Implementation of the Idea of Criminal Individualization for Children who Commit the Crime of Sexual Intercourse

Ririn Narulita, Cahya Wulandari, Rodiyah

Semarang State University

DOI: https://dx.doi.org/10.47772/IJRISS.2024.8120289

Received: 16 December 2024; Accepted: 20 December 2024; Published: 20 January 2025

ABSTRACT

This research aims to determine the application of the idea of criminal individualization in the punishment of children who commit crimes of sexual intercourse in Indonesia. Punishment for child perpetrators by taking into account the individual factors of the child perpetrator. This research uses qualitative method with survey approach in Semarang District Court. Lack of parental supervision in many cases of sexual intercourse by children is the dominant factor. This factor should be used as the basis for the judge's consideration in sentencing. The result of this research is the obstacle of the application of the idea of individualization of punishment, namely the legal vacuum in the Indonesian Criminal Procedure Code that has not regulated the guidelines of the idea of individualization of punishment.

Keywords: Children, crime, individualization of punishment

INTRODUCTION

According to (Sudarto, 1986) individualization of punishment means that in the provision of criminal sanctions, it is necessary to consider the individual characteristics and situations faced by individual perpetrators. This approach pays attention to the differences that exist in various schools of thought in criminal law, which are related to the understanding and purpose of the punishment. The objectives and guidelines of punishment are the implementation of the idea of individualization of punishment. These objectives and guidelines of punishment are not yet known (not yet included) in the Dutch Colonial Criminal Code. Therefore, the Criminal Code of the Archipelago accommodates and implements the objectives and guidelines of punishment in Article 51 to Article 54. The humanistic value approach that requires individualization of punishment is also reflected in the objectives of punishment as stipulated in Article 51 of Law Number 1 Year 2023, namely: a. To prevent criminal offenses by enforcing the rule of law for the protection of society; b. To socialize the convict by providing guidance so that he/she becomes a good and useful person; c. To resolve conflicts caused by criminal offenses, to restore balance and to bring a sense of peace in society; d. To foster a sense of remorse for the criminal offences; e. To improve the quality of life of the convict; Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society; d. Fostering a sense of regret and releasing the convict's guilt. Individualization of punishment does not only mean that the punishment to be imposed must be adjusted/oriented to individual considerations, but also the punishment that has been imposed must always be modified/changed/adjusted to individual changes and developments (Barda, 2011).

Another aspect of individualization of punishment is the need for discretion for judges in choosing and determining what sanction (punishment/action) is appropriate for the individual/criminal offender concerned. Thus, there is a need for "flexibility or elasticity of punishment" although still within the limits of freedom according to the Law.

Children are the next generation of the nation who have a strategic role in ensuring the existence of the nation and state in the future. Soedjono Dirjisisworo stated that according to customary law, minors are those who have not yet determined concrete physical signs that they are adults (Marsaid, 2015). The prohibition of sexual crimes in the form of acts of intercourse against children is regulated in Article 76D of Law Number 35 of

2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 76D states: "Every person is prohibited from committing violence or threat of violence, forcing a child to have intercourse with him/her or another person". The crime of sexual intercourse can occur by anyone and to anyone. In this case, children can potentially become perpetrators of criminal acts, one of which is the crime of intercourse which often occurs in the community.

Based on the results of interviews with judges of the Semarang District Court, it can be seen that there are several causes of the occurrence of the crime of sexual intercourse, namely the lack of supervision of parents towards children and also other factors such as the environment that has a bad influence on children and also does not practice the value of religious value education properly and of course the factor of psychological problems or psychiatry of children involved in the crime of sexual intercourse. For example in Court Decision Number 7/Pid.Sus-Anak/2023/PN.Smg Basically, parents are the dominant factor in the occurrence of the crime of sexual intercourse. Negligence in parental supervision of children can refer to the inability or unwillingness of parents to provide sufficient attention or supervision of their children's activities, especially in terms of social relationships or interactions that may pose a risk to the welfare of the child. A parent knowing that their child (the perpetrator) and the victim's child have been dating since 2017 and often spend time together in the room of the perpetrator's house, could be considered an example of negligent supervision if the parent does not take the necessary steps to monitor or limit interactions that could be risky.

