

Role of Supervisory Judges and Observers to Create Achievement of Justice for the Convicts

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ABSTRACT. The Implementing criminal decisions by judges characterized by improvements in the legal status of the accused person to the convicted person and at the same time moving the court to the jail a judge must be granted a special duty to track the decision and observe (hereinafter *kimwasmat*). In addition, although guided by the Prosecutor, the defendant needs to be convicted by a supervisory magistrate and by an observer of a criminal court decision. In the criminal justice system that exists to investigate, prosecute, the judicial and judicial authorities, but between the separate and autonomous subsystems, it can not be understood individually.

Keywords: *Administration, Wasmat Judge, Indonesian Criminal Court.*

1. INTRODUCTION

Whereas in the implementation of a criminal decision by the prosecutor which is marked by a change in the legal status of the defendant to become a convict, as well as a transfer of the court's juridical responsibility to a correctional institution, it is necessary to have a judge who is assigned a special task to supervise and observe (hereinafter referred to as *kimwasmat*) on the decision. There remain issues, debates and problems concerning punishment [1] in the environment of contemporary legal life and human rights compliance system. In the role of a supervisory and supervisory judge body, for example, pursuing court rulings of permanent legal force. It is not the first time that this research has studied the classification of legal issues for the supervisory and observer judges. Based on intellectual-academic dynamics through argumentation / results of previous studies that tend to use normative legal research methods, it is found that several recurring problems are found, such as: busy judges examining cases in court, lack of judge personnel to carry out supervisory and observation functions, no special funds for the implementation of the supervisory and observing judges institution, the location of the office of the supervisory judge and observer which is far away or not in the same office as the correctional institution, the delay in the execution report by the prosecutor, and is not supported by the facilities and facilities of the supervisory and observer judge institution.

Some urgent questions can therefore be stated as follows: theory, the explanation why and the manner in which the chemistry occurs in the criminal justice system. Political explanations for national criminal law given that the article in the RKUHAP by 2012 is exactly the same as the present KUHAP. The legal

question of the supervisory and observing judge institutions therefore remains important to be examined and reviewed. In general, this research has three (3) objectives: first to focus on and detect the supervisory principles, and the observer judges who are Indonesian, universal and rational; secondly, to create a supervisory and observing judges institutions approach, relevant, participative and clear model and model of implementation; and third, to improve the approach, application and transparency of supervisory and observatory judge institutions.

2. RESEARCH METHOD

In the contains methods the author uses a normative and descriptive juridical analytic method in the form of research on the administrative system in the implementation of essential in carrying out duties as supervisors and observers in the criminal law system which is the basis or object for the implementation of judges and supervisors in a reciprocal relationship due to the social structure of society such as the economy, politic, and social. Whereas the legal system is considered from the point of view of non-text context (laws and regulations) and the legal system is discussed, thought about and contemplated in a time and space where the legal system applies mutually on the structure of society in the fields of economy, politics, culture, and so on [2]. Thus, the socio legal research approach is a study of legal science that includes social factors but scientifically it is still writing in the field (science) of law because it sees law as a prevailing norm in society [3]. Broadly speaking, there are research derivatives in the form of research specifications, data collection methods by using a secondary data source

approach based on law and the like which are supporting plus a few primary sources, namely in an interview source that sees an identified pattern of symptoms becoming a reality.

Qualitative research was initially used extensively in the fields of sociology, anthropology, and later in psychology, education, languages and other social sciences. Qualitative research does not use statistical analysis, but instead narrative analysis in data analysis [4]. On the basis of the outcomes of interviews and document analyses, instantiated with a constructive legal framework, a socio-legal approach leads to legal study, which outcomes using the deduction (syllogism).

