

Implementation of Criminal Supervision by the Prosecutor's Office Based on Legal Certainty

Vidya Khairunnisa¹⁾ & Andri Winjaya Laksana²⁾

¹⁾ Faculty of Law, Sultan Agung Islamic University (UNISSULA), E-mail: VidyaKhairunnisa.std@unissula.ac.id

²⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), E-mail: andriwinjaya@unissula.ac.id

Abstract. *The research objectives in this study are to find out and analyze the current implementation of criminal supervision by the prosecutor's office, to find out and find solutions to the weaknesses in the implementation of criminal supervision by the prosecutor's office currently, to find out the implementation of supervision by the prosecutor's office based on legal certainty. This research uses a sociological juridical approach, with quantitative descriptive research methods. The data used is primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty. The results of the research conclude that the current implementation of criminal supervision by the prosecutor's office is that Law No. 1 of 2023 concerning the Criminal Code states that defendants who commit criminal acts which are threatened with imprisonment for a maximum of 5 (five) years can be sentenced to supervision; The implementation of criminal supervision by the prosecutor's office is based on legal certainty, that conceptually, criminal supervision is categorized as a principal crime, so a comprehensive study is needed, as an effort to realize a just punishment. Apart from that, the retributive justice paradigm which is repressive has changed into a punishment paradigm based on restorative justice. This can be seen in the formulation of the New Criminal Code Bill, one of which is the criminal supervision, the criminal supervision is an alternative crime of conditional deprivation of liberty. The concept of criminal supervision in the Draft Criminal Code is currently still general, so it is necessary to formulate an *Ius Kontituendum* policy for the concept of criminal supervision in Indonesia, such as the criminal*

supervision procedure for supervision has not been explained in detail, so it must be conceptualized early on, so that the implementation of criminal supervision can run effectively.

Keywords: *Criminal; Prosecutor; Supervision.*

1. Introduction

Indonesia is a legal state. The simple definition of a legal state is a state that exercises its governmental powers based on law. In the 1945 Constitution of the Unitary State of the Republic of Indonesia, Article 1 paragraph (3) states that "The State of Indonesia is a State of Law". Before the amendment, the provisions of Indonesia as a rule of law state were not regulated expressly in the body but in the Explanation of the 1945 Constitution which stated "The Indonesian state is based on law (rechtsstaat), not based on mere power (machtsstaat)" after the amendment to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia no longer uses the word rechtsstaat but includes the sentence "The State of Indonesia is a State of Law" and the Explanation section was removed. This formulation strengthens the principle of the rule of law adopted in the 1945 Constitution. As Bothlink defines the rule of law, it is the freedom of the state's will to hold power limited by the provisions of the law itself.

The prosecutor's office is one of the law enforcement institutions where supervision by the prosecutor's office is very necessary. Referring to Law of the Republic of Indonesia Number 11 of 2021, an amendment to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the Prosecutor's Office as a law enforcement agency is required to play a greater role in upholding the supremacy of law, protecting public interests, upholding human rights, as well as eradicating Corruption, Collusion and Nepotism (KKN). In this new Prosecutor's Law, the Prosecutor's Office of the Republic of Indonesia is a government institution whose function is related to judicial power which carries out State power in the field of prosecution and other authorities based on the Law independently, regardless of the influence of government power and the influence of other powers. (Article 2 paragraph 1 Law Number 11 of 2021).

Crime is a reality in social life that deserves special attention. This is not only because the types of criminal acts continue to develop over time, but criminal acts have also caused deep unrest and disrupted security and order in social life. One form of crime that is developing in society is violence.

Djoko Prakoso stated that criminologically crimes or criminal acts are "acts that

violate the norms that apply in society and get negative reactions from society, and psychologically crimes or criminal acts are "abnormal human acts that violate the law, which are caused by psychological factors of the perpetrator of the act.

Settlement of criminal cases is carried out through an evidentiary process, namely a prosecution process carried out directly in a trial. In judicial practice, the process always begins with arrest, detention, then prosecution by the public prosecutor, which ends with a judge's decision.

Nowadays criminal acts are increasingly common in Indonesia. This is closely related to various aspects, especially the economic aspect. One of the causes of the rise in crime is that economic needs must be met urgently, while the available jobs cannot meet the needs of all Indonesian people to work and earn a steady income.

