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The Nature of the Supervisory Function of Supervisory and Observer Monitoring of the Prisoners' Development

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Abstract: ***This study aims to identify and analyze and find: the nature of the supervisory and supervisory supervisory functions of the counselor's formation; implementation of the supervisory and supervisory function of judges on guidance of prisoners; and the ideal function model of supervisory and supervisory supervisory supervision of inmatesguidance The type of research to be conducted is descriptive research with the type of normative legal research related to the nature of the supervisory and supervisory function of judges on the guidance of prisoners. The results of the study indicate that the supervisory and supervisory nature of supervisory judges is to ensure the protection of human rights of prisoners. Oversee the fulfillment of the rights of prisoners as dignified human beings even though their freedom is deprived of the court judgment imposed on them. Implementation of the function of the wasmat Judge to prisoners has not been optimal in ensuring that the decision of the court which has had permanent legal force has been executed by the Prosecutor as the executor as appropriate. The ideal function of supervisory and supervisory supervisory supervision is to make an active observation because during this time supervision and observation of judges are more pasif and administrative. In addition, coordination between prisons and supervisory judges and observers is more impressed by judges' intervention of prisons.***

Keywords: The Supervisory Function, The Prisoners

1. Introduction

Indonesia as a country of law has three basic principles, namely supremacy of law, equality before the law, and law enforcement in a process that is not due to law. In the subsequent explanation, in every state law has the character of the guarantee of the protection of human rights; judicial or independent judiciary; and legality in the legal sense, namely that both government / state and citizen in action must be based on law[1]

While the element of the legal state as written Soetanto Soepiadhy, namely: First, the recognition of the guarantee of human rights and citizens. Secondly, there is power sharing. Third, in carrying out its duties and obligations, the government must always be based on applicable law, both written and unwritten. Fourth, the existence of judicial power in the exercise of its power is independent, that is to say apart from the influence of government power and other powers[2]

The judiciary as a law enforcement agency in the criminal justice system is a foundation of hope from justice seekers who, always wanting a simple, simple, speedy and low-cost trial as set forth in Article 2 paragraph (4) of Law Number 48 Year 2009 About Powers Justice (Judicial Power Law) ,. Justice which, resulting from a judicial institution through a judicial process contained in the judge's decision is the main condition in maintaining the viability of a society because judgments of unjust judges make public trust in the judiciary to be reduced, resulting in the community is reluctant to take legal action in overcoming the legal problems they face. Thus in this case the judge as a state official authorized by the law to hear in a criminal justice process, has an important role in enforcing the criminal law for the achievement of an expected and desired justice.

Normatively, judges are granted freedom by law to judge according to their convictions without being influenced by anyone. Judges are free to decide cases based on their thoughts and consciences and also free from interference by extra judicial parties. Any interference in judicial matters by other parties outside the judicial authority is prohibited, except in matters referred to in the Act.[3]

Judicial movements through space, in a case to find justice is known as the concept of judicial activism. According to Black Law Dictionary, judicial activism is interpreted as; a philosophy of judicial decision-making in which the judge is allowed to use his knowledge of public policy issues, among various factors, to guide him to decide a problem..[4]

Judges are always required to always dig, understand, and follow the values of law and sense of justice that live in society as regulated in Article 5 paragraph (1) of Judicial Power Law. This is because the values of law and sense of justice always change along with the socio-cultural development of society. While the text of the Law is static, and can not be separated from socio-political factors that accompany the birth of a law. The text of the law is also not

[1]Majelis Permusyawaratan Rakyat Republik Indonesia, *Panduan Pemasyarakatan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (Jakarta: Sekretariat Jenderal MPR RI, 2008), him. 46

[2] Setanto Soepiandhy, Maredesain Konstitusi, (Purwangga: Kapel Press 2004), hlm. 26

[3] M. Syamsuddin, "Rekonstruksi Perilaku Etik Hakim dalam Menangani Perkara Berbasis Hukum Progresif. *Jurnal Hukum.* No. Edisi Khusus Vol. 18 Oktober2011, Wm. 133.

[4]Bryan A. Garner, *Black's Law Dictionary. Eighth Edition,* (St. Paul Minn: West Publishing Co., 2004), hlm. 850.

always capable of continuously reflecting the values of law and sense of justice in a society that, is changing. Within this framework, a judge can not only act as a mouthpiece of the Act. The judge, through his position and authority, must be able to play an active role as a central figure of legal reform. As a legal reform, judges can make legal discovery, the formation of law, and the creation of law.[5]

The judge's job is to provide justice for the justice seeker. Responsible to God, because the judge's verdict in the name of God Almighty. In the name of God is a very, very heavy thing, something that must really be contemplated. The accountability of the judge's verdict will be carried on until the death of the judge before his Lord in accordance with the revelation "For Justice by the One God". With that head, the judge can drop a death sentence to a criminal defendant or political opponent of the ruler, be able to extinguish a civil right, be able to bankrupt a person, and the company, could make people lose their jobs, can scatter the family, and a series of powers other unusual possessions of any position, profession and function. In addition to the task of adjudication, judges have other duties that are to carry out supervision and observation of the decision of the court as regulated in Article 277-283 of Law Number 8 Year 1981 regarding the Criminal Procedure Code (KUHAP). This supervisory and observation task is carried out after the court has passed a decision which, having a permanent legal force, means that the verdict has no further remedies. As the executive of a court decision or a judge's verdict is the prosecutor as the executor.

