

Legal Analysis of Criminal Supervision and its Imposal by Judges in The Criminal Justice System in Indonesia

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Abstract. *The reform of criminal law through Law Number 1 of 2023 concerning the Criminal Code (KUHP) introduces criminal supervision as a principal criminal sanction oriented toward rehabilitation and social reintegration. The imposition of criminal supervision by judges requires further examination to ensure its conformity with the principles of legal certainty, justice, and the effectiveness of sentencing. Studies specifically addressing criminal supervision as a principal criminal sanction under the 2023 Criminal Code, particularly concerning the legal basis and parameters for judges in imposing such sanctions, remain relatively limited. The purpose of this research is to identify and analyze: (1) the urgency of implementing criminal supervision in the Indonesian justice system; (2) the judicial role of judges in imposing criminal supervision; and (3) the problems associated with the imposition of criminal supervision by judges within the Indonesian criminal justice system. This research employs a normative juridical approach with an analytical descriptive research specification. The data used in this research are secondary data obtained through library research, consisting of primary, secondary, and tertiary legal materials. The results of the research indicate that the 2023 Criminal Code provides a legal basis for criminal supervision as an alternative to imprisonment, oriented toward rehabilitation and social reintegration. However, its implementation is not yet supported by adequate procedural provisions under the Criminal Procedure Code (KUHP), particularly concerning the execution mechanism, the handling of violations of general and specific conditions, and the division of responsibilities of Community Supervisors. Therefore, more specific and integrated regulations are required to ensure legal certainty, clarify the respective authorities of law enforcement officials, and ensure the effective implementation of criminal supervision within the criminal justice system.*

Keywords: *Criminal Supervision; Criminal Justice System; Judges.*

1. Introduction

Indonesia is a state of law (*rechtsstaat*), namely a state that places law as the main basis for organizing government or state affairs.¹ as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). This provision shows that all aspects of the life of society, the nation and the state must be carried out based on applicable laws.² Criminal law as a branch of public law has the function of protecting the legal interests of society through regulations regarding prohibited acts, criminal liability, and the types of punishment that can be imposed on perpetrators of criminal acts.³

In its development, Criminal Law in Indonesia was originally a legacy of the Dutch colonial government as stated in the *Wetboek van Strafrecht (WvS)* and enforced in the Dutch East Indies. After Indonesia's independence, these provisions were maintained to avoid a legal vacuum and enforced through Law Number 1 of 1946 concerning Criminal Law Regulations known as the Criminal Code (hereinafter referred to as the Old Criminal Code). In order to realize criminal law reforms that are more in line with societal developments, Pancasila values, and modern legal needs, the government then passed Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the 2023 Criminal Code), where criminal law no longer only emphasizes retributive justice, but also prioritizes the goals of rehabilitation, social reintegration, and community protection.

The reform of criminal law through the 2023 Criminal Code is part of the national criminal law reform effort which includes reforming criminal law institutions (legal structure reform), reforming the substance of criminal law (legal substance reform), and reforming legal culture (legal culture reform).⁴ One form of renewal of the substance of criminal law is realized through changes to the criminal system, particularly regarding the regulation of the types of principal penalties, Article 10 letter a of the Old Criminal Code regulates principal penalties consisting of the death penalty, imprisonment, detention, fines, and closure. Meanwhile, Article 65 paragraph (1) of the 2023 Criminal Code regulates principal penalties in the form of imprisonment, closure, supervision, fines, and community service. These changes indicate a shift in criminal policy that is no longer solely oriented towards the punishment of deprivation of liberty, but also

¹Saipuddin Zahri. *Problems in Investigating Corruption Crimes*, Tunas Gemilang Press, Palembang, 2016, p. 1.

²Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, "Judgment Considerations Policy in the Decree of the Court Criminal Statement Based on Criminal Destination," *Jurnal Daulat Hukum*, Vol. 3, No. 1, March 2020, p. 179.

³Ramadhani, GS and Arief P Barda Nawawi, *Criminal System and Double Track System Actions in Criminal Law in Indonesia*, *Diponogoro Law Journal*, Vol. 1 No. 4, 2012, p. 10.