Certainty is needed to realize the principle of equality before the law without discrimination. In particular, providing a balance of protection and interests of victims and perpetrators of criminal acts that is not only oriented towards punishment is a legal need in society as a solution while providing legal certainty, especially the benefits and sense of justice of society, in order to answer the development of society's legal needs that fulfill the sense of justice of all parties. Legal certainty as one of the goals of law can be said to be part of efforts to realize justice.¹The real form of legal certainty is the implementation or legal enforcement of an action regardless of who carries it out. With legal certainty, everyone can predict what they will experience if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.

The synchronization of legal structures explains that all law enforcement agencies, such as police, prosecutors, judges, advocates and correctional institutions, must not feel that they are right and blame each other. Meanwhile, legal culture must be integrated with the substance of the law and be considered by the legal structure in enforcing criminal law. Based on the problems above, the author is interested in studying "Implementation of Criminal Supervision by the Prosecutor's Office Based on Legal Certainty".

This research aims to: 1) determine and analyze the implementation of criminal supervision by the prosecutor's office; 2) know and analyze the implementation of supervision by prosecutors based on certainty law.

¹Sahabuddin Sahabuddin and Warfian Saputra, 'Prison Policy for Light Crimes in a Just and Indonesian Criminal Law', *Faces of Law*, 5.2 (2021), 629 .

2. Research Methods

This research uses a sociological juridical approach. The type of research used in completing this thesis is a qualitative descriptive research method. The data used is primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty.

3. Results and Discussion

3.1. Current Implementation of Criminal Supervision by the Prosecutor's Office

The actual implementation process does not only involve the behavior of the administrative body responsible for implementing the program and engendering obedience in the target group, but also involves a network of political, economic and social forces that can directly or indirectly influence the behavior of all parties involved to determine the direction for Policy objectives can be realized as a result of government activities. Implementation Goals As mentioned previously, implementation is an activity carried out systematically and bound by mechanisms to achieve certain goals.

Criminal Supervision in the Criminal Code is in line with the purpose of punishment, the substance of punishment is simply to improve the thought pattern and behavior of the convict, so that he can regret the actions he has committed, not the opposite, namely continuing to think about committing a crime that is actually greater than the previous crime. Law No. 1 of 2023 concerning the Criminal Code states that defendants who commit criminal acts that are punishable by imprisonment for a maximum of 5 (five) years can be sentenced to supervision.

Conditional punishment according to PAF Lamintang is a sentence where its implementation depends on certain conditions set by the judge in his decision.²Conditional convicts do not need to serve their sentence unless during the probation period the convict violates the general conditions and/or special conditions that have been previously imposed. The word conditional sentence is just a general term, where what is meant by conditional is not the punishment but its implementation which depends on certain conditions.³So, in a conditional sentence, a convict has been found guilty by a judge, but the convict does not

²Lamintang, PAF, Theo Lamintang, 2009, Special Offenses for Crimes Against Property. Sinar Graphics, Jakarta, p. 136

³Teguh Prasetyo. 2005, Material Criminal Law, Kurnia Kalam, Yogyakarta, p. 136

need to serve his sentence as long as the convict does not violate general conditions and/or special conditions during the period determined by the judge. The application of conditional punishment must be directed at the goals of establishing a moral relationship between prisoners and society. Conditional sentences can avoid public stigma regarding convict status so that convicts can more easily return to society. Apart from that, conditional sentences can also reduce the costs that must be incurred while the convict is in prison, especially related to the problem of excess capacity, which will require a lot of money to solve if a new prison is built. Therefore, by providing conditional sentences, convicts do not need to serve their sentences in prison, thereby reducing the problem of overcapacity. The benefits can also be felt by the families of conditional convicts, especially if the conditional convict is the backbone of the family. Not placing conditional convicts in prison means that conditional convicts can continue to work to provide for their families. Conditional sentences can prevent losses caused if the convict is serving his sentence in prison.

Muladi states that prisons have grown into places of pollution that prison advocates are trying to avoid, because in these places accidental criminals, newcomers to the world of crime are corrupted through their association with chronic criminals.⁴ Even the best personnel have failed to eliminate the enormous ugliness of the prison.⁴ A convict who is in prison is susceptible to negative influences. In fact, currently prisons are known as the School of Crime, where someone who initially only commits minor crimes, after leaving prison, instead of being deterred and repentant, instead gains more knowledge or expertise in the field of more serious crimes.