If the Judges' duties are given the authority to decide a case against a violator or supervise the execution of the decision, then here not only the Chief Justice can supervise but there is already established by the Chief Justice of the District Court based on the Decree of the Minister of Justice on the appointment of a Supervisory Judge and Observer to assist the duties of the Chief Justice of the District Court. The Supreme Court Judge and Observer who has been appointed by the Chief Justice of the Court of Justice may supervise and observe the execution of a court decision to carry out sentences against a convicted person who will serve a sentence in a Penal Institution, in which the jurisdiction to decide on a criminal offense is the Judge handling the case and sentencing against the convict itself. After the Chief Judge decides a case and imposed a sentence, the Supervisory Judge and Observer may supervise the execution of the Court's decision and so shall any court decision so here the Chief Justice shall give the ward of the Supervisor and Observer Judge to assist the Chief Justice in observing and supervising the convicted person undergoing punishment in Penitentiary. As well as those mentioned in the Act. Number 48 of 2009 on the Principle of Justice that: a. The Chairman of the Court shall oversee the execution of a decision of a Court having a permanent legal force; b. Supervision of the execution of the decision of the Court as referred to in paragraph (1) shall be conducted in accordance with the laws and regulations (Article 55 paragraphs 1 and 2). In accordance with that Article by malalui the Chief Justice of the District Court to assist the Chief Judge in executing and supervising and deciding cases. The Chief Justice authorizes the Supervisory and Observer Judge to supervise and observe the decision of the District Court which, pursuant to the Circular Letter of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 7 of 1985, dated 11 February 1985 on the Implementation Guidelines for the Judges of the Supervisor and Observer in the Court.

However, there are various problems faced by the District Court against the Supervisory and Observer Judges, namely the implementation of the duties of the judge himself, besides his role as a special judge to oversee and observe the prisoners in prison, the Supervisory and Observer Judge still serves as an active judge handling and prosecute the case. So that the judges appointed as Supervisory and Observer Judges of the District Court ruling have no reason to supervise and observe the process of guidance in Penitentiary

2. Formulation of the problem

1) What is the nature of supervisory and supervisory supervisory functions on guidance of prisoners?
2) What is the implementation of supervisory and supervisory supervisory functions on guidance of prisoners?

3. Theoretical Framework

1) Theory of the State of Law (The Rule Of Law)

In Indonesian literature, the term Law State is a translation of rechsstaat. With regard to the State of Law, there are two concepts that contribute significantly to its development. The concept of rechtsstaat as a native state born in Germany founded in the nineteenth century, the concept asserts that administrative measures should be based on law. Rechtsstaat assumes the superiority of administrative power over people and controls the administration through legislative decrees by giving reasons and administrative frameworks.[1]

Rechtsstaat as the concept of Continental Europe, born in revolution with the background of the struggle against absolutism, is based on the civil law system. In addition, it is also used the term rule of law which is also intended as a State of Law. Rule of law (Anglo Saxon) in its journey developed. by evolution, and based on the common lawsystem, with judicial characteristics. The original idea of the State of Law arose in Plato's writings, when he introduced the concept of Nomoi, in which he claimed that the administration of a good state, was based on a good (law) arrangement[3]

The concept of legal state has changed, in terms of time it turns out the concept of a legal state developing dynamic and

[5] Basuki Rekso Wibowo, "Pembaruan Hukum yang Berwajah Keadilan" dalam *Varia Peradilan*, Majalah Hukum Tahun XXVII. No. 313, Desember 2011, hlm. 11-12

[1] Meryll Dean, *Japanese Legal System*, (London: Cavendish Publishing Limited, 2002), him. 513.. See La Ode Husen, Negara Hukum Demokrasi dan Pemisahan Kekuasaan, UMI-Toha, Makassar, hlm. 1

[3] Muhammad Tahir Azhary, *Negara Hukum: Suatu Studi tentang Prinsip-Prinsipnya Dilihat dari Segi Hukum Islam, Implementasinya pada Periode Negara Madinah dan Masa Kini*, (Jakarta: Prenada Media Group, 2015), him. 66

not static. Brian Z Tamanaha, states that there are two versions of the developing legal state, namely the formal and substantive versions, each growing in three forms. The concept of the legal state of the formal version begins with the concept of rule by law that the law is interpreted as the instrument of government action, Then develops in the form of formal legality, where the concept of law is defined as a general norm, clearly prospective and definite. While the latest development of the concept of a legal state version of the formal is democracy and legality, where the agreement that determines the content or substance of the law. While the substantive version of the concept of the rule of law developed from individual rights, where privacy and individual autonomy and contract as the most basic foundation. It then develops, on the principle of the rights to personal and or dignity of man and evolves into the concept of social welfare which contains substantive principles, equality, welfare and community survival.[4]

Furthermore, according to Brian Z Tamanaha, the formal conception of the rule of law is aimed at the way in which the law is declared (by the authorities), the clarity of the norm and the temporal dimension of the enactment of the norm. The formal conception of a state of law is not directed to the settlement of legal judgments over the reality of the law itself, and it does not relate to whether the law is good or bad. While the substantive conception of the rule of law moves beyond that, it continues to recognize the above-mentioned formal attributes. The conception of a substantive law state wants to move farther than that. The basic rights or derivation is to be essentially a concept of a substantive legal state. The concept is used as a foundation which is then used to distinguish between good law that fulfills those basic rights and bad law which ignores basic rights. The formal concept of a state law focuses on the appropriateness of the source of the law and its legality form while the substantive concept also includes the requirements on the content of the legal norm.[5].

In relation to the constitution, Aristotle states that the constitution is the preparation of a position within a state, and determines what is meant by the governing body, and what is the end of every society. the constitution is the rules, and the ruler must state according to the rules. In this connection, SriSoematri (1987: 2-3), states that the essence of a constitutional State of Law is the protection of human rights. On that basis, the existence of the constitution in a country is conditio sine quanon. In this twentieth century, no country in the world considers a modern state without mentioning itself as a state based on law. Thus, the State of Law is in conflict with the constitutional state, or the country which makes the constitution the rule of life of the state, government, and society. The state and the constitution are two things that can not be separated from one another.[6]

The concept of a world recognized law of the world, namely the concept of a Continental European legal state, and the concept of an Anglo Saxon legal state. In addition, it is also known the concept of socialist legalty that is based on communist ideology by placing law, as a tool for realizing socialism by ignoring the rights of individuals. Individual rights coalesce in the objectives of socialism which, prioritizing collectivism above individual interests. However, it is only the concept of a Continental European legal state and the concept of an Anglo-Saxon legal state, since these two concepts are generally adopted by the countries of the world.

