

Effectiveness of supervision and observation Judge wasmat in guidance of prisoners in correctional institutions

Sri Wulandari,
Fakultas Hukum Universitas 17 Agustus 1945 Semarang
ndari904@gmail.com

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Abstract

This study aims to analyze the effectiveness of the supervisory and observation function of the supervisory and observer judge (Wasmat), the special task as a control/follow-up system of the judge's performance after passing a verdict in court so that the purpose of sentencing can be achieved and there are no deviations while the inmate is serving his sentence in the correctional institution. The research method uses a normative legal research type with secondary data supported by primary data with qualitative descriptive research specifications. Supervision and observation are carried out to realize the protection of the rights of prisoners who are subject to deprivation of liberty and conditional sentences both inside and outside the correctional institution. Judge Wasmat has an important role and is not intended to interfere/seize the authority of correctional officers in carrying out guidance as stipulated in Law No. 22 of 2022 concerning Corrections. It is hoped that after being released, prisoners will return to society as good people and can participate in development. However, in carrying out these duties, the judge is often faced with various problems as obstacles, such as the existence of statutory regulations as a legal umbrella that is considered not optimal (Articles 277 and 283) of the Criminal Procedure Code, problems with facilities and infrastructure, limited number of judges and bureaucratic factors between other law enforcers. So there needs to be good cooperation between law enforcement institutions, prisoners and the community to get the expected results.

I. Introduction

The Indonesian State Government System is based on the law "*Rechtsstaat*" not based on mere power "*Machtsstaat*" (Sinar Grafika Jakarta, 2002). Legal regulations aim to create order and regularity in community life, but in reality there are often violations of the law that are influenced by various circumstances and policies. Therefore, sanctions against lawbreakers are considered necessary by holding a criminalization as part of an integrated criminal justice process to deter perpetrators of crimes and reorganize the stability of community life.

Crime prevention efforts can be done *penally* and *non-penally*. Crime prevention by means of *penal* means is primarily criminal law, both material criminal law, formal criminal law and criminal enforcement law. While *non-panel means* are carried out by socialization/legal counseling to the community (Muladi and Barda Nawawi Arief, 1984).

In the law enforcement process, judges are not only tasked with giving sentences to defendants, based on Law No. 48 of 2009 concerning Judicial Power in conjunction with Articles 277 to 283 of the Criminal Procedure Code, as in the Circular of the Supreme Court (SEMA) of the Republic of Indonesia No. 7 of 1985 concerning Guidelines for the Implementation of the Duties of Supervisory and Observer Judges (Wasmats) that judges have the task of carrying out supervision and observation of the implementation of court decisions, appointed by the chief justice with a work period of two (2) years. This task is specific, namely not only aimed at prisoners in Correctional Institutions (Lapas) but also at prisoners who have completed their sentences or prisoners who are serving conditional sentences.

The implementation of the supervision and observation tasks is carried out together with the correctional institution, because that is where the convicts serve their sentences and also receive guidance. As for parole, namely for convicts who have completed 2/3 of their sentence, the task of the supervising and observing judges will cooperate with government/community officials involved in the field of social services and correctional center (Bapas) counselors.

Judge Wasmats is appointed by the chief justice and given a special task to assist the chief justice in supervising and observing court decisions, so that there is a guarantee that the decisions handed down by the court are implemented properly (Article 280 paragraph (1) of the Criminal Procedure Code). The purpose of supervising and observing the implementation of judges' decisions is intended to obtain certainty, monitoring/control whether the decisions handed down by the court have been implemented properly so that there is no oppression of the rights of convicts that are of a suffering nature and degrade human dignity. Because punishment is not to suffer/act of revenge but rather as an effort for rehabilitation and social reintegration. It is hoped that convicts who have completed their sentences can return to society as whole human beings and obey the law.

Supervision and observation are also carried out horizontally towards prosecutors as executors of court decisions and correctional institutions, namely as an effort to observe the implementation of the work results of judges (Abdul Hakim, 1995). Meanwhile, observation is more focused on efforts to improve the effectiveness of prisoner guidance while in prison and outside prison. With the hope that there will be no deviations in the prisoner guidance system

as regulated in Law No. 22 of 2022 concerning Corrections.

In fact, the correctional system is intended as a form of change from the prison system to the correctional system. The differences between the two systems have implications for the differences and methods of guidance and guidance given to prisoners. In the prison system, the punishment system is very cruel and ruthless, while the correctional system is aimed at rehabilitation and social reintegration efforts, however, these efforts to change in their implementation often cause deviations and tend to still be patterned after the prison system. This is evident from the occurrence of various cases that are actually contrary to the meaning of the purpose of the correctional system itself (Adnan Buyung Nasution, 2002).

