

Reformulating Sentencing for Perpetrators of Sexual Violence Against Minors Within the Family in A Fair Manner in Indonesia

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Keywords	Abstract
Child Sexual Abuse; Intra-Family; Criminal Sanctions; Best Interests of the Child; Criminal Law Reform.	Sexual violence against children committed by family members constitutes a serious crime that not only violates criminal law but also undermines the fundamental role of the family as a space for protection, care, and child development. Although Indonesia has established various legal instruments, including the Child Protection Act (Law No. 35 of 2014) and the Sexual Violence Crimes Act (Law No. 12 of 2022), the prosecution of perpetrators of intra-family sexual violence still tends to fail in providing an optimal deterrent effect. Furthermore, the handling of these cases has not been fully oriented toward the best interests of the child, particularly in relation to victim protection, recovery, and the prevention of revictimization throughout the criminal justice process. This study employed a normative-empirical legal research method using statutory, conceptual, and case approaches, supported by empirical data obtained through interviews with stakeholders involved in child protection and law enforcement. The findings indicate that sentencing decisions often fail to adequately consider family-based power relations, the long-term traumatic effects experienced by child victims, and the potential risk of revictimization. In addition, the weak integration between primary penalties, additional penalties, and child protection mechanisms demonstrates that the existing penal system has not yet provided substantive justice for victims. This study recommends reforming sentencing policies by developing a fairer sentencing model that prioritizes victim protection. The proposed reform includes increasing the additional penalty enhancement to one-half of the principal sentence, replacing the current one-third increase, for perpetrators of intra-family sexual violence.

INTRODUCTION

Sexual violence against children within the family context represents one of the most serious and complex forms of crime in contemporary legal discourse. Unlike sexual violence committed by strangers, intra-family sexual violence (intrafamilial abuse) has a distinctive characteristic: it is perpetrated by individuals who have legal, moral, and social obligations to protect the child (Sari, 2020; Yuldashevna, 2026). This paradox—the protector becoming the perpetrator—not only constitutes a criminal offense but also undermines the fundamental function of the family as the primary institution for child safety, care, and development (UNICEF, 2014). The consequences for victims are multidimensional, including long-term physical harm, severe psychological trauma, impaired social development, and, in many cases, lifelong difficulties in establishing trusting relationships (Cruz et al., 2022; Hickie & Lefevre, 2022; Simmons et al., 2018).

In Indonesia, child sexual violence has been regulated through several legal instruments. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantees every child's right to life, growth, development, and protection from violence and discrimination. At the statutory level, Law No. 23 of 2002, as amended by Law No. 35 of 2014 concerning Child Protection, defines a child as any person under 18 years of age, including children in the womb, and establishes criminal sanctions for perpetrators of sexual violence. Articles 81 and 82 of Law No. 35 of 2014 stipulate imprisonment of 5 to 15 years and fines of up to IDR 5 billion for perpetrators of sexual violence against children. More importantly, Article 81(3) and the corresponding provision in Article 15(a) of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence (hereinafter referred to as the TPKS Law) require an additional one-third increase of the principal sentence when the perpetrator is a parent, guardian, caregiver, educator, or education personnel.

Despite these legal provisions, empirical evidence reveals a significant gap between the normative framework and its implementation in practice (Sitepu et al., 2025). Data from the Online Information System for Women and Child Protection (Sistem Informasi Online Perlindungan Perempuan dan Anak or Simfoni PPA) of the Ministry of Women's Empowerment and Child Protection (Kemen PPPA) recorded 15,120 cases of violence against children between January and November 2023, with sexual violence consistently representing the most prevalent category from 2019 to 2023. Simfoni PPA data also indicates that the household environment remains the primary location of violence incidents. These patterns continue despite the existence of aggravated sentencing provisions, suggesting that the current penal framework has not yet achieved an adequate deterrent effect (Pathinayake, 2018).