The comparison of the concept of the rule of law (rule of law) of the AV. Dicey, and the Concept of Anglo-Saxon State Law Frederich Julius Stahl, namely rechtsstaat. The concept of the rule of law of the AV. Dicey, who, based on Angfo Saxon's legal system: a) the supremacy of the rule of law, the absence of an arbitrary power, in the sense that one can only be punished for breaking the law; b) Equality before the law, this argument applies to both ordinary citizens and to officials; c) human rights by law, as well as court decisions. The concept of the State of Law by Frederich Julius Stahl in Muhammad Tahir Azhary, is: a. Protection of human rights; b. Separation or sharing of power; c. Governance under the Law; and d. State administrative courts. From that comparison, even between the rechtstaat concept (from Germany followed by the Dutch), the concept of rule of law (in English) in many ways goes hand in hand, but because of its different historical births, the difference between the two concepts on the protection of the fundamental rights of the people. The concept of rechtsstaat born from the Continental European legal system, then the concept is more directed to the improvement, and limiting the function of executives and administrative officials, so as not to violate the fundamental rights of the people, while the concept of rule of law, because born in the atmosphere of Anglo Saxon legal system , the application of such concepts is directed to improvements, and enhancement of the role of copper-law institutions, as well as courts to enforce human rights and basic rights.

The spirit of limiting state power grew stronger after the birth of the so-popular adage of Lord Acton, that is, "power tends to corrupt, but absolute power corrupt absolute" (human beings who have power tend to abuse that power, but unlimited power (absolute) will certainly be misused).[9] Therefore, the limits of government power should be regulated with the constitution, so as not to act arbitrarily against its citizens. The essence of a constitutional state is the protection of human rights.

In the context of the change in the concept of the State of Law, according to Miriam Budiarjo, there has been, among other things, criticisms of excesses in industrialization and capitalist astern, the spread of socialism which seeks a fair share of power and the victory of some socialist parties in Europe. Democracy in the idea of bam should extend to the economic dimension with a system that governs economic provisions, and seeks to minimize social and economic differences, especially the differences that arise and the unequal distribution of wealth. Such a country is called the

[4]Brian, Z Tamanaha, *On The* Rule *of Law, History, Politics* (UK; Cambridge-University, Press,, 2006)f .hlm. 91-101
[5]*Ibid*
[6]Ridwan HR, *Hukum Administrasi Negara,* (Jakarta: Rajawali Pers, 2010), hlm.3

[9]Ridwan HR. 2010. *Hukum ....Op.cit,* him. 3.

welfare state or the social service state (the state, which provides services to the public).[12]

According to Bagir Manan, that the conception of the State of Modern Law is a combination of the concept of the State of Law and the welfare state. In this concept the task of the state or government is not merely as a guardian of public order or security, but assumes the responsibility of realizing social justice, public welfare, and the greatest prosperity of the people.[13]

The affirmation of Indonesia, is the Legal State expressly stated in the 1945 Constitution in Article 1 paragraph (3), states that: "The State of Indonesia is a State of Law". in the concept of the State of the Law, idealized that the commander should be made in the dynamics of state life, is law, not political or economic. Therefore, the jargon which is commonly used in English to call the State of Law is "the rule of law, not of men", all the regimes of government, which, practiced in the history of mankind is the principle of "rule of men", ie the power of government entirely in the hands of men strong. This principle, then shifted into "rule by law", in which man began to take into account the importance of the role of law as a tool of power, in order to avoid arbitrariness and powers.

The concept of the State of Law, which is used in Indonesia and has been popular is the term rechtsstaat. Meanwhile, to add to its Indonesian characteristics, it is also known as the State of Law by adding Pancasila attributes. thus becoming the State of Pancasila Law.[15]

According to M. Scheltema as quoted La Ode Husen bahwa Absolute State provides protection to its citizens, although in different ways for each nation. Therefore, in his view the element of the State of Law must be based on the historical roots and development of a nation, because every nation or country has a history that is not the same.[16]

The granting of meaning and content of the State of the Law which characterizes Indonesia, put forward by Padmo Wahyono in La Ode Husen, reveals that Indonesia, is a state based on the law, with the formulation of rechtsstaaf with the assumption that the pattern taken does not deviate and the understanding of the State of Law in general (genusbegrfo) , adjusted to the circumstances in Indonesia. It is used with the measure of life view and state view. Various opinions can be expressed about, the State of Law, but the important thing is the same points of the various opinions. The State of the Law implies that in the life of society and the state, the law must make the supreme together with the principle of democracy, the law must make the means for the Indonesian people in realizing the national goal by placing the constitution as the law governing the state.[17]

[12]Miriam Budiarjo, *Dasar-dasar llmu Politik*, (Jakarta: Gramedia Pustaka 1991), him. 59.
[13]Bagir Manan, *Menyongsong Fajar Otonomi Daerah*, (Yogyakarta: Pusat Hukum FH UII, 2001, hlm, 16.
[15]La Ode Husen, *Negara Hukum Demokrasi dan Pemisahan* (Makassar: PT. UMITOHA Ukhuwah Grafika, 2009), him. 22.
[16] ibid
[17]*Ibid*,,hlm. 20,

2) Theory of Penance

Criminalization is the most important part of the criminal law, as Ashwoth puts it in Chairul Huda as it is the culmination of the whole process of accountability of someone who has been guilty of a criminal offense. Chairul Huda argues that mistakes not only determine the accountability of the maker, but also the manufacturer can punish him. The decisive mistake can be accounted for by the manufacturer is a perspective which, looking backward. In this case the manufacturer's mistake in the past is questioned. This means whether a person can be applied to criminal sanctions for his actions in the past. While the decisive mistake that the maker can make is a forward-looking view in this case the future of the maker in question what should be done against a person who commits a criminal offense and is guilty. Andi Hamzah, said that the issue of criminal or criminal penalization is very important in criminal law and criminal justice. According to Andi Hamzah, criminal or criminal prosecution is a concrete or realization of criminal legislation in abstract legislation.24 Hamdah continued that the judge will have extraordinary discretion in choosing how long the imprisonment will be imposed on a particular defendant in a concrete case.[25]

