



Legal Review of the Role Supervisory Judges and Observer towards Convicts Who is Sentenced to Conditional Punishment

Herlina Panggabean, Fernando Simanjuntak, Holmes Rajagukguk

Universitas Sisingamangaraja XII Tapanuli, Siborongborong, Indonesia

Received: 11 Jan 2024; Received in revised form: 17 Feb 2024; Accepted: 25 Feb 2024; Available online: 06 Mar 2024
©2024 The Author(s). Published by Infogain Publication. This is an open-access article under the CC BY license (<https://creativecommons.org/licenses/by/4.0/>).

Abstract— *The research was conducted to determine the implementation of the functions and duties of supervisory and observing judges. To describe this, qualitative descriptive research was conducted. The research location was Tarutung District Court and Tarutung Correctional Center. Materials were obtained through field studies with interviews, then analysed qualitatively. From the results of the research, it shows that the Wasmat judge did not carry out supervision as it should be, where the Wasmat judge has not signed, checked the supervisor's register and observations based on the minutes of the execution of the sentence, and the check on the spot visit to the Correctional Institution was not carried out regularly as stipulated in the regulation, namely 3 times a month. The supervising judge has not observed the behavior of prisoners in the penitentiary and outside the penitentiary. Likewise, the judge has not made observations of the behavior of prisoners on the sentences imposed on him so that it has not brought sentencing policy for other judges.*



Keywords— *The Role of Judges, Convicts and Conditional Punishment*

I. INTRODUCTION

This adult construction problem is becoming increasingly complex as a result of efforts to pay more attention to human rights factors, as well as making crime professional and functional. This requires a multidimensional approach that is fundamental to the impact of financing, both in terms of individual and social impact. Supervisory tasks: (a) Inspect and sign the registers of surveillance and observation that are in the public domain of the State Court; (b) cheek on the spot at least once in three (three) months to the Marketing Institute to verify the truth of the news of the execution of the court rulings signed by the Prosecutor, the Head of the Marketing Board. (c) Conduct observations of the situation, atmosphere and activities that take place within the walls of the institutions, in particular to assess whether the state of the criminal institution has met the understanding that “Meditation is not meant to preach and is not permissible to undermine human dignity”, observe with its own eyes the behavior of the

convict in connection with the crime imposed on him; (d) conduct interviews with the prosecution officers (especially the guardians of the Constructors of the prisoners concerned) on the conduct and the results of the reconstruction of the imprisoned, whether the progress achieved or the regress that has occurred; (e) conducts direct interviews to the prisoner on the matters of treatment against him, the humanitarian relations between themselves and with the persons of the Prosecution Service; (f) contact the outsiders of the Chief of the Marketing Board of the Presidents of the Market Council as well as on the requirements of the Department of Criminal Affairs, if they are in need of consultation with the Ministry of Crime, and in the circumstances in which the proceedings are to be resolved. The data on the conduct of the prisoner can be guided by factors such as: the type of criminal behaviour (e.g. for the first time committing a crime, resident and so on), the attention of his family to him (large number, lack of peers), the circumstances of his

environment (tuna susila etc.), his work records (unemployed and so forth), his personal records (calm, egocentric, etc.), the number of his close friends (one, two, three or more), his psychic status etc.; b) conducting an evaluation of the relationship between the criminal's conduct and the convicted criminal, whether the criminal has been sentenced to the perpetrator with a specific behaviour with sufficient meaning (in a certain sense) so that at the time he can be punished, he can become a member of the community. The surveillance and observation carried out by the supervisory judge and the observation here is not meant as vertical surveillance (surveillance from top to bottom) but as side-by-side (horizontal). The supervisory duties performed by the supervising judge and the observer are regulated in article 280 paragraph (1) of the Constitution. In addition to the provisions of this Constitution, the Supervisory Judge and observer appear with the enactment of the 2004 Law on the Power of the Judiciary but are not accompanied by its rules of implementation. The supervisory duties performed by the judge supervisor and the observer are not carried out physically but only administratively. In addition to receiving reports from the prosecutors of the news of the execution of the judgment, the supervisory judge and the observer also receives reports and behaviour of the prisoners' construction from the head of the justice agency or from the conditional criminal agency. (BAPAS).