Court decisions further demonstrate significant disparities in sentencing for intra-family child sexual violence cases (Benedet & Grant, 2020; Wouters et al., 2025). An analysis of five court decisions illustrates this issue: Decision No. 1941/Pid.Sus/2024/PN Sby (stepfather as perpetrator) imposed a sentence of 6 years' imprisonment; Decision No. 66/Pid.Sus/2024/PN Tjk (family member as perpetrator) imposed 6 years' imprisonment; Decision No. 44/Pid.Sus/2023/PN Bbu resulted in 7 years and 6 months' imprisonment and an IDR 50 million fine; Decision No. 54/Pid.Sus/2024/PN Liwa (step-grandfather as perpetrator) resulted in 10 years' imprisonment and an IDR 500 million fine; while Decision No. 858/Pid.Sus/2022/PN Bjm (biological father as perpetrator) imposed 18 years' imprisonment, an IDR 1 billion fine, and an additional two years of chemical castration. These variations—ranging from 6 to 18 years' imprisonment in cases with similar intra-family characteristics—indicate that family relationships have not been consistently recognized as strong aggravating factors and that standardized, operational sentencing guidelines remain absent.

Previous studies have examined related issues from various perspectives. Musofiana (2024) emphasized the need to reconstruct child victim protection regulations by identifying weaknesses in legal substance, institutional structures, and legal culture. Simatupang (2023) examined chemical castration regulations from the perspective of justice values and found that existing sanctions remain more offender-oriented than victim-oriented. Sudarno (2022) analyzed criminal statistics and the implementation of chemical castration sanctions from a criminological perspective. However, these studies have not formulated a specific sentencing model that integrates power-relation analysis, aggravated sentencing provisions, custody revocation, witness and reporter protection, and revictimization prevention mechanisms for

intra-family child sexual violence. This constitutes the research gap addressed by the present study.

The urgency of this research is reinforced by the persistent prevalence of child sexual violence in Indonesia and the inadequacy of current sentencing practices in achieving sufficient deterrence and victim protection. Data showing 10,932 cases of child sexual violence in 2023 and 11,771 cases in 2024 indicate that this issue remains a serious concern. The dominance of household environments as locations of violence demonstrates that perpetrators frequently operate within spaces that should function as primary environments for child protection, indicating that the deterrent function of criminal law has not been fully effective within the private sphere of the family. Therefore, regulatory reform and the development of judicial sentencing guidelines are urgently required.

This study addresses three principal research questions: (1) How has criminal sentencing been applied by judges to perpetrators of intra-family child sexual violence under the Child Protection Act and the TPKS Law? (2) Why has the current criminal sentencing policy failed to provide adequate deterrence and victim protection? (3) How should criminal sentencing policy be reformed to achieve greater justice and provide comprehensive protection for child victims? The novelty of this study lies in the proposed sentencing reform model, which extends beyond increasing the sentencing enhancement from one-third to one-half of the principal sentence by incorporating mandatory revocation of custody rights, differentiated sentencing for repeat offenders, and institutional integration between sentencing mechanisms, child victim recovery programs, and revictimization prevention strategies.

METHOD

This study employed a normative-empirical legal research approach that combined juridical normative research through the examination of legal texts, literature, and documents with juridical empirical research involving the collection of field data through interviews. The normative analysis focused on relevant legal rules, principles, and doctrines, while the empirical analysis examined the implementation of legal provisions and sentencing practices in cases of intra-family child sexual violence.

The study applied three analytical approaches: (1) a legislative approach, which examined relevant legal instruments, including Law No. 35 of 2014 concerning Child Protection, Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, Law No. 23 of 2004 concerning the Elimination of Domestic Violence, the Criminal Procedure Code, and the 1945 Constitution of the Republic of Indonesia; (2) a conceptual approach, which analyzed theories of justice, child protection, and criminal law reform; and (3) a case approach, which examined five court decisions concerning intra-family child sexual violence cases.

Empirical data were collected through in-depth interviews with four relevant stakeholders: (1) Commission VIII of the House of Representatives of the Republic of Indonesia (DPR RI); (2) the National Commission on Child Protection (Komnas PA); (3) the Indonesian Child Protection Commission (KPAI); and (4) the Ministry of Women's Empowerment and Child Protection (Kemen PPPA). The research design was descriptive-analytical, prescriptive, and interdisciplinary, aiming to describe existing sentencing practices and formulate a more appropriate and implementable sentencing policy model for perpetrators of intra-family child sexual violence. The collected data were analyzed qualitatively through

systematic processes of data collection, identification, categorization, interpretation, and conclusion drawing. Data validity was strengthened through triangulation of legislative analysis, court decision analysis, interview findings, and documentary evidence.