Even if the convict is placed in prison for a short period of time, the negative impact will still be felt, namely by the emergence of a negative stigma from society regarding the status of the prisoner. Muladi explained that this stigma results in sanctions which then cause more stigma. Because of a crime, someone is convicted, then that person is expelled from their job. This places the convict outside his circle of friends, and then the stigma removes the convict from the circle of true people.⁵

It can be concluded that the negative impact that arises from placing a convict in prison is not affected by how long or short the convict is in prison. Even if a convict is in prison for a short time, he can still create a stigma that increases

⁴Ardito, YP, Umar Ma'ruf and Aryani Witasari. Implementation of Criminal Action Prosecution Online in Realizing the Principle of Fast Prosecution, Simple & Low Cost, *Jurnal Daulat Hukum*, Volume 4 Issue 2, June 2021 ISSN: 2614-560X

⁵*Ibid.*144

negative sanctions, which in turn strengthens the negative stigma. Therefore, this conditional sentence needs to be implemented more in order to reduce various problems that arise as a result of criminal matters regarding independence.

Conditional sentences are regulated in Articles 14a to 14f of the Criminal Code along with its implementation regulations (Staatblad 1929-487). Since the issuance of the ordinance on the implementation of conditional sentences in 1926 until now, there have been no changes in Indonesia, except for several articles in 1929 (Staatblad 1929 no. 77) and the addition of Chapter II concerning military conditional convicts (Staatblad 1934 no. 172 jo. 337) and closing provisions regarding the exemption of *leges stamp money*.⁶

Until now, only the Ordinance on the Implementation of Conditional Sentences is the regulation for the implementation of conditional sentences. This conditional criminal arrangement is practically a derivative of the Netherlands, with several deviations according to the needs and conditions of the Dutch East Indies colony. Therefore, this rule certainly cannot accommodate the needs of achieving the goals of true conditional punishment. Article 276 of the Criminal Procedure Code mandates that the implementation of conditional sentences be carried out with serious supervision in accordance with statutory provisions. Supervision is a process of observing the implementation of all activities to ensure that all work being carried out runs well. Supervision is very important in the implementation of conditional sentences because only with supervision can we know whether the conditional convict has complied with the conditions set or not. The conditional sentence ordinance only states that supervision is carried out by officials who are entrusted with the task of carrying out the judge's decision. Article 14d paragraph (1) of the Criminal Code determines that those entrusted with supervision are officials who have the authority to order the execution of a decision, if there is an order to carry out a decision. To find out who is meant by an official who has the authority to carry out a judge's decision, it is necessary to refer to Article 1 point 6 letter a of the Criminal Procedure Code which determines that a prosecutor is an official who is authorized by law to act as a public prosecutor and carry out a judge's decision which has permanent legal force. . Article 1 number 1 of the Prosecutor's Law also explains that a prosecutor is a functional official who is authorized by law to act as a public prosecutor and implementer of court decisions that have obtained permanent legal force and other authority based on law.

⁶Sudarto, 1986, *Capita Selecta Criminal Law, and Criminal Law*, Bandung Alumni, Bandung, matter. 38

So, it can be concluded that the supervisor of the implementation of conditional sentences is the prosecutor. Chapter II of the Ordinance on the Implementation of Conditional Sentences also regulates special institutions or officials who can be provided with assistance in fulfilling special conditions. However, these institutions are not clearly mentioned in the ordinance. These institutions could be the police, RT/RW heads, village heads, village officials, school principals or Bapas. Of these several institutions, only Bapas is stated to be able to supervise conditionally convicts. Coaching outside correctional institutions has been carried out by the Correctional Center (Bapas). Article 1 number 4 of Law Number 12 of 1995 concerning Corrections provides the understanding that Bapas is an institution for carrying out guidance for Correctional Clients. The definition of a Correctional Client according to Article 1 number 4 of the Correctional Law is someone who is under the guidance of the Father. Conditional convicts themselves are included in correctional clients as stated in Article 42 paragraph (1) letter a of the Correctional Law. Thus, the clearest institution or special official who can be given assistance in fulfilling these special requirements is Bapas. This statement is reinforced by the Decree of the Minister of Justice of the Republic of Indonesia Number: M.02- PR.07.03 of 1987 concerning the Organization and Work Procedures of Correctional Centers. The Main Duties and Functions of Correctional Centers which states that the main task of Bapas is to provide guidance and supervision to correctional clients. Based on the minister's decision, it further confirms that what is meant by special institutions or officials who can be provided with assistance in fulfilling special requirements is Bapas. However, it is still necessary to provide a clear explanation regarding the position, duties and functions of both the Prosecutor and the Father in the technical instructions for supervising the implementation of conditional sentences so that there is no overlap and confusion in their implementation so as to create cooperation in terms of supervision so that conditional sentences can achieve the desired objectives. aspired to.