II. RESEARCH QUESTIONS

My research question (RQ) is as follow:

From the description above, the problems that will be examined in this study are: How is the implementation of the duties of supervision and observation judges towards convicts sentenced to conditional punishment; Factors that hinder the implementation of the duties of supervision and observation judges towards convicts sentenced to conditional punishment.

III. LITERATURE REVIEW

The definition of judge supervisor and observer is not regulated in the Law but according to the intelligent dictionary Indonesian word supervisor is the basic word of the observer accompanied by the beginning of the worker - and the termination - which is generally meant to be careful, guard, observe. A British management expert named Brech, as quoted by The Ling Gie, formulated the concept of "control" as follows: "To match the implementation of newly undertaken tasks to the standard measures previously set in the plans with a view to ensuring sufficient progress and satisfactory performance

of the tasks, and also to record the experience gained from implementing those plans as an indication of possible actions in the future". Knowing what the organization's goals are achieved effectively and effectively. Negative surveillance tries to ensure that unwanted or required activity does not occur or occurs again. The function of monitoring basically includes four elements: 1) setting standards of execution; 2) determining measurements of performance; 3) measuring real execution and comparing it by deviating from the standard.

Function of the supervisory judge

The existence of supervisory judges and observers in criminal justice is inseparable from the need to supervise the implementation of court decisions as stated by H. Oemar Seno Aji, supervision and observation carried out by the wasmat judge has the following functions, namely: a) Determination of implementation standards; b) Determination of implementation measures; c) Measurement of actual implementation and comparing it with the standards that have been applied; d) Taking the necessary corrective actions if the implementation deviates from the standard. Duties of the Judge Wasmat a) Checking and signing the register of supervision and observation at the registrar of the District Court; b) Conducting checking on the spot at least once every 3 (three) months to the Penitentiary; c) Observing the situation, atmosphere and activities that take place within the walls of the institution, especially to assess whether the condition of the penitentiary is still feasible. d) Conducting interviews with correctional officers; e) Conducting direct interviews with prisoners; f) Contacting the Head of the Penitentiary and the Chairman of the Correctional Supervisory Board (DPP). The duties of the Judge Referee in terms of "observation" are as follows: 1) Collecting data on the behavior of prisoners categorized by type of crime (e.g. murder, rape, etc.); 2) To evaluate the relationship between the behavior of the prisoner and the punishment imposed. So, the definition of a judge is a State Court judge who is tasked with overseeing the execution of a court ruling. According to Mardjono Reksodiputro, "The duty of the judge was not an extra job, but a very important office, if not a noble one." Through this position, the criminal justice system (which is supposed to be integrated) wants to obtain input for: (a) improving existing funding policies; (b) preventing violations of the rights of prisoners.

History of the establishment of Judge Wasmat

Significant and fundamental changes to the Criminal Justice System in Indonesia occurred after the enactment of Law Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter KUHAP) on December 31,

1981. The inclusion of matters concerning supervision and observation of the implementation of court decisions in Law Number 8 of 1981 is not new, but is a new institution that has never been found in Indonesian legal life before. Sourced from Law Number 14 of 1970 concerning Basic Provisions of Judicial Power in Article 33 and Article 34, which mandates the following: Article 33: (1) The execution of court decisions in criminal cases shall be carried out by the Prosecutor; (2) The control of the execution of the court decision mentioned (1) by the President of the Court concerned, shall be further regulated by Law; (3) The execution of court decisions in civil cases shall be carried out by the Registrar and Bailiff led by the President of the Court. (4) In the execution of court judgments, efforts shall be made to preserve humanity and the principles of justice. Article 34: "The implementation of court decisions shall be further regulated by legislation". The term *Juge de l'application des peines* (j.a.p) which is often used in France, Portugal, Italy, Germany and Brazil can be interpreted as a judge who executes court decisions (*Rechterder Executie*) which is used in France in particular where the orientation of thinking about the "Executing Judge" will lead us to a French criminal justice system that always identifies with the doctrine of Social Defense. In France, the role of the supervisory and observing judge (*juge de l'application des peines*) is to conduct supervision and observation in correctional institutions and conditional release. The active role of supervisory judges and observers does not end when the judge imposes a sentence, but still plays a role during and after the prisoner leaves the correctional institution.