RESULTS AND DISCUSSION

Statistical Overview of Child Sexual Violence in Indonesia

Data from Simfoni PPA, Ministry of Women's Empowerment and Child Protection, reveal a persistently high and alarming incidence of child sexual violence. Table 1 presents the reported cases for recent years.

Table 1. Sexual Violence Cases Against Children in Indonesia (2023–2025)

Year	Number of Reported Child Sexual Violence Cases	Data Source
2023	10,932 cases	Simfoni PPA, Kemen PPPA
2024	11,771 cases	Simfoni PPA, Kemen PPPA
2025*	11,049 cases (*January–mid-2025)	Simfoni PPA

The apparent decrease from 2024 to 2025 must not be interpreted as an indicator of reduced incidence or improved law enforcement effectiveness. As recognized by multiple stakeholders in this study, intra-family sexual violence is highly susceptible to underreporting — driven by shame, family pressure, economic dependence on the perpetrator, social stigma, perpetrator threats, and victim reluctance to report. The recorded figures therefore likely represent only a fraction of actual cases.

More significantly, data from Pusiknas Bareskrim Polri (National Police Criminal Investigation Information Center) indicates that of 2,648 cases of child sexual abuse handled by police from January to 17 June 2025, 1,139 cases (43.01%) occurred in domestic environments (home of perpetrator, victim, or other locations). Table 2 presents the distribution of violence incidents by location, converted from the Simfoni PPA graphical data.

Table 2. Distribution of Violence Incidents by Location (Converted from Simfoni PPA Figure)

Location of Violence Incident	Number of Cases	Proportion
Household / Domestic Environment	19,112	Highest — dominant location
Educational Institution (School)	Significantly lower	Second category
Community/Public Space	Significantly lower	Third category
Workplace	Significantly lower	Fourth category
Other Locations	Remaining cases	Minor proportion

Source: Simfoni PPA, Kemen PPPA (Figure 1, converted to table format). The dominance of the household as the primary location of child violence incidents — at 19,112 cases — has profound legal implications: the normatively designated space of child safety has

become the most dangerous environment. This paradox undermines the preventive function of the existing criminal law framework, indicating that threats of aggravated penalties have not penetrated the private domain of family.

The forms of violence recorded within the domestic environment further illuminate the problem. Table 3 presents the distribution of domestic violence types, converted from Simfoni PPA graphical data.

Table 3. Forms of Domestic Violence in Indonesia (Converted from Simfoni PPA Figure)

Form of Domestic Violence	Number of Cases	Legal Significance
Sexual Violence	13,290	Highest — most prevalent form; governed by Law No. 12/2022 and Law No. 35/2014
Physical Violence	Second highest	Governed by Law No. 23/2004 on PKDRT
Psychological Violence	Third category	Governed by Law No. 23/2004 on PKDRT
Economic Neglect	Present but lower	Governed by Law No. 23/2004 on PKDRT

Source: Simfoni PPA, Kemen PPPA (Figure 2, converted to table format). Sexual violence at 13,290 cases constitutes the most prevalent form of domestic violence — a finding that carries profound implications for the criminal law framework. The dominance of sexual violence within the domestic sphere confirms that this is not merely an individual pathology but a systemic phenomenon rooted in asymmetric power relations within family structures. As noted by the World Health Organization (2002), sexual violence encompasses any act of a sexual nature perpetrated against a person using coercion, regardless of relationship to the victim or setting.

Sentencing Disparities in Court Decisions

Analysis of five court decisions in intra-family child sexual violence cases reveals significant sentencing disparities that point to the absence of a consistent, operationalized sentencing guideline for this category of crime. Table 4 presents a comparative summary.

Table 4. Comparative Analysis of Court Decisions — Intra-Family Child Sexual Violence Cases

Case Number		Relationship (Perpetrator–Victim)		Principal Sentence	Additional Penalty	Analysis	
Decision 1941/Pid.Sus/2024/PN Sby	No.	Stepfather (Ayah Tiri)		6 years imprisonment + fine	None specified	Relatively given relation	low power-betrayal;