The Ordinance on the Implementation of Conditional Sentences itself only regulates a few supervision procedures for conditional sentences which are only subject to general conditions. Technical supervision instructions are only explained in Articles 2 to 4 of the Ordinance. Article 2 provides that for a conditional criminal decision that has permanent legal force, the prosecutor immediately notifies the Minister of Justice by attaching a certain form, then the Minister of Justice orders that the input material he has received be immediately included in the general list managed by his department. Article 3 paragraph (1) stipulates that the prosecutor as quickly as possible notifies the Minister of

Justice of the end of the trial period accompanied by the reasons used for the purpose of the action, the last sentence used as the basis of each decision and the end of the time period when ordered to carry out the implementation of the criminal decision conditional condition, if the end of the term does not coincide with the end of the conditional probation period. Article 3 paragraph (2) determines the obligation of the Minister of Justice to order that the input material be registered in the general register, including records regarding the pardon that has been granted to the conditionally convicted prisoner. Article 4 paragraph (1) explains that the prosecutor is obliged to notify the Minister of Justice if the judge imposes a sentence on a defendant who commits a criminal offense during the probation period. From several procedures for monitoring the implementation of conditional sentences above, it can be seen that there is no regular communication between the prosecutor as supervisor and the conditional convict.

The absence of regular supervision has a negative impact, namely that conditional convicts will not feel deterred by their actions and tend to repeat their crimes, either the same or new crimes. The convict feels free to carry out any action because there is no supervision. So that convicts feel the same whether they have committed a crime or not and the public will feel afraid of conditionally convicts because conditional convicts are people who have been found guilty by a judge but do not need to serve their sentence in prison, therefore there needs to be supervision so that the public is not afraid of being conditionally sentenced.

Article 16 of the Ordinance states that special institutions or officials who can be provided with assistance in fulfilling special conditions strive to achieve good personal relations with conditionally convicts by means of personal visits. The measures described in Article 16 should not only be devoted to conditional sentences with special conditions, but also conditional sentences with general conditions or both. The nature and scope of conditional punishment which will control the activities of conditional convicts must be truly understood by the person concerned. Convicts on conditional sentences must be given a copy of the judge's decision and given an oral or written explanation regarding all the meanings relating to conditional sentences, especially the conditions attached to conditional sentences and the consequences if there is a violation of these conditions.⁷

⁷Ibid.p.204

Therefore, it is necessary to carry out direct supervision of the convict's environment in the process of implementing the general and special requirements. To support an effective supervision system and support the success of supervision, uniformity is needed in the procedures for its implementation, both in the pattern of supervision and the system of cooperation between the parties involved in the supervision, within the limits of their respective authorities.⁸

Facts on the ground state that the obstacles faced by Prosecutors and Fathers in supervising the implementation of conditional sentences are one of the legal gaps due to the lack of technical guidance for supervision of conditional sentences. The negative impact that occurs due to the absence of technical instructions for conditional criminal supervision is that it creates confusion for the Prosecutor and the Father because there are no technical instructions for conditional criminal supervision in their efforts to take certain actions.

The absence of technical instructions is what causes supervision of the implementation of conditional sentences by prosecutors to not be able to run well. The Ordinance on the Implementation of Conditional Sentences is the only regulation that exists as a guideline in monitoring the implementation of conditional sentences. This Ordinance issued in 1939 still does not regulate technical instructions for supervising the implementation of conditional sentences. The absence of technical instructions for supervision of conditional sentences ultimately means that prosecutors in the supervision process determine their own activities during the process of supervision of conditional sentences other than those stipulated by the Ordinance on the implementation of conditional sentences. The activities during the conditional criminal supervision process carried out by prosecutors outside of the regulations on the implementation of conditional sentences in various regions essentially have similarities consisting of 2 (two) forms, namely requiring conditional convicts to report themselves to the relevant Prosecutor's Office within a certain period of time and visits to the conditional convict's residence as a form of direct supervision carried out by the Prosecutor, including in the environment around the conditional convict by conducting questions and answers to the conditional convict himself and/or the community who is usually represented by the head of the RT or RW regarding the fulfillment of conditions and behavior.