The theory of individualization of punishment seeks to find the causal factors of the occurrence of an effect by only looking at the factors that had existed or exist after the act is committed. In other words, the event and its consequences actually occur concretely (post *factum*). According to this theory, not all factors are causes. The causal factor itself is the factor that is very dominant or has the strongest role in the emergence of an effect. Supporters of the theory of individualization of punishment are Birkmayer and Karl Binding. Birkmayer put forward the theory of de meest werkzame factor in 1885 which states that from a series of conditions that cannot be eliminated, not all can be used to cause an effect, only the dominant factor or strong influence can be used as the cause of an effect.

The author argues that the application of the idea of individualization of punishment in the imposition of judicial decisions against child perpetrators of the crime of sexual intercourse has not been fully optimal. The idea of individualization of punishment prioritizes treatment that is adjusted to the circumstances and personal background of the perpetrator, including factors that influence his actions. Criminal individualization aims to make the punishment imposed more appropriate, not only based on the perpetrator's actions alone, but also considering other factors that contribute to the occurrence of the crime. According to the author, the dominant factor of parents should be the main consideration for judges in deciding criminal cases, especially those involving children. This is in line with the principle of criminal individualization, which emphasizes that in determining criminal sanctions, judges should not only look at the criminal act committed by the child perpetrator alone, but also pay attention to social conditions and various factors that influence the child's behavior. One very important factor is the influence of parents or family. The influence of parents and the family environment can play a huge role in shaping a child's behavior, be it positive or negative.

Unharmonious family conditions, neglect by parents, or even domestic violence can be factors that trigger criminal acts in children. Therefore, judges must look beyond the crime committed, but also consider how the family background and parental relationship may affect the development of the child's behavior. By considering these factors, judges can make a fairer and wiser decision, which focuses not only on punishment, but also on rehabilitation and restoration of the offender's social condition. This approach is in line with the principle of restorative justice which emphasizes repair and restoration, not just retribution. Judges should not only consider juridical or legal aspects, but also non-juridical aspects. The imposition of punishment against child perpetrators, it is necessary to first consider the aggravating and mitigating circumstances. The aggravating circumstances are that the child perpetrator is not responsible for his actions and there is no peace between the child perpetrator and the victim witness. While the mitigating circumstances are that the perpetrator child regrets and frankly admits his actions and the child has never been convicted.

The main obstacle in the implementation of the idea of individualization of punishment in the imposition of decisions for offenders related to legal substance according to Lawrence M. Friedman can be explained as a

mismatch between the principle of individualization of punishment and the existing legal structure, especially in the Criminal Procedure Code (KUHAP) which does not accommodate these needs. In the practice of criminal justice in Indonesia, the application of this principle is often constrained by the lack of clarity in the Criminal Procedure Code which does not provide specific guidance on how personal aspects of the perpetrator such as social, psychological, or background factors can be considered in the criminal sentencing process. The idea of individualization of punishment is regulated in Law Number 1 Year 2023, but the Criminal Procedure Code does not provide guidance on the application of the idea of individualization of punishment, therefore without a clear regulation in the Criminal Procedure Code, the applicable criminal law tends not to accommodate this principle effectively.

The idea of criminal individualization cannot only be regulated in the National Criminal Code, therefore the Criminal Procedure Code must be harmonized with the regulation of the idea of criminal individualization. So that the articles containing the idea of individualization of punishment are not just "dead articles" that exist in the National Criminal Code and which cannot be implemented in practice in court. This concern arises, when critically examining the provisions of KUHAP related to the possibility of forms of decisions that can be imposed on a defendant. Legal reform or also often referred to as legal reform in Indonesia is not merely changing, growing, correcting, reviewing, replacing or completely removing the provisions of legal rules and principles in the law and the provisions of laws and regulations that apply in a legal system. Legal reform is more of a realization through the affixation, addition, replacement or elimination of a provision, rule or legal principle in the law of the legislation in force in a legal system so that the legal system concerned becomes better, fairer, more useful and becomes more certain according to the law. (Teguh Prasetyo, 2017)

In several European countries, the idea of penal individualization has been regulated and implemented in their criminal justice systems through updates or developments in criminal procedure law (KUHAP) as well as substantial criminal law. Various countries in Europe recognize that each offender has a unique background and conditions that influence his or her actions, therefore, the punishment or legal action given should also take these factors into account. Here are some examples of European countries that have integrated the idea of penal individualization in their legal systems. First, the State of Macedonia formulates the purpose of punishment in Article 32 of the criminal procedure code of Macedonia besides the realization of justice, the aim of punishment is: (1) to prevent the offender from committing crimes and his correction. (2) educational enfluence upon others, as not to perform crimes). The formulation of the purpose of punishment is to correct the perpetrator of the crime and also by imposing coercion / bad taste on the perpetrator is expected to have an impact on other people besides the perpetrator not to commit crimes. Thus, the formulation of the purpose of punishment above can be said to protect two interests, namely general interests / protection and special / individual interests / protection. (Gialdah, 2017)