The existence of statutory regulations as a legal umbrella is considered unable to maximize the role of supervisory and observer judges in correctional institutions. Added to this are various obstacles such as facilities and infrastructure, limited presence of judges so that it is felt to be very burdensome for the main tasks of the judges themselves and bureaucratic factors of other law enforcers. So the government's role is needed in optimizing the role of Wasmat judges to reduce these various obstacles.

Without good interconnectedness and cooperation between law enforcement institutions as an integrated criminal justice subsystem, prisoners and the community, prisoner development will certainly find it difficult to achieve the expected results. Based on these main ideas, two (2) problems can be put forward in this study, namely how effective is the supervision and observation of supervisory and observer judges (Wasmat) in prisoner development in correctional institutions and why it is necessary to optimize the implementation of supervision and observation of Wasmat judges in prisoner development in correctional institutions

2. Research Method

This research is a normative legal research with a statutory approach method *and* literature sources related to the research. The type and source of data use secondary data supported by primary data. The type of research used is qualitative descriptive research, then analyzed and presented qualitatively.

3. Results and Discussion

a. Effectiveness of Supervision and Observation of Supervising and Observer Judges (Wasmat) in the Guidance of Prisoners in Correctional Institutions.

Judges in handing down a criminal verdict to a defendant must also be responsible for the sentencing, especially the sentencing in the form of deprivation of liberty. As stated in the Guidelines for the Implementation of the Criminal Procedure Code, that:

"The implementation of a court decision that has permanent legal force in a criminal case is carried out by the prosecutor. However, if the court decision is in the form of deprivation of liberty, the role of the judge as an official is also expected to be responsible for the decision that is handed down, not stopping at the time of handing down the decision (Department of Justice of the Republic of Indonesia, 1982).

With this responsibility, judges have a new task of a special nature, namely to carry out supervision and observation of court decisions as regulated in Law No. 48 of 2009 concerning Judicial Power in conjunction with Articles 277 to 283 of the Criminal Procedure Code (KUHP).

The duties of the supervising and observing judges as regulated in the Criminal Procedure Code (KUHP) are only in outline, while the complete duties are stated in the Circular of the Supreme Court No. 7 of 1985, namely as follows:

a. Supervisory Sector Duties

- 1) Checking and supervising the supervision and observation registers held at the District Court clerk's office.
- 2) Conduct checks at least once every 3 months in correctional institutions to check the accuracy of the minutes of the implementation of court decisions signed by the prosecutor, head of the correctional institution and prisoners.
- 3) Conducting observations of the conditions and atmosphere of activities taking place within the correctional institution environment.
- 4) Conduct interviews with correctional officers (especially the prisoner's guardian) regarding the prisoner's behavior and results of the prisoner's guidance.
- 5) Conducting direct interviews with prisoners regarding the matters of their correctional activities.
- 6) Contacting the head of the correctional institution and the chairman of the correctional supervisory board/correctional coordinator at the regional office of the Ministry of Justice in order to exchange problems and communicate about the technical treatment of prisoners, both treatment inside and outside the institution.

b. Tasks in the Field of Observation .

- 1) Collecting data on the behavior of prisoners categorized based on the type of crime , the age of the prisoner concerned, their job before becoming a prisoner and the circumstances/conditions of their family environment.
- 2) Conduct an evaluation regarding the relationship between the prisoner's behavior and the sentence imposed , whether the length of the sentence imposed on him is appropriate to his crime.

In order to clarify the judge's special duties regarding what is meant by supervision and observation, this can be explained as follows:

- a. Supervision is a judge's duty carried out to ensure that court decisions are implemented properly.
- b. Observation is a judge's task carried out as research material for decisions that are useful for sentencing or guidance in correctional institutions and have a reciprocal influence on prisoners while serving their sentences.

Regarding the two statements about supervision and observation, according to Bambang Poernomo, the observation task is more important than the supervision task because the most benefits are found in observation than supervision. He explained that the

main benefit of the observer judge's task is to participate in implementing a direct approach, in order to find out to what extent the good or bad results are for the prisoner based on the decision of the judge concerned. The judge's approach efforts will increase their ability in the legal field so that the judge is no longer just a sentence maker without also thinking about the benefits of his decision (ibid, 2002).

The role of the supervising and observing judge can be implemented through the application of criminal law by the judge. Whether the punishment has had the power to capture the convict or not, whether the length of the sentence imposed is in accordance with the time of guidance required by the correctional institution and whether the punishment applied has made good or actually worse for the convict.

The task of supervision and observation by the judge is not intended to interfere and usurp the authority of correctional officers in carrying out guidance. However, in Article 282 of the Criminal Procedure Code, judges are given the authority to discuss methods of guidance for prisoners together with correctional officers.