Even though activities during the conditional criminal supervision process are not regulated by ordinance, prosecutors need to carry them out because of the

⁸Muladi, 2002, *Conditional Criminal Institution*, Alumni, Bandung, p. 214

negative impacts that could occur if conditional convicts are left to live in the community without supervision. However, the absence of technical guidance for conditional criminal supervision often creates other problems in supervision. The absence of these technical instructions also makes prosecutors who do not supervise mandatory reporting and direct supervision feel innocent and in the end are not subject to administrative sanctions. This sanction cannot be imposed as a result of the absence of regulations requiring prosecutors to carry out mandatory reporting and direct supervision. The Head of the Prosecutor's Office as the leader cannot impose sanctions because of the difficulty in determining the violation. In the absence of these sanctions, in the end, conditional criminal supervision itself ultimately does not work well.

Therefore, to fill the legal vacuum, this temporary technical guidance should be used as technical guidance that remains under conditional criminal supervision. One of the other problems that arises due to the absence of technical instructions is the undisciplined attitude of conditional convicts. This undisciplined attitude cannot be separated from the absence of sanctions for conditionally sentenced prisoners who do not carry out mandatory reporting. The absence of this sanction is because the obligation to self-report has not been regulated in the conditional punishment ordinance which is the only regulation implementing conditional sentences. Article 14f paragraph (1) of the Criminal Code only states that sanctions for conditional convicts can only be implemented if the conditional convict violates general conditions, namely committing another criminal offense or violating special conditions imposed by the judge. The absence of sanctions for conditional convicts who do not carry out their mandatory reporting makes the prosecutor's efforts to maximize supervision of conditional criminals in vain. For this reason, it is necessary to update the technical instructions for supervision of the implementation of conditional sentences which can maximize the supervision process so as to obtain maximum results.

Cooperation between prosecutors and other institutions, especially the National Police, in terms of supervision of conditional sentences is also needed. This cooperation is necessary to maximize the results of conditional criminal supervision. Article 33 of the Prosecutor's Law also mandates that in carrying out its duties and authority, the prosecutor's office must develop cooperative relationships with law enforcement and justice bodies as well as state bodies or other agencies.

The cooperation referred to in Article 33 of the Prosecutor's Law also includes supervision of the implementation of conditional sentences where the

Prosecutor in supervision of conditional sentences must foster cooperation with other institutions, especially the Fathers. Chapter II of the Ordinance on the Implementation of Conditional Sentences does regulate cooperation in monitoring special conditions. However, this cooperation should also be held to monitor general requirements as well. Cooperation in supervising general requirements is necessary considering the obstacles faced by prosecutors regarding the limited number of prosecutors. Limited human resources or in this case prosecutors who supervise conditional sentences, which is inversely proportional to the number of duties of prosecutors, is a factor that becomes an obstacle in supervising conditional sentences.

The prosecutor's limitations mean that the direct supervision process in the form of visits to the conditionally convict's environment cannot be carried out. Therefore, it is also necessary to regulate cooperation between Prosecutors and Fathers in supervising conditional sentences which are subject to general conditions or special conditions so that supervision can run optimally. Bapas, which is also an agency that can supervise conditional sentences, apparently does not yet have technical instructions for monitoring conditional sentences. Article 16 paragraph (2) of the Ordinance on the implementation of conditional sentences only states that the person providing assistance has a fairly good relationship with the defendant with the conditional sentence and informs him of his situation in the community and always informs him of the situation of his family, as far as possible by means of visits. This article is still too simple to apply. Therefore, the technical supervision of conditional criminals is equated with the technical supervision of parole. Conditional sentences and parole do have differences. The difference is that parole clients have served a minimum of 2/3 (two thirds) of their sentence in prison, whereas parolees do not need to enter prison. The crimes committed by parole clients are more serious than those committed by parole clients. Apart from that, parole also involves prisons in terms of supervision. However, conditional punishment and parole have the same concept. The concept of conditional punishment and conditional release is supervision and guidance of conditional sentences and conditional release is outside prison or in the community. The technical supervision that should have been carried out by Bapas was in reality not carried out well. The failure to carry out supervision by the Bapas was due to the prosecutor not handing over conditional convicts to the Bapas. In fact, according to Article 6 paragraph (3) letter a of the Corrections Law, Bapas has the authority to supervise conditional convicts. Regarding the handing over of conditional convicts from the Prosecutor to the Father, it turns out that this has been regulated in the Deputy Attorney