According to Barda Nawawi Arief, there are two fundamental conditions of punishment namely the principle of legality and the principle of error, with other words about punishment is closely related to the principal thoughts of criminal acts and criminal responsibility.[26] In general, the theories of punishment are divided into three: 1) Absolute Theory or Theory of Revenge (Vergeldings Theorien) According to this theory the criminal is imposed solely because people are tired of committing a crime or a crime. This theory was introduced by Kent and Hegel. Absolute theory is based on the idea that criminal is not for practical purposes, such as repairing criminals but criminal is an absolute demand, not just something that needs to be dropped but becomes imperative, in other words the nature of criminal is revenge. As stated, Muladi stated that: Absolute theory sees that punishment is a retaliation for the mistakes that have been made to be oriented to the act and lies in the occurrence of the crime itself. This theory puts forward that sanctions in criminal law are imposed solely because people have committed a crime which is an absolute consequence that must exist as a retaliation to the person committing the crime so that sanctions aim to satisfy the demands of justice.[27]

From the above theory, it is clear that criminal is an ethical demand, in which a person who commits a crime will be punished and the punishment is a necessity of its nature to shape the nature and change the evil ethic to the good. Karel O. Christiansen identifies five basic characteristics of absolute theory: a. The purpose of punishment is just retribution (the criminal purpose is only in return); b. Just retribution is the ultimate aim, as for instance whatsoever is from any point of view is without any significance whatsoever (Revenge is the ultimate goal and in it does not contain means for other purposes such as public welfare); c. Moral guilt is the only qualification for punishment (mistake

[25]*Ibid*.
[26]Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Bandung: Citra Aditya Bakti, 2002), hlm. 88.
[27]Zainal Abidin Farid, *Hukum Pidana 1*, (Jakarta: Sinar Grafika, 2007), hlm. 11.

as the only condition for punishment); d. The penalty shall be proportional to the moral guild of the offender (Criminal should be adjusted to the offender's error); e. Punishment point into the past, it is pure reproach, correct, educate or resocialize the offender (Criminal look back, it is a pure defend and aims to improve, educate and socialize the perpetrators).[28]

3) Theory of Supervision

Supervision is one of the functions in the management of an organization. Where has the meaning of a process to supervise and evaluate an activity. An oversight is said to be important because in the absence of good oversight will certainly result in a goal that is, less. satisfactory, both for the organization itself and for its workers. The term supervision in Dutch "Controlee" which means also the examination. Controlling function has 2 (two), equivalent, that is supervision and controlling. Supervision herein, is the control in the narrow sense as any attempt, or activity to know and assess the actual reality of the execution of the task, or the work of understanding more "Forceful" of the supervision, that is as any effort or activity to know, and assess the actual facts about the implementation of the task or activity, whether appropriate or not. The control of the business or activity to guarantee and direct for the implementation of the task, or work to run as appropriate.[41]

Supervision is an assessment activity against an organization with the aim that the organization, carrying out its duties and functions well, and can achieve that goal. has been established. In practice one of the most commonly practiced supervisory techniques is the examination, which is the activity to assess whether the actual results of the implementation have been in accordance with the intended and to identify the deviations or obstacles found. The purpose of monitoring, therefore, is to observe what actually happens and compare it with what should happen, with the intention of immediately reporting any irregularities or obstacles to the head / responsibility of the relevant function / activity in order to take the necessary corrective action.

Surveillance activities are not intended to find fault or find out who is wrong. Basically it can be said that the main purpose of supervision, is to understand what is wrong for future improvement, and direct all activities in the framework of execution of a plan so that can be expected a maximum result.

Theoretically, the definition of supervision can be distinguished ie. *"Control as command, "Control as influence"* dan *check" (exante, dumque dan ex post)*[43] In addition, according to Harjono Sumosudirjo in Laode Husen may also be referred to as preventive supervision, are provisions aimed at:

a) Prevent the occurrence of deviant actions, from a predetermined basis;
b) Providing guidelines for the implementation of activities in an effective and efficient manner;
c) Determining goals or objectives to be achieved; and
d) Determine the authority and responsibility of various instances relating to the task to be performed.[52]

According to Murugesan that the characteristics of the supervision are:

1) Control process is universal. Control is essential function in any organization whether it is an industrial unit, university, government office, hospital etc.
2) Control is a continuous proses ia a never ending activity on the part the part of managers Itisanon stop process. The-manager watches the operation of the management and tosee whether they are going towards the desired end and if not actions are not taken to correct them.
3) Control is action based. Action is essential element of the control It istheaction. Which ensures performance according to the decided standards.
4) Control is forward looking. Control is linked with future not past. A proper control system prevents losses, minimizes wastages. It acts as a preventive measure.
5) Control is closely linked with planning. Plan gives the direction to variousbusiness activities whilecontrol verifiesand measures the performance of these activities and suggests proper measures to remove the deviations.[59]

4. Discussion

a) Supervisory and Monitoring Supervisory Function on Prisoners' Guidance

Indonesia as a law country wants the criminal justice system to be done well and successfully. The criminal justice system is a crime control consisting of police agencies, prosecutors, courts and correctional prisons. From this definition, it can be said that talking about the criminal justice system directly speaks of the components of law enforcement itself. The criminal justice system is essentially a criminal law enforcement process, while the objective is to re-socialize and rehabilitate perpetrators of criminal acts, control and prevention of crime and realize the welfare of the people. Therefore, it is closely related to the criminal legislation itself, both substantive criminal law and criminal law of criminal procedure, since the criminal legislation is essentially a criminal law enforcement system "in abstracto" which will be manifested in law enforcement "in. concreto ".