Secondly, the UK Criminal Justice Act provides sentencing guidelines governing different types of crimes and their corresponding sentences. Although these guidelines provide limitations, judges retain the freedom to adapt sentences based on the personal circumstances of the offender. The UK sentencing guidelines also include consideration of the defendant's personal factors, such as the level of involvement in the crime, intent or motivation, and potential for rehabilitation. Judges can adjust sentences by considering whether the defendant shows remorse, whether they have the potential to change, and whether they have a history of behavior that supports rehabilitation. It is important to understand that penalization is not just about punishing individuals, but also about creating a deterrence and community protection effect. Its main purpose is to enforce the law, deter criminal acts, and ensure that the consequences of the criminal acts committed by the offender match the gravity of the offense.(Michael Tonry, 1992).

The comparison of the Criminal Procedure Code of European countries above regarding the application of the idea of individualization of punishment, the Indonesian Criminal Procedure Code has the potential to be updated by including clearer guidelines on the application of the principle of individualization of punishment. Through the renewal of the Indonesian Criminal Procedure Code by including guidelines for the application of the idea of individualization, it can create harmony among law enforcement officials in applying the idea of individualization of punishment in the National Criminal Code. This adjustment is a strategic step in creating a criminal justice system that is more just, humane, and effective in providing penalties that are in accordance with the individual conditions of the offender. Some of the reasons for the urgency of the reform of KUHAP in

the context of the application of the idea of individualization of punishment.

CONCLUSIONS

The main obstacle in the implementation of the idea of individualization of punishment in the imposition of decisions for perpetrators related to legal substance according to Lawrence M. Friedman can be explained as a mismatch between the principle of individualization of punishment and the existing legal structure, especially in the Criminal Procedure Code (KUHAP) which does not accommodate these needs. The amendment of KUHAP that is in line with the idea of individualization of punishment in Law Number 1 Year 2023 will be applied in the imposition of judicial decisions for child perpetrators of the crime of sexual intercourse. The legal vacuum that was previously an obstacle in the application of the idea of individualization of punishment will be resolved. The Indonesian criminal justice system will have a greater opportunity to provide fair and appropriate treatment to child offenders, including in the case of the crime of sexual intercourse.

The main obstacle in the implementation of the idea of individualization of punishment in the imposition of decisions for perpetrators related to legal substance according to Lawrence M. Friedman can be explained as a mismatch between the principle of individualization of punishment and the existing legal structure, especially in the Criminal Procedure Code (KUHAP) which does not accommodate these needs. The reform of KUHAP that is in line with the idea of individualization of punishment in Law Number 1 Year 2023 will be applied in the imposition of judge's decision for child perpetrators of the crime of sexual intercourse. The legal vacuum that was previously an obstacle in the application of the idea of individualization of punishment will be resolved. The Indonesian criminal justice system will have a greater opportunity to provide fair and appropriate treatment to child offenders, including in the case of the crime of sexual intercourse.

ACKNOWLEDGMENT

The researcher would like to thank the lecturers, parents, friends, all those who have supported this research, as well as colleagues while currently pursuing a Master of Science in Law at Semarang State University. Thanks are also addressed to the Semarang District Court agency.

REFERENCES

1. Barda Nawawi Arief. (2011). Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru. Kencana Prenadamedia Group.
2. Gaildah. T. (2017). Pola Penegakan Hukum Pidana Berdasarkan Nilai - Nilai Kemanusiaan Dalam Perspektif Asas Manfaat. Jurnal Litigasi, 18, 64
3. Marsaid. (2015). Perlindungan Hukum Anak Piana Dalam Prespektif Hukum Islam (M. Asy-Syari'ah, Ed.
4. Michael Tonry. (1992). Sentencing, Judicial Discretion and Training edited by Colin Munro; Martin Wasik
5. Muhammad Idrus. (2009). Metode penelitian ilmu sosial : pendekatan kualitatif dan kuantitati. Erlangga
6. Sudarto. (1986). Kapita Selekta Hukum Pidana. Alumni
7. Teguh Prasetyo. (2014). Hukum Pidana. Raja Grafindo Persada.