General's Letter for Operations Number B22/O/E/2/1982 concerning the sending of conditional decisions. Apart from that, Article 37 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 31 of 1999 concerning the development and guidance of correctional inmates also determines that in the event of a judge's decision to impose a conditional sentence, work training is mandatory as a substitute for a fine, or the return of the child to the parents. or guardian, the Prosecutor is obliged to hand over the convict and the child concerned to the Father.

Regarding this issue, the prosecutor also does not feel guilty if he does not hand over the conditional convict to the Bapas because in some regulations there are no sanctions if the prosecutor does not hand over the conditional sentence to the Bapas. Even though in some of these regulations there are no provisions regarding sanctions if the Prosecutor does not hand over conditional sentences to Bapas, logically the Prosecutor should also hand over supervision of conditional sentences to Bapas because Bapas also has the authority to supervise conditional sentences. Apart from that, by handing over to Bapas, cooperation can be held in terms of supervision from both agencies so as to maximize supervision itself. Therefore, there should be arrangements regarding handover along with sanctions if the handover is not carried out so that conditional criminal supervision can run optimally.

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⁹ <https://www.kejaksaan.go.id/pages/pengertian-kejaksaan>, accessed on May 28 2023, at 06.00 WIB.

acts have also caused deep unrest and disrupted security and order in social life. One form of crime that is developing in society is violence.

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3.2. Implementation of Supervision by the Prosecutor's Office Based on Legal Certainty

Surveillance crime in the National Criminal Code is a new type of crime in Law Number 1 of 2023 concerning the Criminal Code ("National Criminal Code"). The National Criminal Code, which has finally been ratified by the government after a long process and being finalized from all aspects, does regulate many new things, including the basic punishment which previously consisted of the death penalty, imprisonment, imprisonment, fines and imprisonment, has now been changed to imprisonment, imprisonment, supervision, fines, and social work. The new provisions which will take effect in 2026 emphasize that one of the aims of punishment is to return the convict to society.

The crime of supervision is mentioned as the main crime in Article 65 of the National Criminal Code. Article 75 of the National Criminal Code explains: "A defendant who commits a criminal act which is punishable by a maximum prison sentence of 5 (five) years can be sentenced to supervision while still observing the provisions as intended in Articles 51 to Article 54 and Article 70."

Based on these provisions, a convict can only be sentenced to supervision if the crime he commits is punishable by imprisonment for less than 5 (five) years. Furthermore, further requirements for criminal supervision are regulated in Article 76 of the National Criminal Code. In paragraph (1) it is stated that a supervision penalty can be imposed for a maximum period of time equal to the prison sentence that is threatened, but the term cannot exceed 3 (three) years. Meanwhile, Article 76 paragraphs (2) and (3) of the National Criminal Code explains that in criminal supervision, general conditions and special conditions must also be stipulated. The general condition is that the convict will not commit any further criminal acts. If the general conditions are violated, the convict is obliged to carry out a prison sentence whose term cannot be more than the period of supervision. On the other hand, the special conditions are that the convict must pay compensation arising from his criminal act within a period that is shorter than the supervision period he has served, and is obliged to do something or not do something in accordance with the decision of the Panel of Judges. If special conditions are violated, the prosecutor, based on the considerations of the community counselor, recommends to the judge that the supervision period be extended or that the convict be ordered to serve a prison sentence.

The supervision period can be reduced by the prosecutor's proposal to the judge with the consideration of the community counselor. This reduction proposal can only be given if the convict shows good behavior.