The judge in the imposition of a criminal takes into account the nature of the criminal act and the circumstances of the author and the development of the conception of criminal individualization as the influence of Criminology which encourages the attention of the accused person as the judge's judgment in handling the criminal judgment. This concept is often called a two-track system (twintrack system) in which

[28]M. Sholehuddin, *Sistem Sanksi Dalama Hukum Pidana: Ide Dasar Double Track System dan Implementasinya,* (Jakarta: Rajawali, 2004), hlm. 35.
[41]Sujamto, *Beberapa Pengertian di Bidang Pengawasan,* (Jakarta: Ghalia Indonesia, 1986), hlm. 17.
[43]Carla M. Zoethout. et.al, *Control in Constitutional Law,* (Dordrec: Martinus Nijhoff Publishers, 2000), him. 132, La Ode Husen, *Hubungan Fungsi Pengawasan DPR dengan Badan Pemeriksa Keuangan Dalam Sistem ketatanegaraan Indonesia* (Bandung. CV. Utomo; 2005), hlm. 243.
[52]La Ode Husen, *Hubungan Fungsi Pengawasan ...Ibid* hlm. 243.
[59]Murugesan, G. *Principles of Management,* (New Delhi, University Science Press, 2012X hlm, 112.

criminal individualization is also considered (punishment should fit the criminal) .1 Supervision is defined as a process of monitoring activities to ensure that all organizational activities are implemented as planned and at the same time is an activity to correct and correct if found any irregularities that will interfere with the achievement of goals. Supervision is also a management function necessary to evaluate the performance of an organization or units within an organization to establish progress in the desired direction. From the above description can be interpreted that kepengawasan is an activity or supervisory action of a person who is given the duty, responsibility and authority to do the guidance and assessment of the person and or institution he coached. If judging from the existing regulations then the form of supervision can be encountered in so many regulations be it the Act, Government Regulation, Presidential Instruction and Ministerial Decree.

Article 55 paragraph (1) and (2) of Law Number 48 Year 2009 on Judicial Power, considers the need for supervision and execution of the following determining court decisions: 1. The implementation of the court's decision in a criminal case shall be conducted by the prosecutor; 2. Supervision of the implementation of the decision of the court referred to paragraph (1) by the respective Head of the Court under the Act. This confirms that in order to obtain assurance that the court's decision is properly implemented, the respective Head of the Court oversees the exercise. The provisions concerning the supervision and observation of the execution of court decisions shall also be governed by Law No. 8/1981 on the Criminal Procedure Code (KUHAP) dated December 31, 1981, Statute Book of 1981 No. 76 and Supplement to Statute Book No. 3209) which replaced Met Herzien Indonesisch Reglement abbreviated by HIR (S. 1941-44 jo S. 1948-224), Chapter XX concerning Supervision and Observation of Court Decisions, Articles 277 to 283. Chapter XX of the Criminal Procedure Code regulates the authority of the President of the District Court as referred to in Article 55 paragraph (2) of Law Number 48 Year 2009 regarding Judicial Power is delegated to a judge called the Supervisory and Observer Judge (KIMWASMAT) as regulated in Article 277 KUHAP up to Article 283 Criminal Procedure Code.

In addition to the Criminal Procedure Code and Law Number 48 Year 2009 regarding Judicial Power, the regulation on Supervisory and Observer Judges is also regulated in the Circular Letter of Supreme Court. 3 of 1984 on the Implementation of the Duties of Supervisory and Observer Judges and Circular Letter of Supreme Court Number 7 dated February 11, 1985 on the Guidelines for the Implementation of Duties of Supervisor and Observer Judge. Its task is to control the execution of court decisions (imprisonment and imprisonment) since the decision to obtain permanent legal force until the completion of its implementation, with its authority to correct directly apparatus who neglect or deviate from the decision that has been dropped In relation to Bambang Poernomo's supervisory and observational tasks, the most important benefit in the regulation of Chapter XX KUHAP does not lie with his supervisory duties, but lies in his observational tasks as research material for criminal proceedings. The reason given is that the judge in this special assignment also takes a direct approach, in order to know where the good or bad results of the inmate of the judge's decision. The approach of this judge will add to the ability of penitentiary law and the introduction of the application of the penology so that judges are no longer just punishers without thinking about the merits of their decisions. [2]

To support the successful implementation of court decisions, the Criminal Procedure Code (KUHAP) has been stipulated on the necessity of each court to appoint judges who are given special tasks to assist the Chief Justice of the District Court in exercising supervision and security against the decisions of the court that impose criminal deprivation of liberty.3 This is in accordance with the provisions of Article 277 paragraph (1) of the Criminal Procedure Code which provides that: In each court there must be a judge who is given a special task to assist the chairman in exercising supervision and observation of decisions of courts that impose criminal deprivation of liberty. In addition, according to the provisions of Article 277 paragraph (2) of the Criminal Procedure Code, it shall also explain the period or period of work of the Supervisory and Observer Judges in exercising such supervision and observation. The duration of the supervision and observation by the Supervisory and Observer Judge shall be valid for a maximum period of 2 (two) years. The contents and provisions of Article 277 paragraph (2) of the Criminal Procedure Code specify that: The judge referred to in paragraph (1), called the Supervisory and Observer Judge, shall be appointed by the Chief Justice for a maximum of 2 (two) years. Supervisory and Observer Judge basically has 2 (two) main duty in execution of court decision that is supervision and observation. The provisions concerning supervision by Supervisory and Observer Judges are stated in Article 280 paragraph (1) of Criminal Procedure Code which stipulates that: The Supervisory and Observer Judge shall supervise in order to obtain assurance that the court decision is carried out properly. It means that the judge who has such special duty oversees to ensure that the decision on the imposition of the crime of deprivation of liberty has actually been carried out according to the principles of humanity and justice and this is to prevent the public's assumption that the court's decision is only made as a symbol only.[4]

The provisions concerning observations, by the Supervisory and Observer Judges stated in Article 280 paragraph (2) of KUHAP stipulates that: The Supervisory Judge and the Observer make observations for the research material for the sake of useful provisions! punishment obtained from the behavior of prisoners or the fostering of Penal Institutions and the mutual influence of prisoners during their crimes.