⁴Faisal and Muhammad Rustamaji, *Renewal of the Pillars of Criminal Law in the Draft Criminal Code*, *Udayana Master of Law Journal*, Vol. 10 No. 2, 2021, p. 291.

prioritizes forms of punishment that are more adaptive and oriented towards the rehabilitation of perpetrators of criminal acts. One concrete manifestation of this change is the introduction of supervision as a type of principal penalty that was previously unknown in the principal penalties of the Old Criminal Code.

Supervision punishment is a form of punishment imposed on perpetrators of criminal acts with the aim of monitoring and guiding their behavior without having to serve a prison sentence.⁵Through this punishment, the convict does not serve his sentence in a correctional institution, but remains in the community subject to supervision and certain obligations for a period of time determined by the judge.⁶Conceptually, the supervision sentence in the 2023 Criminal Code is basically related to the Old Criminal Code which is known as a conditional sentence and is also known in the criminal law systems of common law countries such as America, Western Europe, and especially England which is known as probation.⁷According to Muladi, the term probation in the modern sense means a system that attempts to rehabilitate someone who is proven to have committed a crime, by returning them to society during a period of supervision.⁸In the Old Criminal Code, supervision sentences were regulated as conditional sentences as regulated in Articles 14a to 14f of the Old Criminal Code, which were a mechanism for suspending the implementation of a prison sentence by setting certain conditions that must be met by the convict, thus ensuring that the implementation of the sentence still prioritized public safety and the desired rehabilitation goals.⁹

Supervision sentences serve as an alternative to imprisonment by emphasizing the monitoring and rehabilitation of offenders outside the prison environment. This approach allows offenders to continue interacting with the community while still being accompanied by a supervisory officer responsible for their supervision. On the other hand, probation, an alternative to deprivation of liberty, helps offenders resume normal social life and increases the possibility of providing compensation for the losses suffered by victims of their crimes. Thus, supervision sentences incorporate efforts to implement the idea of protecting both the interests of society and the interests of individual offenders.

The regulation regarding supervision sentences is used as an alternative form of supervision sentence for freedom (alternatives to imprisonment) which is also in line with the development of international criminal law or what is known as

⁵Kinanthi, Lembah Nurani Anjar, Hamzani, Achmad Irwan, and Kus Rizkianto, *Chemical Castration for Child Rapists*. NEM Publisher, 2022.

⁶Ibid.

⁷Muladi and Barda Nawawi Arief. 1998, *Criminal Theories and Policies*, Bandung Alumni, pp. 33-155.

⁸Ibid. pp. 155-156.

⁹Teriyanti Btr, Arika Palapa, Iksan Saifudin, *Supervisory Crimes in the Perspective of Criminal Law Reform in Indonesia*. Journal Syntax Idea, Vol. 6, No. 7, July 2024, pp. 31-33.

probation and judicial supervision in the United Nation Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules, Article 6.2h).¹⁰ This prompted member states to develop various forms of criminal sanctions in an effort to reduce the excessive use of imprisonment, improve the rehabilitation of offenders, and mitigate the negative impact of institutionalization on convicts. This also aligns with the Third United Nations Congress on Crime Prevention and the Rehabilitation of Prisoners held in Stockholm in 1965, which also focused on discussions on adult probation and other non-institutional measures.¹¹

The success of implementing supervisory punishment is not solely determined by the normative provisions in the 2023 Criminal Code but also depends heavily on the judge's discretion in imposing such punishment. In the process leading to criminal punishment, the capacity to take responsibility for one's actions is one of the elements of guilt that must be proven. Proving this element is not easy, as it requires a careful assessment of the perpetrator's condition and the facts revealed in court.¹² Although the decision to impose a supervisory sentence is the judge's discretionary right and has examined the evidence presented and obtained a conviction regarding the case being examined, it is not impossible that the judge considers the case to have the same characteristics as other cases, so that there is a risk of ignoring special aspects that should be taken into consideration in making a decision.¹³

Legal considerations in court decisions represent a judge's accountability for the verdict they render. Therefore, every decision must be based on clear, rational, and accountable legal considerations. Although there is no standard formulation for sentencing, judges must still base their decisions on aggravating and mitigating circumstances and consider philosophical, legal, and sociological grounds.¹⁴ In this case, the judge's role in imposing a supervised sentence is to determine the specific requirements that the convict must meet, with rehabilitative and corrective purposes. The judge decides on a supervised sentence as an alternative to imprisonment, where the convict does not need to undergo physical confinement as long as they meet certain limitations and supervision.