Case Number		Relationship (Perpetrator– Victim)	Principal Sentence		Additional Penalty	Analysis
						family relationship not treated as strong aggravating factor
Decision 66/Pid.Sus/ 2024/PN Tjk	No.	Family member	6 imprisonment	years	Not specified	Same pattern: family nexus did not result in meaningful aggravation beyond ordinary sentencing range
Decision 44/Pid.Sus/ 2023/PN Bbu	No.	Family member / Power relation	7 years 6 months imprisonment		IDR 50,000,000 fine	Marginally higher; still does not fully reflect long-term trauma or systematic power- relation abuse
Decision 54/Pid.Sus/ 2024/PN Liwa	No.	Step-grandfather (Kakek Tiri)	10 imprisonment	years	IDR 500,000,000 fine	Heavier sentence reflecting perpetrator's authority, vulnerability of victim, and abuse of trust within family
Decision 858/Pid.Sus/ 2022/PN Bjm	No.	Biological father (Ayah Kandung)	18 imprisonment	years	IDR 1,000,000,000 fine + 2 years chemical castration	Most severe: recognizes betrayal of parental protection duty; integrates additional penalty for long-term recidivism prevention

The range from 6 to 18 years in broadly comparable intrafamilial cases demonstrates that the family relationship has not been uniformly positioned as a meaningful aggravating factor in judicial practice. While Article 81(3) of Law No. 35 of 2014 and Article 15(a) of Law No. 12 of 2022 provide for mandatory one-third aggravation when the perpetrator is a parent, guardian, or caregiver, the pronounced variation in outcomes suggests that judges exercise considerable discretion — and that no clear operational guideline exists to ensure proportionality and consistency.

Decision No. 858/Pid.Sus/2022/PN Bjm stands in stark contrast to the lower-range decisions: it demonstrates that when judges fully consider the perpetrator's position as biological father, the systematic betrayal of parental protection duty, and the long-term

developmental harm to the victim, significantly heavier sentencing is both possible and legally justified. The inclusion of chemical castration as an additional sanction in this decision also reflects an orientation toward long-term victim protection and recidivism prevention — dimensions that are absent from the lighter decisions.

According to Arief, (2011), sentencing must simultaneously serve retributive, preventive, rehabilitative, and social protection functions. The absolute theory of sentencing (retributivism) holds that punishment must be proportional to the moral gravity of the offense; the relative theory emphasizes deterrence and social protection; and the combined theory integrates both, demanding that criminal sanctions reflect the seriousness of the act while also serving society's broader interests. Intra-family child sexual violence — with its systematic betrayal of trust, exploitation of power, and devastating long-term impacts on the most vulnerable subjects of law — demands application of the combined theory in its fullest form. The pattern of comparatively light sentencing in many of the reviewed decisions reflects a failure to operationalize these theoretical imperatives.

Theoretical Analysis of the Current Legal Framework

The current sentencing framework for intra-family child sexual violence rests on three interlocking theoretical foundations, each of which points toward the need for reform.

Justice Theory and the Demand for Substantive Justice

John Rawls (1999) argues that an adequate theory of justice must be formed through a contractarian approach in which principles of justice are the product of agreement among free, rational, and equal persons. Applying Rawls's difference principle to the sentencing context: policies of the state must provide the greatest benefit to the most disadvantaged group. Child victims of intra-family sexual violence — structurally the most powerless subjects in any power relation — must receive priority protection under this principle. Aristotle's concept of corrective justice (justice that corrects disequilibrium caused by wrongful acts) further demands that punishment be proportional not merely to the formal elements of the offense, but to the full scope of harm — including the betrayal of familial trust and the long-term developmental damage to the child.

Gustav Radbruch's three values of law — justice, legal certainty, and utility — provide the evaluative framework for assessing the current regime. Legal certainty is undermined by the sentencing disparities documented above; justice is inadequately served when children bearing permanent psychological harm receive the same formal protection as victims of lesser wrongs; and utility is not achieved when the deterrent function of criminal law fails to prevent recurring intrafamilial abuse. The concept of substantive justice, as distinguished from merely formal or procedural justice, demands that sentencing outcomes genuinely protect victims and create real systemic change, not merely satisfy procedural requirements.

Child Protection Theory and the Best Interests Principle

Child protection theory departs from the recognition that children, as legal subjects not yet physically, mentally, or socially mature, require special protection from the state, society, family, and social environment. The Convention on the Rights of the Child (United Nations, 1989), ratified by Indonesia through Presidential Decree No. 36 of 1990, establishes that every child has the right to protection from all forms of physical or mental violence, exploitation,

neglect, and abuse. The principle of the best interests of the child (the best interest of the child) demands that every legal policy and action concerning a child prioritize the child's welfare, safety, and future.