This means that, in the observation of the Supervisory Judge and Observer to observe the prisoners during their criminal life, especially regarding their respective behavior and the treatment of officers from the Penitentiary against the prisoners themselves. Thus, judges will be able to know until where the court's verdict appears to be a good outcome to the prisoner in question, as well as important research that is useful for criminal prosecution.[5]

[2]Bambang Poernomo, *Pola Dasar Teori-Asas Umum Hukum Acara Pidana dan Penegakan Hukum Pidana*, (Yogyakarta: Liberty, 1993), hlm. 1.
[4]Suryono Sutarto, Sari *Hukum Acara Pidana,* (Semarang: Yayasan Cendikia Puma Dharma, 1990), hlm. 10.
[5]*Ibid*

1) In the context of the Judge as supervisor is responsible for: 1. Checking and signing registers of supervisors and observers residing in the Court of the District Court.
2) Conduct checking on the spot for at least 3 (three) months to the correctional institution to check the truth of the implementation of court verdict signed by the Prosecutor, Head of Correctional Institution and the convicted person.
3) Conduct an observation of the circumstances, circumstances and activities taking place within the walls of the institution, in particular to assess whether the condition of the penitentiary has satisfied the notion that "punishment is not meant to be told and should not be degrading of human dignity" with his own eyes the behavior of prisoners dropped on him.
4) Conducting interviews with prison officers (especially the guardian-coaches of the prisoners concerned) on the behavior and outcomes of prisoners, both the progress made and the setbacks.
5) Conduct hands-on interviews with prisoners on the subject of their treatment, humanitarian relations between their own neighbors and prison officers.
6) Contact the Head of Correctional Institution and Chairman of the Board of Correctional Foster (DPP), and if necessary, contact the coordinator of the correctional area of the Justice Department's office in order to exchange opinions in solving a problem; as well as consultation (in a coordinating setting) on the treatment of technical prisoners, both in the organization's walls and outside.

This supervisory and observation task is important since it is not only related to the convicted person deprived of liberty, but also to the convicted person who has already completed his or her crime, even to the convicted prisoner. In the Decree of the Minister of Justice of the Republic of Indonesia No. M.01.PW.07.03 of 1982 concerning Guidelines for the Implementation of the Criminal Procedure Code, the supervision in question is to ensure that judgments imposed by the courts are properly implemented, by law According to Muladi, the articles on the supervisory and observer judges in the KUHAP are abolished or omitted. During this time, supervisor and observer judges are not running optimally. In addition, supervision and observation by judges of the penal system puts it as if the Correctional Officer is under a judge. In fact, pemasyarakatan is a subsystem equivalent to other subsystems in the Integrated Criminal Justice System (SPPT), namely police, prosecutors, and judges.6 Supervision at the stage of execution of the decision is the final stage in the process of the criminal justice system. Supervision at the stage of execution of judgment in the criminal justice system may be made after a court decision has been enforced. After the decision of the court that has permanent legal force, then immediately conducted monitoring and observation through observation. Supervision and observation is conducted to determine whether the decision has been properly and properly implemented. In the implementation of conditional punishment decision, supervision is conducted to determine whether the conditions that have been determined in the judicial verdict have been met, ie from the trial period, the convicted person will not commit a crime. This is because in the execution of conditional punishment decisions must be done with serious supervision and observation. In carrying out the supervision and observation of the decision of the Court against the conditional ruling of JudgePengawas and Pengamat is more administrative and passive that awaits a report from the Prosecutor in connection with the execution of a court decision. The supervisory philosophy undertaken by the supervisory judge is to ensure the protection of the human rights of prisoners. The Law of the Republic of Indonesia No. 8 of 1981 on the Criminal Procedure Code (Criminal Procedure Code), in its explanation, can be read by the lawmakers against the criminal procedure law contained in the HIR (derived from IR 1848 and updated with S.1941-44). Among other things it is said that HIR "... has not provided assurance and protection against human dignity as it belongs to a State of law". And to affirm that this KUHAP is different from HIR, then the explanation a.l. shows the importance of "... appreciation, practice and implementation of human rights as well as the rights and obligations of States" Referring to the above explanation, it should be accepted that the application of the articles in the Criminal Procedure Code must always be interpreted by showing human rights. Although the formulation of the articles of the Criminal Procedure Code does not clearly constitute the formulation of human rights for suspects and defendants, the spirit of this law rejects human rights violations at every stage of the criminal justice system. Human rights are also often defined as such rights which are inherent in human nature. so without those rights, we can not possibly have the dignity of the human being (inherent dignity). Therefore, it is said that these rights are inalienable and should not be inviolable. The preamble of the UDHR begins with the words: "The equation here denotes no discrimination in the protection of the State or the guarantee of the State on the rights of the individual, it is these characteristics that distinguish human rights from other rights granted by law (legal rights). The distinction between the rights granted by law and human rights is important, because the rights granted by law can be granted restrictions whereas human rights do not. Legal rights arise under the guarantees of laws and regulations under them8. A view that mentions this right does not necessarily overshadow the notion of an obligation, to become "human rights and obligations", beginning with our understanding that rights and obligations are symmetrical. This is true, but keep in mind that this symmetry is not within the same individual. In the sense of human rights, these rights are inherent in humans and can only be possessed by individuals. While the obligations that are part of symmetry are in the State, because only the State is

b) The realization of legal certainty in the execution of the judge's decision

Certainty is an inseparable feature and law, especially for written legal norms. The law of certainty is not used as a guideline for self-determination is called one of the goals of the law.