As previously explained, the supervision sentence in the 2023 Criminal Code (KUHP) is a development of the conditional sentence concept stipulated in the previous KUHP. Previously, the conditional sentence provisions in the previous KUHP still had various weaknesses and limitations because they did not provide

¹⁰Muladi and Barda Nawawi Arief. Op. Cit., p. 84.

¹¹Ibid.

¹²Ahmad Rifai. Legal Discovery by Judges in a Progressive Legal Perspective, Sinar Grafika, Jakarta, 2011, p. 92.

¹³Ibid.

¹⁴Dwi Hananta. Consideration of Mitigating and Aggravating Circumstances in Sentencing. Journal of Law and Justice, Vol. 7, No. 1, March 2018, p. 88.

clear parameters to guide judges in determining how conditional sentences should be imposed. This situation resulted in the application of conditional sentences in judicial practice being less than optimal and tending to be inconsistent.¹⁵To address this problem, the Supreme Court issued Supreme Court Circular Letter (SEMA) Number 1 of 2017 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guideline for the Implementation of Duties for the Court, which provides guidelines for judges in applying conditional sentences, especially for children.

SEMA Number 1 of 2017 stipulates that the imposition of a conditional sentence must be accompanied by special conditions, where the validity period is longer than the sentence with general conditions, but does not exceed three years. In addition, the mandatory decision must include the provisions of Article 73 paragraph (7), namely the Public Prosecutor carries out supervision and the Community Guidance provides guidance so that the Child complies with the conditions that have been set. The SEMA also emphasizes that special conditions must be constructive, not hinder the educational process or psychological development of the Child, and easy to implement. The existence of these guidelines shows that the provisions for conditional sentences in the old Criminal Code have not provided adequate standards of implementation so that internal guidelines are needed for judges to create uniformity in the application of the law.

With the enactment of the 2023 Criminal Code, it is necessary to examine whether these regulations provide a legal basis and adequate parameters for judges in imposing supervisory sentences. This issue is crucial because judges are authorized to determine whether supervision is more appropriate than imprisonment, taking into account the purpose of the sentence, how the supervision sentence is decided, the nature of the crime, the level of culpability of the perpetrator, the perpetrator's personal circumstances, and the interests of public protection. Therefore, clarity of norms regarding the limitations and the scope of judicial discretion are determining factors in creating legal certainty and consistency in the application of supervision sentences.

This issue becomes even more important when linked to the purpose of establishing the 2023 Criminal Code as an instrument for reforming national criminal law. If the provisions regarding the imposition of supervisory sentences still do not provide adequate provisions for judges, it has the potential to cause differences in consideration in cases with similar characteristics as occurred in the application of conditional sentences in the Old Criminal Code. Furthermore, if the need for such guidelines still arises, this could be an indicator that the

¹⁵Johana Nababan and Darmadi, AA Ngurah Oka Yudhistira, Comparative Analysis of Conditional Sentences and Supervision Sentences, *Jurnal Media Akademik*, Vol. 3, No. 10, 2025.

renewal of the provisions for supervisory sentences in the 2023 Criminal Code has not fully achieved its purpose of providing legal certainty and clear guidelines for judges in imposing supervisory sentences.

On the other hand, research on supervisory crimes in Indonesia still focuses primarily on the concept of supervisory crimes as part of national criminal law reform. Studies specifically analyzing the legal basis for imposing supervisory crimes by judges under the 2023 Criminal Code are still relatively limited. However, given that national criminalization, supervisory crimes are a new concept in the national criminal justice system, and the 2023 Criminal Code determines the effectiveness of supervisory crimes in the Indonesian criminal justice system, studies are needed that can provide an understanding of the normative construction and its application in judicial practice.

Based on the above description, research on the legal basis of supervisory criminal penalties and the judge's considerations in imposing supervisory penalties is important to conduct. This research is expected to contribute to the development of national criminal law, particularly in providing legal parameters regarding the imposition of supervisory penalties so that their application can realize legal certainty, justice, and benefits in accordance with the objectives of the formation of the 2023 Criminal Code. Based on this, the research is entitled "Legal Analysis of Supervisory Criminal Penalties and Their Imposition by Judges in the Indonesian Justice System."