The additional duties of the supervising and observing judges require the judges to concentrate on their moral responsibilities both in the imposition of criminal sentences and in the obligation to be accountable for the decisions that have been made, so that the punishment has a benefit for the convict and the state in order to improve the welfare of society. To carry out their duties properly, a supervising and observing judge must have in-depth knowledge about the purpose of punishment. This is important as a guideline for judges in carrying out supervision and observation.

The observations carried out by the judge in the special task are not only aimed at prisoners who are still in the correctional institution but also prisoners who have completed their sentences. This is clearly regulated in Article 280 paragraph (3) of the Criminal Procedure Code that the observations as referred to in paragraph (2) are still carried out after the convict has completed his sentence.

The enactment of Law No. 8 of 1981 expanded the duties of judges in supervising and observing court decisions. The target of the implementation of the duties of supervision and observation according to Article 277 of the Criminal Procedure Code (KUHP) is the judge's decision in the form of deprivation of liberty or in other words imprisonment or confinement.

The criminal penalty of deprivation of liberty or often referred to as imprisonment is to limit or can be said to deprive some of the rights of prisoners and also isolate them temporarily from the life of the general public in a place of an institution which is generally called a correctional institution. To clarify the implementation of the decision in the form of deprivation of liberty, it can be quoted from the opinion of A. Hamzah and Siti Rahayu, as follows:

The criminal penalty in the form of deprivation of liberty is carried out in a Correctional Institution and becomes the burden of the Directorate General of Corrections (Bina Tuna Warga), the convict is temporarily isolated from society as if

his citizenship was revoked from society and is therefore called a citizenless person. However, at some point the convict will be returned to society and he will become a citizen of society again (Andi Hamzah and Siti Rahayu, 1983).

The explanation can be concluded that a convict, individually, is a person who experiences a gap in relations with society. For that, elements of society in the correctional system must be truly involved or included for the success of prisoner development because if the community does not involve itself in helping the government in the context of prisoner development, it will indirectly increase crime, in the sense that society does not want to accept people who have experienced a gap in their lives or former convicts, which ultimately the former convicts will not repent but will instead repeat their crimes (*Recidivists*) and will likely get worse.

decisions that are the basis for supervision and observation of judges according to Article 276 of the Criminal Procedure Code (KUHAP) are conditional sentences or probationary sentences. This type of sentence is regulated in Articles 14a to 14b of the Criminal Code (KUHP). What is meant by conditional sentences is imposing a sentence on someone, but the sentence does not need to be carried out unless later it turns out that the convict violates the agreement given to him by the judge before the end of his sentence. So the criminal decision remains, but only the execution of the sentence is not carried out but is replaced with probation.

This conditional sentence is intended as *a recap* , namely an effort to improve the convict by not committing criminal acts again. In addition, by not placing the convict in a correctional institution, it is hoped that it can prevent bad influences from socializing with fellow prisoners while in the correctional institution (*prisonization*).

Roeslan Saleh said that:

Judges are increasingly using conditional sentences, one of the main advantages of conditional sentences is that their reduction in prison with its damaging influence on their family and social life can be avoided (Roeslan, 1993).

The imposition of conditional sentences will be good, because the purpose of conditional sentences itself is to rehabilitate lawbreakers without using correctional institutions. Therefore, to return conditional convicts to their families or communities, guidance, supervision and observation are needed and a greater role is needed from correctional institution officers for the supervision of conditional convicts.

Supervising and observing judges in conditional sentences do not cooperate with correctional institutions because the convict is not serving his sentence in a correctional institution, but the supervising and observing judges cooperate with government officials, schools, religious leaders and related agencies. The judge's observation and supervision of conditional sentences is based on the provisions of Article 280 paragraph (1) and paragraph (3) of the Criminal Procedure Code, namely observation to conduct research on the convict

so that he is good during his sentence, for the benefit of the punishment.

The concept of punishment which was originally intended as a way of revenge or suffering of the convict was changed into a correctional system within the framework of rehabilitation/improving or fostering the convict so that upon returning to society they become good human beings. This concept is based on the Decree of the Head of the Directorate of Corrections No. KP10/3/7 dated February 8, 1965 which contains the concept of corrections, namely that corrections are a *Theraupatic process* , where prisoners at one time enter correctional institutions in a state that is not good/not harmonious with the surrounding community and after undergoing a period of guidance in correctional institutions can return to the environment of their community life and be cured of negative aspects.

The purpose of correctional in principle is to try to make former convicts and correctional students become good people again, able and capable of carrying out social life properly without committing violations of the law and actively participating in community welfare efforts. To achieve this goal, various types of guidance are carried out in the form of activities to equip convicts and correctional students to become good and useful citizens who have the morals to be able to choose good and bad deeds, become useful citizens by having the ability and capacity to participate in carrying out national development, for that they must have skills according to their talents.

