecting human interests. For these interests to be protected, the law must be applied professionally. Law enforcement should proceed in a normal, peaceful, and orderly manner. When the law is violated, it must be enforced properly. Legal enforcement requires legal certainty, which serves as protection against arbitrary actions, including contempt of court, both inside and outside the courtroom. Society expects the benefit of legal certainty because it brings order, security, and peace. People also expect tangible benefits from law enforcement.

This aligns with the purpose of integrative punishment as proposed by Muladi,<sup>70</sup> in which the construction of criminal law regarding contempt of court serves as a means to protect the judiciary, in particular, as well as society at large, from the harm caused by such offences. It also serves as a general and specific preventive measure against contempt of court.<sup>71</sup>

The relationship between press freedom and the legal protection of the judiciary against contempt of court is complex and comprises two elements that must not be ignored or separated. The principle of proportionality is indispensable as a balancing mechanism to reconcile the exercise of press freedom with the preservation of the integrity of the judicial process. This principle prevents the state from exercising excessive or arbitrary power over individuals who have committed offences. In this context, the principle of proportionality serves as a bridge between the need to maintain public security and the state's obligation to protect the fundamental rights of its citizens.<sup>72</sup> On one hand, freedom of expression and opinion is a human right guaranteed by the Constitution. However, this freedom is not absolute. Some values and norms must be upheld to prevent disruption to other pillars of life, especially in the judicial process, which is carried out in accordance with principles and ethical codes that must be observed to preserve the dignity and integrity of the judiciary. Therefore, it is necessary to establish an ideal concept of press freedom so that it does not violate the law or result in contempt of court. At its core, every person has the right to think freely and express ideas and opinions. However, such freedom must not infringe on others' rights and must be limited by social, legal, and societal norms. In the practice of press freedom, there must be a balance between the value of freedom and the value of responsibility. The philosophical foundation of press freedom in Indonesia is grounded in Pancasila, which functions as the legal idealism (*Rechtsidee*), the fundamental norm of the state (*Staatsfundamentalnorm*), and the basic norm (*Grundnorm*). Pancasila provides a conceptual framework to guide press freedom in fulfilling its duties and roles, particularly in news reporting related to judicial proceedings. Since the nation's founding, Indonesia has adopted Pancasila as the source of national inspiration, values, and morality.<sup>73</sup> The values derived from the essence of divinity, humanity, unity, and justice are

<sup>70</sup> Warih Anjari, "The Imprisonment for Doctors Through the Perspective of Final and Binding Constitutional," *Jurnal Yudisial* 10, no. 1 (2017): 60.

<sup>71</sup> Syarif Saddam Rivanie et al., "Perkembangan Teori-Teori Tujuan Pemidanaan," *Halu Oleo Law Review* 6, no. 2 (2022): 186, <https://doi.org/10.33561/holrev.v6i2.4>.

<sup>72</sup> Asmak ul Hosnaha et al, "The Principle of Proportionality in Drug Control Policy in the Philippines and Indonesia," *Sriwijaya Law Review* Vol. 9 Issue 2, July (2025): 330

<sup>73</sup> Nur Rohim Yunus, *Filsafat Pancasila* (Palembang: Refika, 2022), 134.

embodied in the ethical concept of Pancasila.<sup>74</sup> This framework enables justice to be built on clear thinking, implemented fairly and honestly, and upheld with accountability. Justice and law must be upheld based on positive law to achieve justice in accordance with the real conditions of society, which seeks peace and order. Justice must be constructed in line with the legal idealism (*rechtidee*) within a state governed by the rule of law (*rechstaat*).<sup>75</sup>

According to Rawls, freedom may be limited only if it infringes on others' freedom. In the context of the judiciary, this means that freedom of expression can be legitimately restricted if it directly undermines the right to a fair trial for others or the court's impartiality, which is a fundamental freedom for all individuals seeking justice.<sup>76</sup>

Legal justice is not only related to the application of law but also to the substance of the law, which must reflect the recognition that every individual has equal human rights before the law. Similar matters should be treated equally, while different matters should be treated differently. A fair judicial process not only complies with legal procedures but also upholds principles that respect human rights.<sup>77</sup>

Indonesia needs a comprehensive legal system that protects the judiciary from contempt of court caused by publication. Pre-trial media coverage can impact judges' impartiality or intimidate witnesses, justifying carefully tailored contempt sanctions in extreme cases.<sup>78</sup> At the same time, overbroad contempt rules can chill legitimate investigative journalism, entrench opacity, and be used defensively by courts to avoid scrutiny, as seen in debates around media trials and "scandalising the court" offences.<sup>79</sup> A balanced construction, therefore, needs a clear "real risk" or "substantial danger" threshold for interference with justice, explicit protection for good-faith criticism of judicial reasoning and institutional performance, and criminalisation or radical narrowing of vague "scandalising" categories that primarily police reputation rather than process.<sup>80</sup>