2. Research Methods

This research uses a normative legal research method. Normative legal research is conducted by searching for data or library materials or secondary data by examining theories, concepts, legal principles and statutory regulations related to this research.¹⁶ These legal materials are systematically compiled, critically analyzed, and interpreted to draw conclusions that are relevant to the problem being researched.

3. Results and Discussion

3.1. The Urgency of Implementing Supervisory Criminal Procedure in the Indonesian Justice System

The term "Criminal Justice System" or Criminal Justice System (SPP) has now become a term that indicates a working mechanism in dealing with crime using a systems approach.¹⁷ The criminal justice system is a set of mechanisms, procedures, and institutions used by the state to enforce criminal law and

¹⁶Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review*, Raja Grafindo Persada, Jakarta, 2009, p. 13.

¹⁷Gani Hamaminata, *The Development of the Criminal Justice System in Indonesia*. *Journal of Law, Politics and Social Sciences (JHPIS)*, Vol. 2, No. 4, December 2023, p. 51.

maintain order and justice in society. This system encompasses a number of actors with specific roles and functions, from law enforcement to courts, correctional facilities, and other supporting institutions.

Remington and Ohlin define the Criminal Justice System as the use of a systems approach to the mechanism of criminal justice administration and criminal justice as a system is the result of the interaction between legislation, administrative practices and social attitudes or behavior. The definition of the system itself contains the implication of an interaction process that is prepared rationally and efficiently to produce certain results with all its limitations.¹⁸

Mardjono defines the criminal justice system as a crime control system consisting of police, prosecutors, courts and correctional institutions for convicts.¹⁹ Historically, before the advent of the systems approach, what was known as the law and order approach, which relied on the principle of legality, was known. However, in practice, this law and order approach has led to a dual interpretation for police officers: on the one hand, the use of law as an instrument of order, where criminal law contains legal instruments to maintain order in society, and on the other, the use of criminal law as a constraint on law enforcement officers in carrying out their duties. In other words, criminal law is tasked with protecting individual freedom within the framework of a system of public order.²⁰

Romli Atmasasmita stated that the criminal justice system as a form of law enforcement, therefore it contains legal aspects that emphasize the operationalization of laws and regulations in an effort to combat crime and aim to achieve legal certainty (certainly). On the other hand, if the definition of the criminal justice system is seen as part of the implementation of social defense related to the goal of realizing community welfare, then the criminal justice system contains social aspects that emphasize utility (expediency).²¹

In reality, this law and order approach has failed, particularly in reducing crime rates, particularly in the United States. This has led to the emergence of the idea of a systems approach within the criminal justice administration mechanism. This approach is known in criminology and crime prevention theory as the "criminal justice system model."²²

¹⁸Lloyd E. Ohlin and Frank J. Remington, *Discretion in Criminal Justice; The Tension Between Individualization and Uniformity*, State University of New York, Albany Press, 1993.

¹⁹Mardjono Reksodiputro, *Op. Cit.*

²⁰Romli Atmasasmita, *Criminal Justice System (Existentialism and Abolitionism Perspective)*, Bina Cipta, Bandung, 1996, p. 7.

²¹Romli Atmasasmita, *Op. Cit.*, p. 4.

²²M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code; Investigation and Prosecution*, Sinar Grafika, Jakarta, 2007, p. 90.

The criminal justice system is the place where all forms of crime are processed so they can be prosecuted, regardless of their form, from ordinary crimes to extraordinary crimes (Extra Ordinary Crimes). The approach taken within the criminal justice system requires subsystems (police, prosecutors, advocates, courts, and correctional institutions).

