

## *Judicial Sentencing Factors for Parental Child Sexual Abuse at Tilamuta District Court*

### **Faktor Pemidanaan Kejahatan Seksual Anak Oleh Orang Tua Di Pengadilan Negeri Tilamuta**

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#### **Abstract**

*Legal enforcement concerning parental child sexual abuse frequently triggers a sharp clash of norms between rigid procedural certainty and substantive justice. This article examines the judicial reasoning within Tilamuta District Court Decision Number 14/Pid.Sus/2024/PN Tmt, where judges exercised progressive judicial activism by rendering an ultra petita sentence, intentionally increasing the penalty from twelve to seventeen years of imprisonment. This empirical study demonstrates that the step-parent's asymmetrical domestic power relation fundamentally distorts material evidence, thereby neutralizing the victim's defensive capacity and necessitating extraordinary judicial intervention. Consequently, this article explicitly proposes the formulation of specialized sentencing guidelines as ius constituendum securely grounded in therapeutic jurisprudence principles. These guidelines offer a structured, measurable matrix to legitimize progressive judicial discretion, transforming absolute domestic authority into an absolute aggravating factor while mandating longitudinal forensic psychological assessments. Ultimately, this proposed model successfully transitions the judiciary from mechanical statutory application toward a highly victim-oriented restorative justice framework.*

#### **Abstrak**

Penegakan hukum terkait tindak pidana kekerasan seksual anak di ranah domestik kerap memicu benturan norma yang tajam antara kepastian prosedural kaku dan keadilan substantif. Artikel ini menguji penalaran hukum dalam Putusan Pengadilan Negeri Tilamuta Nomor 14/Pid.Sus/2024/PN Tmt, di mana majelis hakim menerapkan aktivisme yudisial progresif dengan menjatuhkan vonis ultra petita, yang secara berani meningkatkan hukuman dari dua belas menjadi tujuh belas tahun penjara. Studi empiris ini berhasil menunjukkan bahwa relasi kuasa asimetris ayah tiri secara fundamental mendistorsi pembuktian materiil, melumpuhkan kapasitas pembelaan korban, sehingga sangat memerlukan intervensi luar biasa dari kekuasaan kehakiman. Oleh karena itu, artikel ini secara eksplisit menawarkan formulasi pedoman pemidanaan khusus sebagai ius constituendum yang berakar kuat pada prinsip therapeutic jurisprudence. Pedoman tersebut menyediakan matriks terukur untuk melegitimasi diskresi progresif hakim, mengubah otoritas domestik menjadi variabel pemberat absolut, serta mewajibkan asesmen psikologis forensik jangka panjang. Model ini akhirnya mentransformasikan peradilan menuju kerangka restoratif dan pemulihan korban holistik.



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## A. INTRODUCTION

### 1. Background

Law enforcement in domestic child sexual abuse cases frequently precipitates a sharp doctrinal clash between a legal certainty constrained by the accusatorial principle and prosecutorial indictments, and the competing demands of substantive justice. This normative tension reaches its zenith when judges progressively engage in judicial activism, transcending the boundaries of criminal charges or rendering *ultra petita* decisions to restore the essence of remediation for child victims ensnared in consanguineous power dynamics. This juridical anomaly unequivocally demonstrates that the sentencing process can no longer be reduced to a mere mechanical syllogism of formalistic legal application; rather, it has transformed into an essential locus of judicial discretion necessary to rectify asymmetries of material proof within the courtroom.

Contemporary global and domestic discourse concerning the sentencing of child sexual abuse is bifurcated into two primary theoretical paradigms. The first paradigm is anchored in pure retributivism and therapeutic jurisprudence, demanding the imposition of maximum statutory sanctions predicated on child protection frameworks to guarantee the victim's comprehensive protection and psychological rehabilitation.<sup>1,2</sup> Contemporary global and domestic discourse concerning the sentencing of child sexual abuse is bifurcated into two primary theoretical paradigms. The first paradigm is anchored in pure retributivism and therapeutic jurisprudence, demanding the imposition of maximum statutory sanctions predicated on child protection frameworks to guarantee the victim's comprehensive protection and psychological rehabilitation.<sup>3</sup>

Conversely, the second paradigm critically scrutinizes the inconsistency of the *ratio decidendi* that precipitates extreme sentencing disparities in sexual crimes; rather than affording protection, such disparities and heterogeneous justifications are deemed to undermine legal certainty and exacerbate the doctrinal deficiencies of the criminal justice

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<sup>1</sup> Kelly Frailing, Brandi Alfonso, and Rae Taylor, "Therapeutic Jurisprudence in Swift and Certain Probation," *American Behavioral Scientist* 64, no. 12 (November 17, 2020): 1768–85, <https://doi.org/10.1177/0002764220956694>.