Applied to sentencing, this principle requires that the criminal justice system not merely penalize the perpetrator but also actively ensure the victim's protection, recovery, and freedom from further trauma. When the perpetrator is a parent, guardian, or family member, the protective failure is compounded: the child loses not only security but also the primary institutional space of their growth and development. Child protection theory therefore demands more than conventional criminal sanctions — it demands integration of sentencing with mechanisms that guarantee the victim's continued safety, including physical separation from the perpetrator and access to rehabilitative services.

Criminal Law Reform Theory and the Demand for Responsive Law

Criminal law reform theory, as articulated by Mochtar Kusumaatmadja in his adaptation of Roscoe Pound's "law as a tool of social engineering," holds that law in Indonesia must serve not merely as an instrument but as a catalyst for societal transformation. Satjipto Rahardjo's theory of Progressive Law (Hukum Progresif) further insists that law must be "for humans, not humans for law" — that it must be bold enough to go beyond formal legal texts when those texts fail to deliver justice for the most vulnerable. Hukum Progresif rejects the static application of formal norms when such application perpetuates injustice, and instead calls for creative, human-centered interpretation and policy-making.

Lawrence Friedman's (1975) tripartite framework — legal substance, legal structure, and legal culture — identifies that effective legal reform requires simultaneous change across all three dimensions. The current sentencing framework for intra-family child sexual violence is deficient across all three: the substantive law lacks a specific operational model for this category of offense; the legal structure lacks consistent training and capacity for sensitized application; and the legal culture continues to treat family matters as private, impeding reporting and prosecution. Franz von Liszt's argument for evidence-based criminal law reform — that reform must be oriented toward empirically demonstrated social realities — is directly applicable: the data on case incidence, court outcomes, and victim impacts all confirm that the current framework is inadequate and that reform is urgently needed.

Effectiveness of Law Enforcement and Victim Profiles

The victims of sexual violence in the domestic environment reveal patterns that underscore both the scale of the problem and the inadequacy of current legal responses. Table 5 presents the distribution of victims by age group, converted from Simfoni PPA data.

Table 5. Child Victims of Sexual Violence by Age Group (Converted from Simfoni PPA Figure)

Age Group		Number of Victims	Legal Implications
0–5	years (Early childhood)	Significant — includes infant and toddler victims	Total dependence on family; perpetrator is always known figure; most severe power imbalance

Age Group	Number of Victims	Legal Implications
6–12 years (Elementary school age)	High — dominant secondary group	Still fully dependent; cognitive maturity insufficient to report or recognize criminality
13–17 years (Junior/Senior school age)	Highest — most prevalent age group High	Adolescent developmental stage; social awareness developing; heaviest reporting burden due to shame/stigma
18+ years (Adult)	Lower proportion	Legally distinguishable from child victims; different evidentiary and protective standards apply

Source: Simfoni PPA, Kemen PPPA (Figure 4, converted to table format). The dominance of victims aged 13–17 years is legally significant: this age group is in a transitional developmental phase where awareness of rights and self-protection capacity is developing but not yet complete. Within intra-family violence, adolescent victims are particularly susceptible to the intersection of emotional dependence, economic dependence, and social stigma that suppresses reporting. The significant proportion of very young victims (0–12 years) further confirms that this is not merely an opportunistic crime but one systematically enabled by the perpetrator's access to the child and the child's total incapacity for self-protection. Table 6 presents the distribution of victims by education level, converted from Simfoni PPA data.

Table 6. Child Victims of Sexual Violence by Education Level (Converted from Simfoni PPA Figure)

Education Level	Number of Victims	Analysis
Elementary School (SD)	High — dominant group	Victims at this level have minimal ability to self-protect, report, or understand the criminality of acts committed against them
Junior High School (SLTP)	Very high — dominant group	Transition stage; still largely dependent on family; social awareness beginning but insufficient for self-protection
Senior High School (SLTA)	High	Developing rights awareness; better able to report but inhibited by shame, stigma, and economic dependence
Higher Education	Lower proportion	Greater self-protection capacity; more likely to access legal recourse
Not Schooling / NA	Present	Most excluded from formal support systems; highest vulnerability

Source: Simfoni PPA, Kemen PPPA (Figure 5, converted to table format). The overwhelming concentration of victims at elementary and junior high school educational levels confirms that perpetrators systematically target those with the least cognitive and social capacity to recognize, resist, or report the abuse. From the perspective of the proportionality

principle in sentencing — a core element of both retributive and modern combined theories — this vulnerability demands heavier, not equivalent, sanctions compared with sexual violence against adults or against strangers.