The National Criminal Code does not regulate the procedures and procedures for implementing supervision crimes. However, Article 76 paragraph (7) of the National Criminal Code regulates that the procedures and limits for reducing criminal supervision are regulated in a Government Regulation, which has not yet been issued. The criminal supervision procedure that currently exists is the criminal supervision of children in conflict with the law as regulated in Government Regulation Number 58 of 2022 concerning Forms and Procedures for Implementing Crimes and Actions Against Children. Judges are authorized by

law to accept , examine and decide a criminal case, he must act fairly in handling a case. In giving decisions, judges are influenced by many things both within themselves and around them, including religion, culture, education, values, norms, and so on, so that it is possible for differences in viewpoints to influence considerations in making decisions. However, what needs to be paid attention to is that the ideal decision is a decision that contains aspects of certainty, usefulness and justice so that child criminals are deterred from the criminal acts they have committed, but on the other hand their rights as children are still fulfilled and create legal order in society so that enforcement law in social life can be realized.

The aspect of certainty requires that in their decisions, judges must be guided by the provisions of laws and regulations as per the principle that Indonesia is a country of law. In criminal law, especially in a criminal case, justice is very difficult to create because there are two parties with different interests who demand the creation of justice, these two parties are the perpetrator and the victim, justice for the perpetrator is certainly a light crime and this will certainly conflict with justice for the victim. , and vice versa, justice for the victim is the most severe punishment for the perpetrator and this is of course opposed by the perpetrator who feels it is unfair, so it is very difficult to determine justice that can satisfy both parties.

Law enforcement officers who assist in the administration of justice to create legal certainty apart from judicial institutions include:

a. Prosecutor's Office as regulated in Law Number. 16 of 2005 concerning the Prosecutor's Office of the Republic of Indonesia.

The Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power in the field of prosecution and other authorities based on the law which is implemented independently. The Prosecutor's Office has the following duties:

- 1) carry out prosecution;
- 2) carry out the judge's determination and court decisions that have obtained permanent legal force.
- 3) Supervise the implementation of conditional criminal decisions, supervised criminal decisions and conditional release decisions.

- 4) Carrying out investigations into certain criminal acts based on the Law
 - 5) Complete certain case files, carry out additional examinations before being referred to court.
 - 6) In the civil and state administration sector, the prosecutor with special powers can act both inside and outside the court for and/or on behalf of the government.
 - 7) In the field of order and peace, carrying out activities to increase public legal awareness, safeguarding law enforcement policies, monitoring the circulation of printed materials, monitoring beliefs that could endanger the state, preventing abuse and defamation of the state.
- b. Police as regulated in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia.

The Indonesian National Police has the duties and functions of maintaining security and public order, law enforcement, protection, protection and service to the community. In order to increase efforts to implement and enforce the law for both the community and the law enforcement officers themselves, the Indonesian government has updated several regulations to improve the existing legal system in order to achieve a just and peaceful society, with improvements in regulations for law enforcement officials. law enforcement officers, each party is expected to be able to carry out their respective duties, functions and authorities responsibly, this implementation cannot be separated from government and community supervision.

In giving a trial criminal decision against a defendant or perpetrator of a criminal act, judges have a different basis for consideration from one judge to another according to several sources interviewed, namely several judges in the Tabanan District Court, Bali, in giving a trial criminal decision, according to them, they have to look at the causation of the criminal case committed by the defendant. There is an element that is the basis for imposing a probationary sentence on the defendant. This element is:

- 1) element of subjectivity,

Pay more attention to the defendant's behavior or attitude during the trial, especially in the agenda of the evidentiary hearing by listening to the defendant's confession during the evidentiary process, if during the examination process the

defendant appears to be remorseful and in good faith in providing information and does not complicate matters in conveying his confession and this is in accordance with the letter. the indictment of the public prosecutor will be one of the judge's considerations in granting a trial criminal decision;

2) juridical element

is a legal basis that regulates probation which is regulated in the provisions of the Criminal Code in articles 14a to article 14 f of the Criminal Code. Most of these provisions contain rules governing probationary sentences. Regarding supervision of court decisions relating to trial criminal decisions, this is carried out by the prosecutor's office in accordance with the provisions of article 1 paragraph 1 of Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Supervision is an important point in conditional sentences, because only with supervision can it be carried out. find out whether the conditional or probation prisoner has complied with the conditions set by the panel of judges in the court decision. In the provisions of article 14 d paragraph 1 of the Criminal Code, it is stipulated that the person entrusted with supervision ensures that the requirements are fulfilled, that the authorized official orders the execution of the decision, if in the future there is an order to carry out the decision.