<sup>2</sup> Herli Antoni, Asmak Ul Hosnah, and Angelica Clara Anasztasia Simanjuntak, "Perlindungan Hukum Bagi Korban Kekerasan Seksual Pada Anak Berdasarkan Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Logika : Journal of Multidisciplinary Studies* 15, no. 02 (October 17, 2024): 235–47, <https://doi.org/10.25134/logika.v15i02.10471>.

<sup>3</sup> Teguh Priyambudi, Andy Usmina Wijaya, and Ani Purwati, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Di Indonesia," *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 2 (August 16, 2023): 116–25, <https://doi.org/10.38156/jihwp.v1i2.116>.

system itself.<sup>4,5,6,7</sup>

A critical blind spot within this theoretical debate lies in the insufficient elaboration of the specific juridical anomaly wherein judges exercise extraordinary discretion to impose sentences that exceed prosecutorial recommendations. The majority of extant literature remains confined to normative-descriptive approaches, focusing primarily on statutory analyses of child protection frameworks or generalized sentencing disparities. Consequently, such studies fail to precisely dissect how the intervention of asymmetrical power relations—particularly the domineering influence of a stepfather—catalyzes a shift in judicial orientation and fortitude from acting merely as the mouthpiece of the law (*la bouche de la loi*) to serving as independent agents of substantive justice.

Addressing this lacuna in the literature, this article argues that judicial independence in overriding prosecutorial demands in domestic sexual abuse cases does not constitute an abuse of power, but rather a progressive imperative necessary to deconstruct legalistic rigidity. Therefore, through an analysis of the *ratio decidendi* of contemporary judicial decisions, this research proposes the construction of specialized sentencing guidelines as *ius constituendum*. These guidelines are designed to provide theoretical legitimacy alongside measurable parameters to justify *ultra petita* departures, particularly when the manipulative power dynamics of a stepfather distort the material evidentiary process and threaten the victim's restitutive rights.

## 2. Research Questions

Predicated upon the preceding background, the tension between legal certainty and substantive justice in domestic child sexual abuse cases necessitates a reconceptualization of the parameters of judicial independence. Accordingly, this article posits two primary legal inquiries that will serve as the analytical framework for the discussio:

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<sup>4</sup> Kathleen Daly, "Sexual Violence and Justice," in *Rape Justice* (London: Palgrave Macmillan UK, 2015), 36–52, [https://doi.org/10.1057/9781137476159\\_3](https://doi.org/10.1057/9781137476159_3).

<sup>5</sup> Deni Setiyawan, Muhammad Ramli, and Noor Rahmad, "Kedudukan Rasio Decidendi Hakim Dalam Pemenuhan Hak Restitusi Kepada Korban Kejahatan Seksual Pada Anak," *JATIJAJAR LAW REVIEW* 1, no. 1 (March 19, 2022): 38, <https://doi.org/10.26753/jlr.v1i1.729>.

<sup>6</sup> Januarina Yustina Uis Loim, Rudepel Petrus Leo, and Daud Dima Tallo, "Disparitas Putusan Hakim Dalam Kasus Kekerasan Seksual Terhadap Anak," *COMSERVA : Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 1 (May 25, 2023): 369–85, <https://doi.org/10.59141/comserva.v3i1.775>.

<sup>7</sup> David S. Lapsey, Bradley A. Campbell, and Ivan Benitez, "Focal Concerns Theory and Case Advancement in Sexual Assault Cases: A Systematic Review and Meta-Analysis," *Journal of Criminal Justice* 86 (May 2023): 102032, <https://doi.org/10.1016/j.jcrimjus.2023.102032>.

- a. How can the construction of judicial *ratio decidendi* in imposing sentences that exceed prosecutorial recommendations (*ultra petita*) in cases of child sexual abuse perpetrated by stepfathers be justified as a mechanism for safeguarding substantive justice?
- b. How should specialized sentencing guidelines be ideally formulated as *ius constituendum* to legitimize judicial discretion in navigating evidentiary distortions engendered by domestic power dynamics?