The prisoner development system applied in the correctional system in Indonesia contains a great ideal , namely that the development and education applied to prisoners is expected not only to facilitate the " *reintegration* " of prisoners with society but also to make them become citizens who support order and goodness in their respective societies to become complete Indonesian people who have the characteristics of not breaking the law again, becoming useful, active and productive members of society and being happy in this world and the hereafter (Soedjono, 1984).

Supervising judges and observers have an important role, apart from being involved in the methods of coaching and observing prisoners, they can also help improve *the sentencing policy* of criminal judges. So that their duties can be carried out well, every supervisory judge and observer should have a good and continuous coaching and observation program so that it can be prepared together with correctional institution officials (Eddy, 1983).

How important are the duties and roles of the supervising judge and observer in the implementation of prisoner development in correctional institutions, considering that with supervision it is hoped that all deviations related to violations of prisoners' rights can be avoided or reduced so that the implementation of good supervision and observation can support the achievement of the ideals of the correctional system. prisoners.

Some forms of deviations that frequently occur include:

1. There are prisoners roaming outside the correctional institution without clear legal provisions.

2. There are acts of oppression, abuse and threats from correctional officers towards prisoners.
3. There was an escape from the prisoner so that the criminal sentence could not be implemented properly.
4. The death of prisoners in correctional institutions is due to errors in the correctional officer's coaching procedures.
5. There are prisoners who oppress other prisoners.

All of these deviations must be eliminated, because they can cause risks in the form of court decisions and the provisions of Articles 277 to 283 of the Criminal Procedure Code (KUHP) not being able to be implemented properly as they should be, and even the supervision and observation system which is the special task of the Wasmat judge becomes ineffective.

b. Optimization of the Implementation of Supervision and Observation of Wasmat Judges in Correctional Institutions.

Until now, the role of the supervising and observing judge (judge wasmat) in the development of prisoners in correctional institutions is considered not optimal and still experiences obstacles in implementing the task of supervision and observation. These obstacles are certainly a problem in the field of law enforcement. Given the important role of the judge wasmat which cannot be underestimated, therefore in every court there must be a judge who is given a special task to assist the chief justice in supervising and observing court decisions with a maximum term of 2 (two) years.

The judge's discretion is intended to control the implementation of court decisions executed by prosecutors and their implementation in correctional institutions, so that there is no oppression of prisoners' rights by correctional officers who are degrading to human dignity/prisoners, so that the punishment imposed by the court is carried out properly because the purpose of punishment is not to cause suffering or revenge.

The spirit that inspires the regulation of supervision by judges is to bring the courts closer to the prosecutor's office and correctional institutions as a series of integrated criminal justice subsystems. The government needs to optimize the role of supervisory and observer judges seriously by reducing various existing obstacles such as the fulfillment of laws and regulations that are currently considered ineffective, government bureaucracy related to coordination and implementation problems in the field often causes clashes due to egoism from each agency, the limited number of judges in each court so that with the special task as a supervising judge it is felt to be very burdensome for the judge's main task to try cases, the problem of infrastructure becomes something classic due to the limited state financial condition and the many priority scales needed. Lack of understanding of the task of supervision and observation by the judge concerned, causing judges to be reluctant to carry out these tasks. The transfer of duties of supervisory and observer judges and the delay in appointing new supervisory and observer judges as replacements has caused a gap in

supervision and observation of judges that cannot be carried out continuously. Even related to the report of the supervising judge which has not necessarily been followed up by the Chief Justice or the lack of direct review to verify the truth of the Prison report.

Often, the wasmat judge is not firm in giving advice or even reprimands if there is a report from a prisoner that is not in accordance with the conditions of the coaching pattern by considering the various weaknesses in the legislation. So the government needs to pay serious attention so that the duties of the wasmat judge can run effectively by:

1. Provide sufficient budget.
2. Establish correctional institutions in every jurisdiction where there is a District Court.
3. Arrange for judges regarding supervisory and observer duties.
4. Adding training for judges and assistant staff.
5. Appointment of new supervisory and observer judges immediately, so that there are no vacancies to replace supervisory and observer judges who are transferred to the main priority that already exists in the District Court.

If urgent, it is necessary to reformulate the regulations regarding the duties of the supervising judge regarding the formulation of norms, laws and regulations and the application of the law.

4. Conclusion

The implementation of supervision and observation tasks by supervisory and observer judges carried out in correctional institutions has not been effective, due to various obstacles in the implementation. In addition, periodic visits that should be carried out at least once every 3 months have not been realized/effective in accordance with the implementation guidelines as stipulated in SEMA No. 7 of 1985 concerning Guidelines for the Implementation of the Duties of Supervisory and Observer Judges. To overcome various obstacles, it is necessary to improve the role of supervising judges, such as referring to the existence of commissioner judges contained in the RUU KUHAP, which has almost the same duties and functions, namely in terms of supervision, so that it is necessary to immediately renew the KUHAP as a legal umbrella to minimize the practice of deviations in the criminal justice process.

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