Interview findings with key stakeholders consistently revealed that current law enforcement effectiveness in intra-family child sexual violence cases is compromised by: structural barriers (perpetrator's control of household; victim's total dependence); procedural failures (repeated victim examination; insufficient child-friendly investigation procedures); institutional gaps (absence of systematic follow-up protection after conviction); and cultural obstacles (family pressure on victims not to report; perception of domestic violence as private matter). As the KPAI (Indonesian Child Protection Commission) emphasized in interviews, many child victims remain in proximity with their perpetrators even after legal proceedings conclude, creating persistent and immediate revictimization risk. This confirms that sentencing limited to imprisonment alone is insufficient to achieve the protective aims of criminal law.

Research Gaps and Prior Studies

This study situates itself within a broader body of prior research, as reflected in Table 7.

Table 7. Research Gaps in Prior Studies on Intra-Family Child Sexual Violence

Gap	Description
Gap 1	Prior research broadly addresses child sexual violence in general, without specific focus on its intra-family dimension.
Gap 2	Limited studies focus specifically on the intra-family context (intrafamilial sexual violence) as a legally and morally distinct category.
Gap 3	The family relationship as perpetrator–victim nexus has not yet been systematically established as a specific aggravating factor in sentencing policy formulation.
Gap 4	No model in prior research integrates penalty aggravation, custody revocation, additional penalties, witness and reporter protection, and victim recovery mechanisms into a single cohesive framework.
Gap 5	This study proposes a reformulated sentencing model grounded in the best interests of the child (the best interest of the child) principle, addressing all four preceding gaps.

Toward a Reformulated Sentencing Model

Based on the theoretical analysis, empirical data, and court decision review presented above, this study proposes a reformulated sentencing model for intra-family child sexual violence perpetrators. The proposed model is structured around four integrated components, as presented in Table 8.

Table 8. Proposed Sentencing Reformulation Model for Intra-Family Child Sexual Violence Perpetrators

Reformulation Component	Current Regulation	Proposed Reformulation	Theoretical Basis
Penalty Aggravation Rate	Addition of 1/3 from the principal penalty	Increase to 1/2 from the principal penalty for intra-	Proportionality principle (Muladi); substantive

Reformulation Component		Current Regulation	Proposed Reformulation	Theoretical Basis
		(Article 81(3) Law No. 35/2014; Article 15(a) Law No. 12/2022)	family perpetrators; explicitly codified as non-discretionary	justice (Rawls, 1999); retributive justice aligned with degree of betrayal and harm
Recidivist Sentencing		No specific differential provision for intra-family sexual violence recidivists	Differential sentencing model: maximum principal penalty plus chemical castration and minimum 5-year post-release supervision for recidivists	Utilitarian theory (Barda Nawawi Arief); specific deterrence (Wirjono Prodjodikoro); evidence-based reform (von Liszt)
Custody Revocation	Rights	No automatic or mandatory custody revocation mechanism linked to sentencing	Mandatory revocation of parental/guardianship custody rights as an additional penalty for convicted intra-family perpetrators; prohibition on physical access to victim	Best interests of the child (UN CRC, 1989); child protection theory; prevention of revictimization (KPAI interview findings)
Integration with Victim Protection	Child	Sentencing systematically integrated with ongoing victim protection mechanisms	Sentencing orders must include: mandatory psychosocial rehabilitation access for victim; mandatory physical separation from perpetrator; prohibition on contact during and after sentence; and formal restitution order	Progressive law theory (Rahardjo, 2009); victim-oriented justice; restorative-protective integration (Muladi combined theory)

The proposed increase from 1/3 to 1/2 penalty aggravation for intra-family perpetrators is the most immediately actionable component of the reformulation. The current 1/3 aggravation was designed to recognize the special culpability of those in protective positions, but empirical evidence demonstrates its insufficient deterrent impact. The persistent high incidence of intra-family sexual violence, combined with the pattern of comparatively light sentencing in court decisions, confirms that the current threshold fails to communicate the gravity of the offense with sufficient legal clarity. Increasing the aggravation factor to 1/2 reflects the greater moral blameworthiness, greater victim vulnerability, and greater long-term harm characteristic of intrafamilial abuse relative to stranger abuse.