3. RESULT AND DISCUSSION

When the process of executing a decision by a judge to the defendant in a court process, then an event of justice that must be carried out does not stop there. In practice, an ongoing justice process must be supervised up to the execution process in the correctional institution where the convict is sentenced. This is where the role of the supervisory judge and observer is to observe directly regarding the certainties received by the convict in carrying out his sentence. This becomes a normative as well as socio-legal study considering that there is a symptom that arises in an aspect of implementing the implications of the decision and also the execution process that has been carried out and carried out. As there is a systematic description, CHAPTER XIX concerning the Implementation of Court Decisions Article 270 of the Criminal Procedure Code Law Number 8 of 1981 Concerning Criminal Procedure Code (hereinafter referred to as KUHAP), reads: "Implementation of court decisions that have obtained The prosecutor continues to enforce the law, for which the clerk will send a copy of the decision letter to him". The author has compiled and submitted a list of 25 (twenty five) questions for informants who were determined purposively at the Tangerang District Court, the South Jakarta District Court and the Central Jakarta District Court. Continuity in a process of implementing supervision and observation is one of the obligations enshrined by a Gesetz Form, namely laws in the legal system in Indonesia. The law is the main reference in interpreting the rules so that they can be implemented [5].

Even though it was carried out by the prosecutor, on the other hand, there must be a judge who supervises and observes the criminal court decision that convicted the defendant. In the process, expressively verbiis, there is a special assignment from the head of the court to the judge for a two-year term. Furthermore, Article 277 paragraph (2) regulates: "Judges as meant in paragraph (1) who are called

supervisors and observers, shall be appointed by the head of the court for a maximum of two years.". According to the a quo article, the author sees that the judges as supervisors and observers are normative-juridical to be strategic. In a strategic sense here, it focuses on an event of supervision carried out on the course of the sentence carried out by each prisoner who will later have a judge in charge of seeing an implementation in the field whether it is appropriate or not in the process of implementing it. In addition, the Tangerang District Court Judge has admitted, during the current Covid-19 pandemic, "not on site at the prison, while a letter of decision and assignment such as the kimwasmat was issued" (Tangerang District Court Judge interview, 28 July 2020)

The basis of his argument, first, there is a clear awareness of the legislators that the judge is not only legally responsible for the decision he has made, but also morally-intellectually, that in fact the judge is considered ideal in knowing why he sentenced the defendant to criminal based on criminal purposes. Second, there is a guarantee that the implementation of decisions will be carried out in reality. Third, the human nature that appears in the observation system for the development of the convict's behavior in the context of fostering, protecting and in the spirit of human rights according to global trends. The above is outlined in Article 280 paragraph (1) of the Criminal Procedure Code, which reads: "The supervisory and observer judge shall supervise and obtain certainty that the court's decision is implemented properly." Then, Article 280 paragraph (2) KUHAP regulates: "Judge supervisors and observers make observations for writing material for the sake of accuracy that is useful for punishment, which is obtained from the behavior of prisoners or the development of correctional institutions as well as the reciprocal influence on prisoners while serving their sentences."

In the article a quo the hypotheses regarding criminal purposes and the construction of a penal system are based on the spirit of the rules of a criminal procedure code. The claim was based, first, on the fact that the Indonesian State seeks to achieve legal goals, including legal clarity in the sense of the rule of law. Contemporary theory, educational theory, the theory of rehabilitation, social control theory and theoretical restorative justice are discussed within the context of the theory of criminal goals, presented by contemporary theory [6]. "The Correctional System is held in order to form Correctional Assistants to become fully human, aware of mistakes, improve themselves, and not repeat criminal acts, so that they can be accepted back by the community, can actively play roles in development, and can live naturally as good and responsible citizens". Thus, with this it is very clear that correctional institutions in Indonesia not only make a convicted person carry out a sentence

for an already inked court decision, but also as a guidance to change a person's character from bad to good or at least better.

In the process, of course it cannot be considered easy, because there are many obstacles that affect more or less, but in this study, it does not discuss these obstacles but the function of the supervisory judge and observer who has the duty of whether a misfortune and criminal punishment imposed has been carried out according to the norm valid or not. Proportionally, the determination of punishment is divided into three definitions, which are: in the sense of establishing a system for criminal sanctions by legislators, implementing concrete crimes by judges, and carrying out crimes by authorized executing officials [7]. The Judge, also said: "The kimwasmat theory ensures that others should not copy the actions of the perpetrator and that the perpetrator does not perform the crime again." (Interview to the Judge, 4 August 2020).