The word "system" expresses the objective complexity of the interconnections of several existing subsystems, and their participation is directly related from beginning to end. The criminal justice system approach requires diverse patterns, from sentencing and the rehabilitation of suspects/defendants to considerations of the costs of the judicial process.²³ According to Lili Rasjidi, the characteristics of a system are:

1. A complexity of elements formed in a single interaction unit (process);
2. Each element is bound in a unified relationship that is mutually dependent on each other (interdependence of its parts);
3. The unity of complex elements forms a larger unity, which includes all of its constituent elements (the whole is more than the sum of its parts);
4. The whole determines the nature of each of its constituent parts;
5. The parts of the whole cannot be understood if they are separated, or understood separately from the whole (the parts cannot be understood if considered in isolation from the whole);
6. The parts move dynamically independently or as a whole within the whole (system).²⁴

According to Muladi, the Criminal Justice System should be seen as "The network of Courts and tribunals which deal with criminal law and its enforcement". The Criminal Justice System contains systemic movements from its supporting subsystems, namely the Police, Prosecutor's Office, Courts and Correctional Institutions or correctional institutions, which as a whole are a single unit that strives to transform input into output, which is the goal of the Criminal Justice System.²⁵

According to Muladi, the meaning of the integrated criminal justice system is synchronization or simultaneity and harmony which can be distinguished in:

1. Structural synchronization

²³Lili Rasjidi, IB Wiyasa Putra, *Law as a System*, PT. Remaja Rosdakarya, Bandung, 1993.

²⁴*Ibid.*

²⁵Abdul Hakim & Kusno, Implementation of the Concept of Supreme Court Regulation No. 2 of 2012 concerning the Limitation of Minor Crimes in the Criminal Justice System in Labuhanbatu Regency, *Scientific Journal "Advocacy"*, Vol. 6, No. 2, September 2018, p. 6.

Structural synchronization is the simultaneity and harmony within the framework of relations between law enforcement agencies.

2. Substantial synchronization;

Substantial synchronization is the simultaneousness and harmony of a vertical and horizontal nature in relation to positive law.

3. Cultural synchronization.

Cultural synchronization is the unison and harmony in experiencing the views, attitudes and philosophies that comprehensively underlie the running of the criminal justice system.²⁶

In essence, the criminal justice system encompasses the entire series of activities carried out by law enforcement officials, such as investigations, inquiries, prosecutions, court hearings, and the implementation of court decisions, as regulated in the Criminal Procedure Code. Criminal procedure serves as a normative framework that ensures that each stage of the criminal justice process takes place in an orderly, fair, and in accordance with applicable legal provisions. This definition emphasizes that the Criminal Justice System is not merely a formal, procedural set of rules, but also plays a crucial role in guaranteeing the rights of all parties involved, including suspects, defendants, victims, and the public. With clear and structured rules, the judicial process can proceed transparently and accountably, thereby maintaining public trust in the criminal justice system.

The development of the Criminal Justice System in Indonesia began with the enactment of the Republic of Indonesia Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP) as a replacement for the criminal procedure law inherited from the Dutch colonial era, namely *Het Herziene Inlandsch Reglement*.²⁷ The enactment of the Criminal Procedure Code (KUHP) transformed the criminal justice system from the colonial system to the Indonesian Criminal Justice System, while also transforming the Criminal Justice System from an inquisitorial system to an accusatory system. This change has fundamental and widespread implications, encompassing fundamental conceptual and implementation changes to the procedures for resolving criminal cases in Indonesia.²⁸

²⁶Gani Hamaminata, Op. Cit., p. 56.

²⁷Oentoeng Wahjoe, *International Criminal Law: The Development of International Criminal Acts and the Enforcement Process*, Erlangga Publisher, Jakarta, 2011, p. 156.

²⁸Ariska, *Legal Reform of the Criminal Justice System in the Draft Criminal Procedure Code*. *Yustitia Journal*, Vol. 5, No. 1, 2019, p. 83.

3.2. The Role of Judges in Sentencing Judicial Supervision System

In the judicial system, judges play a central role in rendering legal decisions, which are not only binding but must also meet three main principles: justice, legal certainty, and expediency. These three principles are often understood as the foundation of an ideal legal system. However, in practice, judges face a dilemma regarding which principle to prioritize when conflicts arise. The principle of justice, which focuses on the proportional and balanced distribution of rights, often clashes with legal certainty, which prioritizes the strict and consistent application of laws.²⁹ On the other hand, the principle of usefulness requires that the judge's decision have a positive impact on society at large, not only on the parties involved in the case.³⁰