A comparative inquiry into global legal standards reveals that jurisdictions such as the United States impose a remarkably high evidentiary threshold in press-related cases. Under this framework, any allegation of contempt must be substantiated by proof of 'actual malice' and a demonstrable, tangible impact on the judicial process before a verdict is rendered. This rigorous requirement is not merely a procedural hurdle; it is a vital safeguard designed to prevent the arbitrary curtailment of freedom of expression. Consequently, as Indonesia navigates its new penal era under Law No. 1 of 2023, it is imperative that our ideal legal construction explicitly adopts these standards. By strictly codifying the necessity to prove both malicious intent and

<sup>74</sup> Yunus, *Filsafat Pancasila*.

<sup>75</sup> Ishaq, *Dasar-Dasar Ilmu Hukum* (Jakarta: Sinar Grafika, 2017), 43.

<sup>76</sup> Iqbal Hasanuddin, "Keadilan Sosial: Telaah Atas Filsafat Politik John Rawls," *Refleksi* 17, no. 2 (2018): 200, <https://doi.org/10.15408/ref.v17i2.10205>.

<sup>77</sup> Hasanuddin, "Keadilan Sosial: Telaah Atas Filsafat Politik John Rawls."

<sup>78</sup> S. Krause, "Punishing The Press : Using Contempt of Court to Secure The Right to a Fair Trial," 2017, 247–84, <https://doi.org/https://doi.org/10.4324/9781315091297-14>.

<sup>79</sup> T. Trivedi, "Freedom Of Speech And Expression Vis-À-Vis Contempt Of Court With Special Reference To Prashant Bhushan Case," *Journal of Legal Studies & Research*, 2023, <https://doi.org/https://doi.org/10.55662/jlsr.2023.9301>.

<sup>80</sup> S. Walker, "Freedom of Speech and Contempt of Court: The English and Australian Approaches Compared.," *International and Comparative Law Quarterly*, 40 (1991): 583–606, <https://doi.org/https://doi.org/10.1093/icljq/40.3.583>.

empirical prejudice to the trial, Indonesia can ensure that its contempt provisions do not inadvertently trigger a 'chilling effect' on public discourse but instead harmonise judicial integrity with the constitutional mandate of a free press. Regarding several matters that must be considered in Indonesia's future legal drafting:

1. What is categorised as contempt of court shall only be opinions that directly and substantially aim to influence or sway public opinion regarding the guilt or innocence of a Suspect or Defendant, while the case is still at the investigation, prosecution, or trial stage, such that it can demonstrably undermine the objectivity and impartiality of the Panel of Judges or threaten the right of the Suspect/Defendant to a fair and impartial trial.
2. It must be proven to be committed with fault (in the form of intent or gross negligence) established through valid and convincing evidence and committed with a disregard for the presumption of innocence.
3. Such criminal acts shall be categorised as complaint-based offences (*delik aduan*) that can only be reported by institutions to avoid abuse by certain parties
4. Exempted from the provisions if categorised as follows:
  - a. Reporting that is factual, objective, and proportional regarding the course of the judicial process, trial proceedings, evidence presented, or court decisions that have obtained permanent legal force.
  - b. Reporting of an educational nature or legal analysis that does not mention the identity of the legal subjects in litigation or does not explicitly conclude the guilt or innocence of the Suspect or Defendant.
  - c. Reporting or criticism directed at the policy, performance, or integrity of judicial institutions or law enforcement in general, rather than the substance of an ongoing case.

## **CONCLUSION**

Formulating a law that comprehensively and impartially regulates contempt of court is highly necessary to achieve legal certainty in Indonesia. Although the national legal system of the Unitary State of the Republic of Indonesia already includes several related provisions in existing laws and regulations, their partial nature and dispersion across various legal instruments, including Law Number 1 of 2023, create legal uncertainty and hinder effective and accurate law enforcement. The current regulation tends to focus more on direct contempt during court proceedings. In contrast, indirect contempt, such as trial by the press, which shapes public opinion and can influence judicial impartiality, has not been adequately accommodated. In fact, this form of judicial protection, rooted in the noble values of Pancasila and the principle of judicial independence, is primarily aimed at upholding the dignity of legal institutions and restoring public trust. Therefore, a clear and proportional *lex specialis* regulation must be drafted. This regulation should balance the right to freedom of expression with the need for a fair and integrity-based judiciary to achieve legal certainty and substantive justice for all levels of society. Indonesian law must be regulated comprehensively rather than partially to ensure judicial protection without hindering the values of democracy and transparency in Indonesia. Press freedom and the protection of the judiciary must be balanced

and aligned. The right to freedom of expression must be prioritised without diminishing the dignity and the essence of the judicial process.

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