If traced further, the birth of the institution of supervisory judges and observers in Indonesia is actually a new thing proposed by Oemar Seno Adji (deceased) as a Professor of Criminal Law and Criminal Procedure at the University of Indonesia. This innovation was a manifestation of his comments on Article 33 (2) of Law No. 14 of 1970 which equated this judge with the "*juge de l'application des peines*" known in France in 1959. Basically, judges in France are given a special task to ensure the implementation of punishment, including deciding whether or not the penitentiary treatment of the convicted person is in accordance with the placement in outside, namely providing opportunities for prisoners to be able to work outside the prison; giving semi-liberty to prisoners, he can be outside the prison without supervision with the obligation to return to the prison at night and remain in the prison every holiday (permission to leave), namely a prisoner is allowed to be outside the prison for a certain time. Oemar Seno Adji's opinion on this was that judge was expressed when delivering a scientific speech as Dean of the Faculty of Law of Krisnadwipayana University at the

XXth Anniversary ceremony on April 1, 1974. Furthermore, in his position as Minister of Justice, he proposed this opinion in the draft Criminal Procedure Code, which was submitted to the House of Representatives on September 12, 1979. The term used was "special judge" whose duty is to supervise prisoners during their imprisonment, their behavior, and the treatment of prisoners by the prison's caretakers. After the enactment of the Criminal Procedure Code (KUHAP), this arrangement regarding the supervisory judge was maintained, which was further emphasized in the guidelines for the implementation of the Criminal Procedure Code (Decree of the Minister of Justice No. M.O.PW.07.03 of 1982) under the same title, namely Supervision and observation of Court Decisions. Because the duties of Supervisory and Observing judges are closely related to the prosecutor's office as an execution apparatus and correctional institution officers who carry out guidance for prisoners, according to Andi Hamzah, as quoted by Abdul Wahid, it is said that with the provisions regarding the supervision of judges on the implementation of judges and the reality of criminal implementation in LP and outside LP if prisoners are employed there can be bridged. Judges will be closer to prosecutors and correctional institution officials. Judges will be able to follow the development of the convict's condition so that they can actively give their opinion in terms of parole. Thus, the purpose of punishment can be achieved. The judge can follow the development of the convict as a prisoner and also the treatment of the correctional institution officials concerned.

Definition of Convict or Prisoner

A convict is a person who is serving a sentence of loss of freedom in a correctional institution (Lapas), i.e. a person who is sentenced based on a court decision that has obtained legal force (Law No. 12 of 1995). Below are some definitions of convicts according to several experts: According to Santoso, an inmate is a person whose actions violate the norms of the law, so they are sentenced to criminal law by a judge; According to Dirjosworo, an inmate is a person who harms other parties who lacks a sense of responsibility towards God and society and does not respect the law; According to Simorangkir, an inmate is a prisoner, a person detained in a Correctional Institution or State Detention Center; According to Purnomo, a convict is a member of society who is separated from his parent and during a certain period of time it is processed in a certain place environment with the purpose, method and correctional system at some point the convict returns to become a good member of society and obeys the law. The definition of a convict is someone who has violated the rules or legal norms that exist in society because of his

actions, so that he is sanctioned in the form of punishment by a court decision.

IV. METHODOLOGY

Based on the type of existing method of the research, researcher used library research. This type is carried out by collecting data and information sources from the literature in the form of documents, scripts, similar previous research results, journals or related books as the main source of research. This research was conducted systematically to collect, process, and conclude data.³ Literature is a type of research that is taken by researchers in researching a book. Literature research involves identifying and researching sources that provide factual or prior information in expert opinion about the research question; an important component of other research methods at any given period. This research applies a qualitative approach. This approach seeks to deepen knowledge based on the references used. (John W. Creswell 2002) This research used content analysis as a research design. Content analysis is a way which permits one to decipher and apprehend human behaviour not directly, by means of reading communicate among one human and different human beings, in numerous genres and types of language used, as an example through faculty textbooks, news mass.