### 3. Research Methodology

This study constitutes doctrinal legal research, analytically operationalized to dissect the construction of judicial reasoning in adjudicating criminal offenses of child sexual abuse within the familial sphere.<sup>8</sup> This research employs a statutory approach and a case approach. The statutory approach is utilized not merely for a mechanistic analysis of regulatory texts, but rather to evaluate the inconsistencies of the norms governing sentencing enhancements within the Child Protection Act and the Criminal Code when confronted with the realities of evidentiary asymmetry.<sup>9</sup> Concurrently, the case approach is specifically applied to the Tilamuta District Court Decision Number 14/Pid.Sus/2024/PN Tmt. The selection of this jurisprudence is justified as an instrument of empirical excavation to scrutinize how the panel of judges executes an *ultra petita* breakthrough when responding to the anomalous asymmetrical power dynamics of a stepfather, a reality frequently unaccommodated by conventional legal frameworks.

The primary legal materials in this study encompass Law Number 17 of 2016 concerning Child Protection, the Indonesian Criminal Code, and the Tilamuta District Court Decision Number 14/Pid.Sus/2024/PN Tmt. Secondary legal materials comprise reputable international and domestic literature focusing on judicial independence, judicial activism, and child protection. Diverging from a mere inventory of literature, the secondary legal materials in this research—specifically the doctrine of therapeutic jurisprudence—are substantively operationalized as an analytical lens. This theoretical framework is structurally deployed to confront the inadequacies of procedural legal certainty, ultimately serving to formulate a measurable matrix of sentencing guidelines as a proposed *ius constituendum*.

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<sup>8</sup> Terry Hutchinson, "Doctrinal Research," in *Research Methods in Law* (London: Routledge, 2025), 8–38, <https://doi.org/10.4324/9781032710372-2>.

<sup>9</sup> Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana Prenada Media Group, 2013). Hal, 138.

The collection of legal materials was conducted through comprehensive library research and an in-depth documentary study of the judicial decision. All legal materials were subsequently subjected to qualitative analysis, employing not merely deductive reasoning, but rather prioritizing teleological and systematic methods of interpretation. Through teleological interpretation, this research traces the essential objectives underlying the judges' legal reasoning to demonstrate that the pronounced escalation in sentencing is intended to transform the justice system into a rehabilitative space for child victims and to establish true substantive justice.<sup>10</sup>

## **B. DISCUSSION**

### **1. The Justification of *Ultra Petita* and Judicial Activism in Responding to Domestic Power Dynamics**

#### **a. The Reconstruction of Substantive Justice and the Doctrine of *Ratio Decidendi* in Criminal Child Protection Jurisprudence**

The imposition of sentences in child sexual abuse cases cannot be construed solely as the manifestation of a rigid legal syllogism or the mechanical application of formal statutory norms (legalistic-formalism). Rather, it represents an arena of normative contestation wherein judges construct the *ratio decidendi* to actualize substantive justice.<sup>11</sup> The issue of intra-familial child sexual abuse demands a paradigm shift from strict legal positivism toward a progressive jurisprudence. Judges are no longer merely passive *bouche de la loi* (mouthpieces of the law); rather, they act as interpretive agents who integrate the victim's suffering, psychosocial dynamics, and the imperative of safeguarding the child's future as the foundational pillars of judicial reasoning. While conventional perspectives tend to reduce the judicial role to that of a linear guardian of formal legality, in adjudicating child sexual abuse cases, this function must be elevated to the vanguard of effectuating dynamic, substantive justice.

This construction of legal reasoning tangibly materializes within the Tilamuta District Court Decision Number 14/Pid.Sus/2024/PN Tmt. This case serves as the analytical epicenter, presenting a fundamental juridical anomaly within contemporary criminal justice practice. The factual matrix indicates that the defendant, acting in his capacity as the victim's stepfather, repeatedly perpetrated sexual assault utilizing

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<sup>10</sup> Mukti Fajar, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2013). Hal, 42.

<sup>11</sup> Andi Arifin, "Peran Hakim Dalam Mewujudkan Negara Hukum Indonesia," *IJOLARES: Indonesian Journal of Law Research* 1, no. 1 (March 30, 2023): 6–10, <https://doi.org/10.60153/ijolares.v1i1.2>.

violence and coercion against the child victim placed under his care and supervision. The Public Prosecutor submitted a sentencing recommendation (*requisitoir*) of 12 years' imprisonment. However, the panel of judges significantly exceeded this prosecutorial demand, rendering a verdict of 17 years' imprisonment. This judicial maneuver exemplifies the tangible application of substantive justice, wherein the adjudicators refused to subordinate themselves to formal prosecutorial constraints in order to effectuate absolute protection for the child victim.