The mandatory revocation of custody rights addresses a critical gap in the current framework: even after conviction and sentencing, many perpetrators retain legal access to their victims within the family structure. Commission VIII of the DPR RI and the Ministry of Women's Empowerment and Child Protection both confirmed in interviews that the absence of this mechanism is a major structural failure — perpetrators may resume contact with victims

post-sentence, creating immediate revictimization risk. Custody revocation, integrated into the sentencing order itself, operationalizes the child protection principle that the state must actively function as *parens patriae* when family structures fail.

The differential sentencing model for recidivists responds to criminological evidence that intra-family sexual violence perpetrators carry heightened recidivism risk due to underlying psychosexual dynamics. Andrew von Hirsch's "just deserts" theory demands that repeated offenders face progressively heavier penalties proportional to their demonstrated disregard for the law and escalating harm to victims. The mandatory element of chemical castration as an additional measure for recidivists — as already applied in Decision No. 858/Pid.Sus/2022/PN Bjm — provides both specific deterrence and a physiological barrier to reoffending.

Finally, the integration of sentencing with victim protection mechanisms reflects the shift in modern criminal law theory from offender-oriented to victim-oriented justice. Substantive justice — the primary theoretical framework of this study — demands that the criminal justice system measure its success not only by the sentence imposed on the perpetrator, but by the degree to which it guarantees the victim's safety, recovery, and future. Mardjono Reksodiputro's articulation of the goals of the criminal justice system includes preventing society from becoming victims, resolving cases to the satisfaction of the parties, and ensuring that offenders do not reoffend. All three goals are only achieved when sentencing is integrated with robust victim protection (Erez, 2019).

The regulatory framework to operationalize this reformulation requires amendment of Article 81(3) of Law No. 35 of 2014 and Article 15(a) of Law No. 12 of 2022 to replace the 1/3 aggravation with 1/2 for intrafamilial perpetrators, and the introduction of a specific provision within the TPKS Law establishing mandatory additional penalties — including custody revocation and post-sentencing contact prohibitions — as non-discretionary components of sentencing in intrafamilial cases. Harmonization with Law No. 23 of 2004 on Elimination of Domestic Violence and Law No. 11 of 2012 on the Juvenile Criminal Justice System is also required to ensure coherence of the full regulatory framework.

CONCLUSION

This study concludes that the current criminal sentencing policy for perpetrators of intra-family sexual violence against children in Indonesia has failed to provide substantive justice for child victims across three interrelated dimensions. First, the existing one-third sentencing enhancement under Article 81(3) of Law No. 35 of 2014 and Article 15(a) of Law No. 12 of 2022 remains insufficient to create an effective deterrent effect, as indicated by the persistently high number of reported cases (10,932 to 11,771 cases annually during 2023–2025), the prevalence of household environments as the primary location of violence (19,112 recorded incidents), and significant disparities in court sentences ranging from 6 to 18 years' imprisonment in cases with similar intra-family characteristics. Second, the sentencing framework remains structurally inadequate because it operates separately from child victim protection mechanisms, leaving victims vulnerable to continued exposure, contact, and dependency on perpetrators even after criminal convictions. Third, the current legal framework does not provide a differentiated sentencing approach for recidivists in intra-family sexual violence cases, despite criminological findings indicating a heightened risk of repeat offenses within this category.

To address these shortcomings, this study recommends a four-component sentencing reformulation model: (1) increasing the sentencing enhancement from one-third to one-half for intra-family perpetrators through amendments to Article 81(3) and Article 15(a); (2) establishing mandatory revocation of custody or guardianship rights as a non-discretionary additional penalty; (3) implementing a differentiated sentencing model for recidivists through the imposition of mandatory maximum sentences, chemical castration where legally applicable, and post-release supervision; and (4) integrating sentencing decisions with mandatory access to victim psychosocial rehabilitation, physical separation from perpetrators, and formal restitution mechanisms. The implementation of this reformulation requires amendments to the Child Protection Act and the TPKS Law, harmonization with the Domestic Violence Elimination Act and the Juvenile Criminal Justice System Act, as well as strengthened judicial capacity and coordinated inter-institutional protocols for child victim protection.

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