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is enforced, that the rightful lawyers can get their rights and that the judgment can be implemented. Although legal certainty is closely related to justice, the law is not synonymous with justice. The law is

general, binding to everyone, generalized, while justice is subjective, individualistic, and not generalized.[11]

Legal certainty is one of the main objectives and legal justice system in Indonesia. Legal certainty is closely related to justice, even some people, assuming that justice is legal certainty. Legal certainty can be achieved after the judicial process has been completed (court decision). The legal certainty is "sicherkeit des Rechts selbsf which means certainty about the law itself." There are four matters relating to the meaning of legal certainty: First, that the law is positive, meaning that the law is a law (gesetzliches recht). it is based on facts (tatsachen), not a formulation of judgments which judges will undertake, such as "goodwill," "modesty." Third, that fact must be formulated in a way that is clear to avoid mistakes in meaning, it is also easy to execute.Fourth, the positive law should not be changed frequently.talking about certainty, so as Radbruch says, the more precise is the certainty of the existence of the rule itself or rule certainty (sicherkeit des rectos). Implementation of the decision / execution is a court decision that can be implemented. A judicial ruling that can be executed is a verdict already having a permanent legal force (in kracht van gewijsde). The verdict which has a permanent strength is a verdict which is no longer possible to be countered with legal efforts in the form of, appeal, and cassation. The decision of a new District Court can be enforced if it has obtained a definite force, if it is impossible or not to be held. Instant comparison is pronounced publicly, unless the defendant asks for a call to carry out the decision for fourteen days in which the condemned will intend to advance the President's request . The implementation of a court decision that has obtained legal force is still carried out by the prosecutor, to which the Penitator sends a copy of the decree to the prosecutor (Article 270 KUHAP). The execution of a new court decision may be made by the prosecutor, after the prosecutor receives a copy of the decision letter from the clerk. According to SEMA No. 21 Year 1983 Date of December 8, 1983 deadline for sending a copy of the decision from the Registrar of the Court to the ordinary course of matter for a maximum of 1 (one) week and for a case with a brief event no later than 14 days. The implementation of the court's decision by the prosecutor or public prosecutor is no longer a prosecution such as detention, indictment, prosecution, etc. The Criminal Procedure Code clearly states: "prosecutor", in contrast to prosecution such as detention, indictment, prosecution and others referred to "public prosecutor". By itself this means the Prosecutor who did not become a Public Prosecutor for a case may carry out a court decision. The results of field research through interviews are known that every Supervisory and Observer Judge has been given additional duty to know the implementation of court decision done by law enforcement apparatus and Lembaga Pengasyarkatan. Until knowing the circumstances, that is. in fact the execution of the court decision is carried out or not against inmates who already have permanent legal force (inkracht van gewljsde). The Supervisor and Observer Judge must go directly to the Penal Institution because the inmates within the Penal Institution are persons, who have been legally deprived of their rights and freedoms, the prisoner shall still obtain justice in accordance with his position as a person who has been declared unlawful . In this circumstance it does not mean that prisoners who are serving imprisonment have no rights that need to be protected as human beings who have rights, but their rights are restricted by law must be well provided.

Based on the results of that interview, it is known that basically the supervision and observation made by the Supervisory and Observer Judge in the Penitentiary to oversee the fulfillment of the rights of the prisoner as a dignified human being, even though his freedom is deprived based on the decision of the court that is imposed on him. So that the principles used by the Supervisory and Observer Judges in carrying out these surveillance and observation must be humanitarian and fairy justice. In addition, this supervision and observation also to supervise in case of the arbitrariness of irresponsible officials and officers of the Penitentiary and as an emphasis also for the recidivists to refrain from committing crimes or criminal acts. Therefore, there should be a real report that has been done by plunging into the field of Correctional Institution, and the head of the District Court should actively take into consideration the supervision and observation by the Judge Supervisor and Observer by asking for various results of supervision and observation of the decision of this District Court from Supervisor and Observer Judge periodically, and later be evaluated together and must be followed up together. The supervisory and observer judges conduct oversight to obtain assurance that the court's decision is properly implemented. In the observation of the Supervisory Judge and Observer to observe the prisoners during their criminal life, especially regarding their respective behavior and the treatment of officers from the Penitentiary against the prisoners themselves. Thus, judges will be able to know until where the court's verdict appears to be good for the prisoner concerned, and it is also important for research to be of benefit to the crime

Taking into account the functioning of the duties performed by the Supervisory and Observer Judges (which is very good for the guidance and assessment of prisoners' behavior as long as they undergo their criminal jurisdiction The role and position of the supervisory and observer judges is closely related to the institution of pemayarakatan that performs the function of guidance on the prisoners. According to article 277 KUHAP the duty of supervisory and observer supervisors is to assist the chief judge in carrying out supervision and observation on the implementation of court decision in the form of criminal deprivation of independence. Article 280 paragraph (1) of the Criminal Procedure Code stipulates that the Supervisory and Observer Judge shall supervise in order to obtain assurance that the court decision is carried out properly. The duties of the Supervisory and Observer Judges are only secondary duties, not the primary duty of being a District Court judge appointed as a Supervisory and Observer Judge not to be relieved of the main duties of examining and adjudicating criminal and civil cases, appointed staff to assist Supervisory and Observer Judges must carry out its basic tasks daily. In the mechanism of execution of duties Judge Supervisor and Observer now looks just to fulfill only administrative task (fulfillment of obligation to make report). So have not touched deeply to the core substance of the expected role is To obtain the certainty

[11]Sudikno Mertokusumo, *Mengenal Hukum,* (Yogyakarta: Liberty, 2007), hlm. 160

of the decision carried out properly. Regarding the functions and duties of supervision and observation are not explained further in the explanation of Law no. 8 of 1981 (Criminal Procedure Code). The explanation is mentioned in the Decree of the Minister of Justice of the Republic of Indonesia Number: M.01.PW. 07.03 of 1982 on the guidance of the implementation of KUHAP Chapter III No.8 supervisors in question is that there is a guarantee that the verdict imposed by the court is done properly. In addition to carrying out supervisory and observation tasks, the supervisory and observer judges are also tasked with making observations as research material for provisions that are useful for future punishment. This observation concerns the behavior of prisoners or the fostering of prisons and the mutual influence of prisoners during their crimes. The task of observation for research material for the provision which is beneficial to the crime there is no further explanation in the Minister's decree. The monitoring and observation conducted by the Supervisory and Observer Judges is reported to the Chief Justice, but not only can the policy of guiding prisoners in prisons or prisons and prisons, but there is also a benchmark in judgment. In addition, to know that the imprisonment imposed on prison inmates may be useful and whether the implementation of guidance on prisoners serving prison sentences is based on the prisoners' basic rights, which are aimed at achieving the objectives of the criminal justice system in general, and particularly so that prisoners do not commit crimes again after completing the sentence of imprisonment.[12]