The debate that arose, the kimwasmat institution was positioned between two opposite poles, such as whether it entered the field of formal criminal law or the area of criminal law enforcement. As Muladi and Barda Nawawi Arief view that criminal and criminal matters are often seen as less interesting things, even as the stepchildren of criminal law [8]. Thus where this becomes a position that provides space for a more specific discussion regarding the supervisory system and observations made by judges in the context of administration and implementation. Pragmatically, the 2012 RKUHAP adheres exactly to the basic idea of a kimwasmat institution in Law No. 8 of 1981 concerning Criminal Procedure Law based on editorial, language and desired intentions. Therefore, the urgency of reforming criminal procedural law becomes problematic if the 2012 RKUHAP changes to a "new KUHAP" with unchanging editorial, language and intentions. Strictly speaking, there is a need for new ideas / concepts regarding chemical institutions for the development of national criminal law.

Not everyone knows the legal normative point of view, technical criminal procedure law and the facts of the practice of chemical institutions when approached sociologically. Or, not everyone is overly concerned with the enforcement of criminal law like jail and prison life. On the basis of this statement a two- way or more understanding relationship must be built on the the prisoners' positions. The views of government officials in the interpretation and concept of chemical agencies, prisons and prison organisations are not always related. Based on interviews with informants, when they were assigned as kimwasmat administratively based on decrees and assignments. Among others (Interview with Judges at the Tangerang District Court, July 28, 2020): "I was

appointed as a kimwasmat based on a decree (SK) containing a Substitute Registrar and the location of the Penitentiary as a place for implementing the kimwasmat function. To visit the Penitentiary the goal is a letter of assignment (ST) because it is related to the state budget. But during Covid-19 I haven't visited," said the Tangerang District Court Judge.

Pragmatically, the 2012 RKUHAP adheres exactly to the basic idea of a kimwasmat institution in Law No. 8 of 1981 concerning Criminal Procedure Law based on editorial, language and desired intentions. Therefore, the urgency of reforming criminal procedural law becomes problematic if the 2012 RKUHAP changes to a "new KUHAP" with unchanging editorial, language and intentions. Strictly speaking, there is a need for new ideas / concepts regarding chemical institutions for the development of national criminal law. The largest portion of criminal law thinking in Indonesia can be said to be centered on two things: material criminal law and formal criminal law. Alhumami argued that the implementation of Article 277 to Article 279 of the Criminal Procedure Code was fulfilled administratively. However, Alhumami argued that substantially one of the obstacles in implementing Article 280 of the Criminal Procedure Code occurred because the kimwasmat office with the correctional institutions was too far away. Thus in its implementation, the kimwasmat institution is ineffective due to three things: the judge's busy examination of cases, the lack of coordination between the kimwasmat and the correctional institution, and the lack of support for facilities and infrastructure including the operational budget [9].

If the kimwasmat institution is considered as the law for the implementation of criminal law, our point of view will also change regarding the national criminal law system, especially the implementation of the kimwasmat institution. Therefore, it is possible to think about, abstract and construct an open, bold, and out of the box construction. The main problems in implementing the kimwasmat institution are in the form of unclear clear and firm laws and regulations, absence of facilities, and lack of wasmat judge personnel [10]. Kimwasmat institutions can be thought philosophically about why they exist and become part of the criminal justice system. The author would like to briefly mention that the criminal justice system is a tool for society to prevent, overcome and respond to crime. At this point, the kimwasmat institution is a tool for dealing with crimes in the context of rehabilitating people who are considered heretical and sentenced by the judge. Nevertheless, Apriyanti, Ali and Suhaimi built arguments in the framework of normative legal research. It was said that the main problems in implementing the kimwasmat institution were in the

form of unclear clear and firm laws and regulations, absence of facilities, and lack of wasmat judge personnel.