The requisite formal burden of proof in this case was satisfied through the verification of admissible evidence pursuant to Article 184 of the Indonesian Criminal Procedure Code (KUHP), encompassing witness testimonies, documentary evidence in the form of a *Visum et Repertum*, and forensic psychological expert testimony corroborating the occurrence of penetration and profound trauma. Nevertheless, the panel of judges meticulously transcended these material elements, probing the dimensions of morality and the egregious breach of fiduciary duty within the familial institution. This adjudicative approach situates the decision not merely as a punitive-retributive instrument, but as a doctrinal decree asserting that the judiciary bears a moral imperative to afford absolute protection to children, as a vulnerable demographic, from domestic predators masquerading as guardian figures.

**b. Judicial Independence, Judicial Activism, and the Discourse on the *Ultra Petita* Anomaly**

The imposition of sentences exceeding prosecutorial demands frequently incites doctrinal debate regarding the boundaries of judicial authority concerning the *ultra petita* principle within Indonesian criminal procedural law. Conventionally, adherents of strict legal positivism contend that judges who render sentences surpassing prosecutorial recommendations undermine legal certainty (*Rechtssicherheit*) and violate the procedural rights of the defendant. However, the seminal study by Lapsey et al. regarding the focal concerns of prosecutors and judges refutes such apprehensions. Lapsey et al. assert that prosecutorial sentencing recommendations are frequently driven by calculations of judicial bureaucratic efficiency or rigid internal standardization, which inherently fail to capture the profound depth of the victim's individualized trauma.<sup>12</sup> Accordingly, this Talamuta District Court decision unequivocally refutes the conventional

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<sup>12</sup> Lapsey, Campbell, and Benitez, "Focal Concerns Theory and Case Advancement in Sexual Assault Cases: A Systematic Review and Meta-Analysis."

postulate that characterizes sentencing disparities as a manifestation of legal uncertainty; conversely, the ruling demonstrates that judicial discretion functions as an indispensable corrective instrument when prosecutorial mechanisms fail to capture the holistic gravity of the offense.

In the context of child sexual abuse, modern jurisprudence positions judicial activism as the manifestation of the *ius curia novit* principle—the presumption that the court knows the law and possesses an inherent obligation to unearth the values of justice prevailing within society. The sentencing escalation from 12 to 17 years in the Tilamuta District Court Decision Number 14/Pid.Sus/2024/PN Tmt, although essentially exceeding the prosecutorial recommendation (*requisitoir*), remains dogmatically within a legitimate legal corridor, as it does not surpass the maximum statutory penalty prescribed by the Child Protection Act and its subsequent amendments. This aligns with a progressive law enforcement framework, wherein judicial independence is safeguarded to rectify structural imbalances. Herein, judicial independence is transformed from a mere procedural shield of state power into a substantive sword for the vindication of material justice.

**Table 1. Juridical Anomaly and Sentencing Paradigm Comparison in Tilamuta District Court Decision No. 14/Pid.Sus/2024/PN Tmt**

Analytical Component	Legalistic Paradigm (Prosecutorial Indictment)	Substantive Justice Paradigm (Judicial Reasoning)	Judicial Activism Analysis
<b>Power Dynamics Qualification</b>	Construes the stepfather's status merely as a formal legal subject without profound weighting of domestic ethical violations.	Construes the stepfather's status as an absolute betrayal of domestic authority and fiduciary duty, exponentially aggravating culpability.	Transforms domestic relations from a mere sociological background element into an absolute dogmatic aggravating variable.
<b>Sentencing Orientation</b>	Recommends 12 years' imprisonment focused on retributive justice, predicated upon rigid bureaucratic sentencing standardization.	Imposes 17 years' imprisonment focused on restorative protection, trauma recovery, and purging the domestic sphere of residual predatory threats.	Demonstrates judicial discretion breaching the boundaries of the prosecutorial indictment to effectuate exemplary sentencing.

<b>Child Protection Construction</b>	Confined to the evidentiary proof of physical violence or coercion, demonstrating mechanical-positivistic tendencies at trial.	Holistically accommodates long-term psychological harm, future detriment, and the devastation of the victim's mental structure.	Integrates therapeutic jurisprudence principles into the <i>ratio decidendi</i> to repudiate secondary victimization in the courtroom.
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Table 1 above corroborates a radical paradigmatic leap from transactional-procedural law enforcement to transformative-substantive adjudication. The legalistic paradigm, represented by the Public Prosecutor's indictment, tends to reduce the essence of child sexual abuse to the mere fulfillment of the statutory elements of physical duress, thereby producing a 12-year sentencing recommendation based on a standardized calculus. Conversely, the substantive justice paradigm articulated by the panel of judges construes this case as a crime against humanity on a domestic scale, wherein the variable of power dynamics and the long-term destructive impact on the victim serve as the primary determinants in establishing the sentencing weight.