The supervisory and observer judges conduct oversight to obtain assurance that the court's decision has been properly implemented. The supervisory and observer judges conduct observations for research material for the provision of beneficial punishment, acquired and the behavior of prisoners or guidance of the Penal Institution as well as the mutual influence of prisoners during their crimes. The embedding is still executed after the convict has finished his crime. Such supervision and observation also applies to the condemned prisoner (Article 280 KUHAP). At the request of the Judge of the Supervisor and the Head of Correctional Institution to inform periodically or at any time about the behavior of certain prisoners in the observation of the judge. If it is deemed necessary for the sake of utilization of observations, the supervisory judge and observer may discuss with the Head of Correctional Institution on the way in which certain prisoners are guided (Article 282 KUHAP). Supervision and observation results are reported by Supreme Court Judge and Observer to the Chief Justice periodically (Article 283 Criminal Procedure Code). The Criminal Procedure Code explicitly states that the supervision and observation by the judge is intended to ensure that the verdict of the court has actually been implemented (Article 280). The results obtained from the supervision will be the subject of research to obtain what benefits can be found from the criminalization against the behavior of the prisoner. From the results of that study, will also be able to know the form and how to coaching what is more appropriate and mutual reciprocal influence on the way of life of the convicted person during his sentence in prison. In fact, it could be a result of that research will also be useful also until after the convict finished his sentence and returned to the community. For such purposes the supervisory judge may request or be given as a report by the head of the LP periodically or at any time regarding the development of the conduct and guidance given to the convicted person. Coordinative consultation and counseling between the supervisory judge and the kalapas can be done on the way of supervision and guidance of certain convicts by knowing the special conduct in carrying out his punishment. The provisions of the Criminal Procedure Code (KUHAP) concerning the above observations and observations indicate that the criminal procedure law adopted by Indonesia now, no longer aims to punish as revenge for the crime of the convicted person. Punishment as vengeance for crime has been abandoned as part of the civilization of the past law. The current legal doctrine adopted by Indonesia is that the implementation of the law is a rehabilitation and reintegration bag! convicted in order to return to normal life into the civilization of the general public. With this belief, the former prison has been renamed prison (LP). Substantial nuance in the LP concept becomes a clinic of healing of public sickness in the form of crime that the convict suffered. The number and duration of the punishment becomes a prescribed form of the drug with a certain degree of quality, which if the recipe has been fulfilled, then the person concerned should be healthy, normal, returning to society after discharge from the LP. The existence of provisions concerning the supervision of judges on the execution of judgments, the gap between what the judge decided and the realities of crime in prisons and outside prisons if convicted persons employed there can be bridged. The judge may follow the convict's progress as well as the treatment of the correctional prison officers concerned. The existence of a judge of supervisors and observers in Indonesia's criminal justice traffic can not be separated from the need for supervision over the execution of court decisions, as stated by H. Oemar Seno Adjie that the implementation of a court decision in a criminal case is conducted by the prosecutor, however "inschackelen" the implementation of the court decision. Supervision intended to ensure assurance, that the judgment imposed by the court was carried out properly.[13]

Judge of Supervisor and Observer in fostering inmates especially developments in practice. If we know that to hold the guidance of prisoners who undergo their criminal in Penitentiary not only focused to carry out the guidance of the prisoner is not only the responsibility of Judge of Supervisor and Observer who is given duty by the Chief Justice, but more authorized apparatus is apparatus located in Institution Penitentiary himself, to the extent of conducting guidance on prisoners who underwent his criminal punishment in the Penitentiary itself. Similarly, if we consider in the description above it can be said that the cooperation between Supervisor and Observer Judge with the Head of Penitentiary is what is expected in the rules of the Criminal Procedure Code. In carrying out the duties of Supervisor and Observer Judge as apparatus authorized to carry out guidance of prisoners in Penitentiary, even if Supervisory Judge and Observer do not attend or have never give guidance to prisoner but Staff from

[12]Bambang Poernomo, *Pokok-Pokok Hukum Acara Pidana dan Beberapa Harapan Dalam Pelaksanaan KUHAP*, (Yogyakarta: Liberty, 1982), hlm. 80

[13]Oemar Seno Adji, *Hukum (Acara) Pidana Dalam Prospeksi*, (Jakarta: Penerbit Erlangga, 1984), hlm 256.

Penitentiary continue to guidance to prisoners who underwent criminal at Institution Correctional especially in Correctional Institutions With due observance to the development that prison guidance can not be said to be the result of the Judge of Supervisor and Observer, because the Supervisory and Observer Judge has not been able to perform its duties as mentioned in the Laws, this is caused by the Judge of Supervisor and The observer is still passive and does not have a separate budget and has no staff to handle data of prisoners who are undergoing their crime in Penitentiary.

5. Conclusion

1) The nature of the supervisory function of the supervisory and observer's judge on the guidance of prisoners is to provide assurance on the protection of the human rights of prisoners; provide legal certainty to the execution of judge's decision; guarantees the guidance of prisoners in the context of social reintegration in the community.
2) Implementation of supervisory and supervisory functions of judges against prisoners is not yet optimal in ensuring that the decision of the court which has had permanent legal force has been executed by the Prosecutor as the executor as appropriate, and the ideal function of supervisory and supervisory supervisory oversight is to carry out active supervision because so far supervision and observation of judges are more passive and administrative. In addition, coordination between prisons and supervisory judges and observers is more impressed by judges' intervention of prisons.

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