Etymologically, the term "judge" comes from the Arabic word "ahkam," meaning not a judge, but rather a person engaged in the duties of a judge, namely the law. In Arabic, "judge" is "qadhi."³¹ Hakim in Arabic comes from (الحاكم) the plural of hukkām is ism fā'il from the word al-hakam whose root is al-hukm, consisting of the letters hā'-kāf-mīm which etymologically means "to prevent", and lexically it is "to settle or decide a matter, give restraint, and prevent someone from what he wants". From this it is then understood that the definition contained in the word judge is to prevent difficulties, persecution, harm, injustice and other evil acts.³²

According to the Great Dictionary of the Indonesian Language, a judge has two meanings. First, a person who adjudicates a case in a court or tribunal, whose decision cannot be challenged. Second, a judge is a person who is intelligent, virtuous, and wise in his behavior and actions.³³ From this, it is understood that a judge is someone who makes good and correct decisions because he possesses wisdom. The word "hikmah" itself in Arabic means knowledgeable, capable, clever, wise, and prudent.

In Islamic terminology, a judge is the source of law, namely Allah SWT. This is clearly seen in the terminology of "law" put forward by the ushuliyin, namely the khitaḥ (command) of Allah SWT, which relates to the actions of mukallaḥ.³⁴ In another sense, judge is synonymous with the word al-qadhi. Both have the same meaning, namely the person who decides cases and determines them, or is also said to be the implementer of laws or laws in the Islamic world. For this reason,

²⁹Satjipto Rahardjo, *Law in the World of Order*, UKI Press, 2006.

³⁰Sudikno Mertokusumo, *Op. Cit.*

³¹AW Munawwir, *Op. Cit.*, p. 286.

³²Muhammad Ali, *Judges in the Perspective of Hadith*. Tahdis Journal, Vol. 8, No. 1, 2017, p. 39.

³³Department of National Education, *Big Indonesian Dictionary*, Jakarta, Balai Pustaka, Jakarta, 2002, p. 383.

³⁴Abd al-Wahab Khallaf, *Ilm Ushul al-Fiqh*. Maktabah al-Da'wah al-Islamiyyah, Cairo, 1956, p. 96.

judges are said to be "those who resolve legal issues presented to them, both those relating to the rights of Allah and those relating to individual servants."³⁵

Judges must correctly adjudicate cases submitted to them. They may not reject a case on the grounds that the law is absent or unclear. Instead, they are obligated to adjudicate it. As law enforcers, they are obligated to explore, follow, and understand the legal values that exist within society. When adjudicating a case submitted to them, judges must clearly understand the facts and events involved.³⁶

Attention to the existence of judges is inseparable from the honorable and strategic role they hold. Judges are the executors of judicial power and hold the authority to examine and decide on all cases submitted to them. Judges, in accordance with their roles and responsibilities, are not merely the mouthpiece of the law (*baouche de lalor*), but are also required to be able to discover and create law (*rechtsvinding*) by exploring the values that exist in society, of course, without neglecting legal certainty itself.³⁷

The ultimate goal of law is justice. Therefore, all legal efforts must be directed toward finding a legal system that best aligns with the principles of justice. Law must be closely intertwined with justice; law is just legislation. If a concrete law, that is, a statute, conflicts with the principles of justice, then it is no longer normative and can no longer be considered law. A law is only law if it meets the principles of justice. Judges, as enforcers of law and justice, explore, follow, and understand the legal values that exist within society.

The judge's duty is not only as an enforcer of the law (statute) on cases in court or an 'agent of conflict'. But it should also include legal discovery and reform. The ideal judge, in addition to having high intelligence, must also have sensitivity to the values of justice, be able to integrate positive law into the values of religion, morality, etiquette and customs that live in society through every decision he makes. Because in essence, the crown of a judge is not on his gavel, but on the weight or quality of the resulting decision.

There are at least three concepts regarding the position of judges in law enforcement. First, within the framework of the total enforcement concept, judges are expected to enforce the law comprehensively, including its norms and values. This is difficult to achieve because enforcing the law itself is governed by

³⁵Editorial Board of the Encyclopedia of Islam, *Encyclopedia of Islam*, Second Edition, Ichtiar Baru van Hoeve, Jakarta, 1994, p. 70.