Where in the results of interviews with Mr. Hariyadi, S.H., M.H. as the observer supervising judge at the South Jakarta District Court in his interview the pattern of the tendency of a supervision and observation to occur and be carried out based on the duties of the superiors and towards the identification and continuous implementation of periodic prisons to the intended correctional institution. The workload is already heavy for the judges; examining, hearing and deciding cases are getting heavier with the duties of the supervisory and observer judges where a task load which is often not linear with the number of existing judge personnel.

In addition, the main problem in this is the weak function of corodination and consolidation between related agencies (Attorney, Court, Correctional Institution and regional offices of judges for supervision and observers in finding the best formula for optimal implementation, so that it can be used as one of the mechanisms for evaluating the behavior of prisoners in prisons. Whereas the kimwasmat institution is part of the criminal justice sub-system associated with LM Friedman's version of the theory of the legal system which questions aspects of legal substance, legal structure and legal culture associated with legal questions in his research (Desi: 2010).

Thus, a continuous process of judges in carrying out supervisory and observational duties requires a mandate from the superior in relation to the implementation of the task implementation of the supervisory and observation process which will be carried out at the intended penitentiary. And this is still a symptom that almost all of them are carried out where the continuity process is not intense or not constant, but rather makes it a formality and is also carried out for the sake of mere administration in its structure.

In constructing his argument, the legal arrangement of the kimwasmat institution is to guarantee the implementation of criminal decisions. Meanwhile, the role of the kimwasmat institution focuses on how that role is carried out by paying attention to services, facilities, and excess capacity. Thus, there are still many problems that make the pattern of trends that occur in the process of continuing dynamics to provide a real depiction of the effectiveness and efficiency of institutions, one of which is in the administrative and state order, in this case the judiciary, there needs to be a fundamental improvement in it both normatively and technically. Organization is technically characterized as any type of partnership between two or more persons who work together formally to achieve a goal characterized in a bond with one / plus persons called

superiors and one / subordinates (Siagian S. Sondang, 1987).

The author observed that 5 (five) administrative models were available in kimwasmat according to the author, and there were 2 (two) models. First of all is the conventional bureaucratic model. The second is the model of an organization.

The classic bureaucratic model emphasizes a close relationship between structure and administration (Frederickson, 2003). In this regard, enforcing the Kimwasmat Act is a law that "waits" for guidance from the Supreme Court of the Republic of Indonesia in its routine enforcement role. The court's systemic liability.

The above argument is reinforced by the Supreme Court of Indonesia 's systemic policy (policy). Relating to the kimwasmat's last enforcement in 1985, on the basis of the Circular Srat (SEMA) of the Supreme Court.

4. CONCLUSION

The implementation of a process carried out by the supervisory judge and observer is still not effective in accordance with the existing regulations because there is still a large gap between normative certainty and real implementation in the context of changing tasks in the field. Where in an activity that carries out it in an in- depth study which makes the process of supervision and monitoring not run as it should be, an appointment that does not have a comprehensive coordination process in all related institutions in this case.

There needs to be a regulation that regulates discussion. The appointment of supervisory and observing judges should be given to senior judges who are more experienced and have higher integrity. The implementation of the supervisory and supervisory functions is carried out in a routine periodic manner and is not sporadic so that reports and field analyzes produce accurate data.

In this study, the writer draws the conclusion that the function of kimsmat in the criminal justice system is legally based on the principle of juridical certainty and the principle of benefit. Still, the legal principle of "no mistake without crime, no mistake without profit" based on the Pancasila principle has been established. Second, the kimwasmat institution is based on the conventional bureaucratic model and administrative model and the component of the state administration to clarify its management and control functions. No matter whether successful or ineffectual, futuristic or not, or anticipatory.

The author proposes that the Kimwasmat institution accept, through the R-KUHAP, the definition of the establishment of legal principles. And that the head of the author suggests

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