In the criminal procedural law system in Indonesia, the official authorized to carry out court decisions is the prosecutor, in accordance with the provisions of article 1 point 6 letter a of the Criminal Procedure Code, it is determined that the prosecutor is an official who is authorized by the statutory regulations for this, to act as a public prosecutor and implement court decisions that have obtained permanent legal force. Furthermore, from the provisions of article 14 d paragraph 3 of the Criminal Code it is determined that further provisions or further rules relating to supervision and assistance as well as regarding the appointment of institutions and leaders of shelter homes who can be entrusted with providing such assistance, are regulated by law. To implement the order in the provisions of article 14 d paragraph 3 of the Criminal Code, an ordinance on the implementation of conditional sentences (*uitvoering gordonnatie voorwaardelijke veroordeeling*) has been promulgated in s. 1939 Nr.77. The supervision system is determined in the provisions of articles 2, 3, 4 and 5 of this ordinance.

From the provisions of article 2 paragraph 1 of the ordinance, it can be seen that it is only stipulated that the prosecutor's obligation is to report the imposition of a conditional or probationary sentence to the Director of Justice, ordering that the input material he has received be immediately entered into the general list managed by his department.

Furthermore, article 3 paragraph 1 of the ordinance stipulates that the prosecutor must report to the Director of Justice regarding the completion of the implementation of the conditional sentence. The report contains:

- 1) When the trial time ends;
- 2) The last sentence used as the basis for each decision is adjusted to article 14 e or 14 f of the Criminal Code;
- 3) The end of the time period when ordered to carry out the implementation of the decision with the conditional sentence, if the end of the time period does not coincide with the end

Legal certainty as one of the goals of law can be said to be part of efforts to realize justice. The real form of legal certainty is the implementation or legal enforcement of an action regardless of who carries it out. With legal certainty, everyone can predict what they will experience if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.

Gustav Radbruch put forward 4 (four) basic things related to the meaning of legal certainty, namely: - First, that law is positive, meaning that positive law is legislation. - Second, that law is based on facts, meaning it is based on reality. - Third, that facts must be formulated in a clear way so as to avoid errors in meaning, as well as being easy to implement. - Fourth, positive law must not be easily changed. Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically legislation. Based on this opinion, according to Gustav Radbruch, positive law which regulates human interests in society must always be obeyed even though positive law is unfair.

Furthermore, legal certainty is a matter (circumstances) that are certain, provisions or provisions. Laws must essentially be certain and fair. It must be a

guide to behavior and is fair because the code of behavior must support an order that is considered reasonable. Only because it is fair and implemented with certainty can the law carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically.¹⁰

4. Conclusion

The current implementation of supervision criminal regulations by the prosecutor's office is that Supervision Crimes in the Criminal Code are in line with the objectives of punishment, the substance of punishment is simply to improve the thought pattern and behavior of the convict, so that he can regret the actions he has committed, not the opposite, i.e. he continues to think about committing an even bigger crime. Law No. 1 of 2023 concerning the Criminal Code states that defendants who commit criminal acts that are punishable by imprisonment for a maximum of 5 (five) years can be sentenced to supervision. The implementation of supervision by the prosecutor's office is based on legal certainty that the crime of supervision is mentioned as the main crime in Article 65 of the National Criminal Code. Article 75 of the National Criminal Code explains: "A defendant who commits a criminal act which is punishable by a maximum prison sentence of 5 (five) years can be sentenced to supervision while still observing the provisions as intended in Articles 51 to Article 54 and Article 70." Based on these provisions, a convict can only be sentenced to supervision if the crime he commits is punishable by imprisonment for less than 5 (five) years. Furthermore, further requirements for criminal supervision are regulated in Article 76 of the National Criminal Code. In paragraph (1) it is stated that the criminal supervision penalty can be imposed for a maximum period of time equal to the prison sentence that is threatened, but the term cannot exceed 3 (three) years. The concept of criminal supervision in the Draft Criminal Code is currently still general, so a policy formulation of *Ius Kontituendum* is needed. The concept of criminal supervision in Indonesia, such as the criminal supervision procedure, has not been explained in detail, so it must be conceptualized early on, so that the implementation of criminal supervision can run effectively and with legal certainty.

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