³⁶Henry Arianto. *The Role of Judges in Law Enforcement Efforts in Indonesia*. *Lex Jurnalica*, Vol. 9, No. 3, December 2012, p. 154.

³⁷Abdul Manan, *Islamic Legal Reform*, PT Raja Grafindo, Jakarta, 2006, p. XV.

the due process of law framework, which imposes other limitations, such as the application of procedural law.³⁸

Second, the full enforcement concept, which allows judges to exercise discretion in areas that are still in the gray area, subject to various limitations in legal substance, legal structure, and legal culture. Third, the actual enforcement concept. Therefore, judicial power encompasses not only legal authority but also legal obligations, which are inherent powers vested in judges and courts to carry out governmental functions such as adjudication.³⁹

Juridically, the position and role of judges can be seen in Law no. 48 of 2009 concerning the Principles of Judicial Power (UPKK), namely:

1. Judges as enforcers of law and justice are obliged to explore, follow and understand the legal values that exist in society;
2. In considering the severity of the sentence, the judge is also obliged to consider the good and bad characteristics of the accused.

Based on the above article, it is possible for judges to interpret the provisions contained in the law. Regarding what and how the role of judges as law enforcers is assumed to be in accordance with their rights, obligations, and authorities as stipulated in criminal procedural law, but on the other hand, there is a possibility that the rights and obligations that describe this role will develop according to the situation and conditions in the administration of criminal justice in accordance with the legal values that exist in society.⁴⁰

A judge's decision reflects the public image of the judge and the court. Failure to render a decision that reflects a sense of justice will generate negative public sentiment. Although the judge has considered the available evidence and has the utmost confidence in the case in hand, the judge often overlooks the fact that, when examining a case, the judge considers it to be similar to other cases in general. However, the judge's role in a criminal case is not simply to decide the case presented, but also relates to a negative evidence system that relies on proven rights, events, or wrongdoing. Rather than solely looking at the evidence required by law, the judge must also consider his or her own convictions, grounded in sound moral integrity, in deciding a case.⁴¹

In the process leading to criminal prosecution, the capacity to be responsible for one's actions is one of the elements of guilt that must be proven. Proving this

³⁸Andi Arifin, Op. Cit., p. 8.

³⁹Ibid.

⁴⁰Abdul Hakim, Legal Analysis of the Position and Function of Judges as Law and Justice Enforcers (Case Study of the Supreme Court of the Republic of Indonesia Decision No. 1176 K/Pid/2007), Scientific Journal "Advocacy", Vol. 03, No. 01, March 2025, p. 2.

⁴¹Ahmad Rifai, Op. Cit., p. 92.

element is very difficult because it requires a long time. The capacity to be responsible is considered to be always present because generally, every normal person is mentally capable of being responsible, unless there are indications that show that the defendant's mental state may be abnormal. In such circumstances, the judge can request a special examination of the defendant's mental state even if the defendant does not request it. If the results are still doubtful for the judge handling the case, the capacity to be responsible does not cease, causing guilt to be absent and criminal sanctions cannot be imposed.⁴²

A judge's decision is the culmination of a criminal case. Beyond normative legal considerations, judges also need to explore other values that can complement their considerations, such as philosophical and sociological ones. It is hoped that these considerations will prevent a judge's decision from being legally invalid due to a lack of substantive considerations within the decision. A judge, in making a decision on a case, must base it on the facts obtained during the trial process. Judges also need to have prior considerations based on the indictment or demands of the Public Prosecutor before issuing a verdict on a case. If there is a consensus between the prosecutor and the judge, the court's decision will reflect the demands of the indictment. If these views differ, the judge may impose a lighter or heavier sentence than the prosecutor's demand. In making this reference, the judge can refer to the evidence presented and the judge's independent assessment of the defendant. This is where the institution of probation plays a role as a downstream stage. In criminal justice practice, judges often impose probationary sentences on perpetrators of criminal acts.⁴³

When sentencing a defendant in a criminal case, judges generally refer to Article 10 of the old Criminal Code, which stipulates one of the sanctions is imprisonment, which is essentially a sanction in the form of shackling, deprivation, or restriction of the prisoner's liberty. Imprisonment is considered effective in deterring criminals, so that prison sentences are often imposed by judges in a criminal case. The implementation of this prison sentence has a negative impact that is not simple for all parties, both the convict as an individual and to society as a whole. The old Criminal Code (KUHP) then also accommodated an alternative in the form of a conditional sentence in Article 14 letters a to Article 14 letter f of the old Criminal Code as an alternative to imprisonment. Conditional sentences are essentially an alternative reference to the penalty of deprivation of liberty, where rather than being institutional, conditional sentences are more non-institutional in nature.