V. RESULTS & DISCUSSION

Duties of Supervisory Judges and Observers of Convicts Sentenced to Conditional Punishment, the panel of judges who have the main task of examining, trying and deciding a case submitted to them, are still given additional duties by the head of the court to assist the head of the court in the field of supervision and observation of the implementation of criminal decisions. In general, the supervisory duties of the magistrate take care of the problem of supervision and observation of the implementation of the law while the convict is serving his sentence in the Penitentiary or convicts sentenced to conditional punishment who are not in the Penitentiary which is not just administrative supervision and is regulated in law. For the guidance and supervision, the magistrate judge works with the correctional officers as stipulated in Article 280 KUHAP paragraph 2 that: The supervisory judge conducts observations for research materials for useful provisions for punishment, which are obtained from the behavior of prisoners or the guidance of correctional institutions as well as the mutual influence on prisoners while serving their sentences. Factors Affecting the Role of Supervisory Judges and Observers of Convicts Sentenced to Conditional Punishment, External Factors, a)

Insufficient number of supervisory judges, based on the results of research in the field, it shows that supervisory judges as stipulated in SEMA No. 7 of 1985 have carried out their duties, although not as they should. In the area of Tarutung District Court, there are 3 (three) correctional institutions, namely: 1) Children's prison with a capacity of approximately 128 students; 2) Penitentiary with a residential capacity of approximately 550 people; 3) Men's prison with a capacity of approximately 550 people. Internal Factors: 1) Lack of Understanding of Supervision and Observation. Based on the results of interviews with judges wasmat that given the time constraints of the judge is enough to conduct a visit on the sport 6 (six) months once, moreover that in general ner sentenced to conditional punishment has a sentence of less than 1 year; 2) Lack of professional staff. In essence, guidance in the correctional system requires professional guidance and education in order to provide useful results for prisoners, while the wasmat judge himself does not have expertise in the development of prisoners so that he cannot contribute anything to prisoners.

VI. CONCLUSION

The author's conclusions in this study are: 1) The implementation of the supervisory judge's duties in observing convicts sentenced to conditional punishment are (a) In filling out the register of supervision and observers, the supervisory judge does not play an active role; (b) The supervisory judge does not conduct visits to conditional convicts; (c) Observations made by the supervisory judge are only based on reports from prosecutors about the development of conditional convicts; (d) The supervisory judge rarely conducts interviews with guardians (prosecutors) because the time of the supervisory judge is not enough due to a lot of work. (e) Judge wasmat never conducted interviews with convicts who were sentenced to conditional punishment due to the difficulty in managing time. 1. The factors that hinder the implementation of the duties of the judge wasmat towards convicts who are sentenced to conditional punishment are as follows: (a) External Factors, Lack of number of judges wasmat, this is often not balanced with the number of prisoners. (b) Internal Factors, Lack of understanding of the wasmat judge in conducting supervision and observation, and the absence of professionals to assist the performance of the wasmat judge.

REFERENCES

- [1] Adi Sujatno, *Pencerahan di balik Penjara*, Teraju, Jakarta, 2008.

- [2] Andi Hamzah, *Sistem Pidana dan Penidanaan Indonesia*, Pradnya Paramitha, Jakarta, 1993.
- [3] Astrawanta, *Pemasyarakatan Dalam Revolusi Indonesia*, Gedung Sutari, Jakarta, 1966.
- [4] Widiada Gunakaya, *Sejarah dan Konsepsi Pemasyarakatan*, Armico, Bandung, 1995.
- [5] Dwija Priyatno, *sistem Pelaksanaan Pidana Penjara di Indonesia*, PT. Refika Aditama, Bandung, 2006.
- [6] Elizabeth Gozali, *Implementasi Sistem Pemasyarakatan dalam Rangka Pembinaan Narapidana*, PPS Unand, Padang, 2002.
- [7] Harsono, *Sistem Baru Pembinaan Narapidana*, Djambatan, Jakarta, 1995. *Kamus Bahasa Indonesia*, Jakarta, Pusat Bahasa 2008.
- [8] Muladi, *Lembaga Pidana Bersyarat*, Alumni, Bandung, 1992.
- [9] P.A.F. Lamintang, *“Hukum Penitensir Indonesia”*, Armico, Bandung, 1984.
- [10] Petrus Irwan Panjaitan, *Lembaga Masyarakat dalam perspektif Sistem Peradilan Pidana*, Putaka Sinar Harapan, Jakarta 1995.
- [11] Roeslan Saleh, *Stelsel pidana Indonesia*, Aksara Baru, Jakarta, 1987