⁴²Ibid. p. 49.

⁴³Legita and Mety Rahmawati. Analysis of Conditional Sentences in Child Abuse Cases (Study of Decision Number 2298/PID.SUS/2012/PN.TNG). *Adiguna Law Journal*, Vol. 1, No. 1, July 2018, p. 11.

Conditional sentences can be imposed on convicts sentenced to a maximum of one year in prison, supported by the judge's belief that the defendant, under adequate supervision, can improve himself and prove he can fulfill the conditions set within a certain period. Conditional sentences aim to minimize the negative impact on convicts from the negative impact of prison sentences that shackle or deprive prisoners of their liberty. Conditional sentences imposed by judges, on the other hand, can also help reduce the problem of overcrowding in correctional institutions in Indonesia, which are considered to be experiencing overcrowding because the number of convicts sentenced to prison sentences that deprive them of their liberty is always increasing exponentially.⁴⁴ Conditional sentences themselves need to be positioned as an alternative to criminal sanctions which are currently considered less effective.

4. Conclusion

1. The urgency of implementing supervisory punishment stems from the problems within the Indonesian criminal justice system, including the high cost of resolving cases and the large number of criminal cases, which have implications for overcrowding in correctional institutions (Lapas) and recidivism due to the domino effect of the poor penal system within the prisons. Furthermore, imprisonment is also considered to have various conceptual and practical weaknesses. From a modern penology perspective, imprisonment tends to be repressive and does not provide optimal room for individual offender improvement. In fact, in many cases, imprisonment has the potential to cause negative effects such as prisonization, social stigmatization, and strengthening criminal networks within correctional institutions. From an individual economic productivity perspective, imprisoning citizens for non-threatening acts diminishes the potential of individuals of productive age, thereby reducing economic contribution. 2. The mechanism for implementing a supervised sentence involves several stages, starting with a judge's ruling. In this ruling, the judge may include specific conditions that the offender must comply with during the supervision period. Judges in the context of their role in considering supervision sentences are absolutely guided by the 2023 Criminal Code in its mechanism. The 2023 Criminal Code provides complex limitations regarding the imposition of supervision sentences, including the judge being required to see the categorization of the form of crime committed by the defendant with limitations on actions that are subject to a maximum of 5 (five) years' imprisonment. The judge also considers aspects based on Article 54 of the 2023 Criminal Code which are elements of limitation before deciding on the imposition of supervision sentences. Judges are authorized to impose supervision sentences as an alternative to light prison sentences, by requiring the convict to fulfill certain general and specific requirements. The general requirement for the

⁴⁴Rully Novian, et al. *Strategies for Addressing Overcrowding in Indonesia: Causes, Impacts, and Solutions*. First edition, Institute for Criminal Justice Reform (ICJR), South Jakarta, 2018, p. 132.

imposition of supervision sentences is that the convict will not commit any further crimes. While specific requirements may include the convict within a certain period shorter than the supervision sentence must compensate all or part of the losses incurred as a result of the crime committed; and/or the convict must do or not do something without reducing religious freedom, freedom of belief, and/or political freedom. These requirements are the Judge's reference based on Article 76 paragraph (2) and paragraph (3) of the 2023 Criminal Code. The implementation of a supervisory criminal decision requires strict coordination between the judge (decision maker), the Prosecutor (executor), and the community counselor. After the decision is read and has permanent legal force, the technical implementation is carried out by the Prosecutor. The daily guidance and supervision process in the field is carried out by the Community Counselor (PK) from the Correctional Center (Bapas). The Judge's mechanism is based on Article 349 of the Criminal Procedure Code which stipulates that "In the event that the court issues a supervisory criminal decision, the implementation of the supervisory criminal decision is carried out by the Prosecutor and guidance for the Convict is carried out by the Community Counselor in accordance with the provisions of statutory regulations."

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