Further elaboration of the preceding data demonstrates that through judicial activism, the panel of judges comprehensively integrates child protection values into the *ratio decidendi*. By exceeding the confines of the prosecutorial demand, the adjudicators transmit a strong deterrence effect to society while simultaneously effectuating the symbolic restoration of the victim's dignity. This asserts that in child sexual abuse cases, judicial independence must not be circumscribed by prosecutorial procedural rigidity, which frequently neglects the dimensions of morality and sociological justice.

**c. The Deconstruction of Domestic Power Dynamics as a Dogmatic Aggravating Variable**

Intra-familial child sexual abuse (incest or domestic abuse) exhibits sociological and juridical characteristics that are diametrically distinct from sexual offenses perpetrated by strangers. In this Tilamuta District Court Decision, the defendant was a stepfather who structurally wielded absolute authority within the household. Munro et al., in their study concerning the state legal response to domestic violence, caution that the law frequently fails to comprehend abuse when it is viewed merely as a series of discrete incidents,

rather than as a systemic constellation of control and domination (coercive control).<sup>13</sup> The power dynamic between the stepfather and the child victim engenders a state of absolute dependency wherein the victim experiences a paralyzed will, such that any form of acquiescence or the absence of physical resistance cannot be construed as genuine consent, but rather as the consequence of intimidating structural repression.

Within the context of Indonesian legal literature, the analysis posited by Abdul Nasution et al. concerning the exploitation of children by parents admittedly recognizes the vulnerability of children within domestic relations; however, their examination remains confined to the macroeconomic dimensions of exploitation, failing to penetrate the depths of criminal law dogmatics regarding the abuse of fiduciary authority.<sup>14</sup> The Tilamuta District Court Decision advances the legal discourse by establishing that familial relations do not merely serve as a sociological backdrop to the case, but rather operate as an absolute dogmatic aggravating factor. The betrayal of the legal and moral duty to protect the child precludes the application of any mitigating circumstances for the defendant.

This analytical framework aligns with the scholarship of Lina Panggabean et al., who underscore the necessity of fortifying legal instruments for child protection; however, the Tilamuta District Court Decision provides a concrete illustration of how such fortification is operationalized directly within the courtroom through bold judicial reasoning that champions victim-centered justice.<sup>15</sup> This modified argumentation concurrently complements Yuspitari's foundational thesis, which frequently circumscribes victim protection within the abstract realm of statutory regulation while neglecting to explore judicial creativity in adjudicative proceedings.<sup>16</sup>

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<sup>13</sup> Vanessa E. Munro, Vanessa Bettinson, and Mandy Burton, "Coercion, Control and Criminal Responsibility: Exploring Professional Responses to Offending and Suicidality in the Context of Domestically Abusive Relationships," *Social & Legal Studies* 33, no. 3 (June 12, 2024): 392–419, <https://doi.org/10.1177/09646639231198342>.

<sup>14</sup> Abdul Haris Nasution, Zulfahmi Zulfahmi, and Asrofi Asrofi, "Analisis Hukum Perlindungan Anak Di Indonesia Terhadap Eksploitasi Anak Oleh Orang Tua Dalam Praktik Mengemis," *Mandub: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 4 (October 8, 2024): 13–24, <https://doi.org/10.59059/mandub.v2i4.1652>.

<sup>15</sup> Lina Panggabean, Triono Eddy, and Alpi Sahari, "Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Seksual (Analisis Undang-Undang Perlindungan Saksi Dan Korban)," *Juris Studia: Jurnal Kajian Hukum* 5, no. 1 (2024): 20–28, <https://jurnal.bundamediagrup.co.id/index.php/iuris/article/view/476>.

<sup>16</sup> Selvy Yuspitari, "Women's Rights in Divorce and Post-Divorce Maintenance: Perspectives from Islamic Family Law in Indonesia and Human Rights," *Nusantara: Journal of Law and Islamic Law* 1, no. 3 (April 21, 2026): 1–24, <https://doi.org/10.65101/nusantara.v1i3.192>.

**d. Therapeutic Jurisprudence and the Victim-Oriented Justice Paradigm in the Remediation of Victim Trauma**

Judicial reasoning that explicitly incorporates the victim's long-term psychological trauma as the basis for imposing maximum penal sanctions reflects the adoption of therapeutic jurisprudence principles. Developed by Frailing et al., therapeutic jurisprudence posits the law as a social force that engenders therapeutic consequences for the psychological well-being of the parties engaged in the adjudicative process.<sup>17</sup> Frailing et al. assert that legal norms, adjudicative procedures, and the roles of legal actors must be structurally designed to mitigate adverse psychological impacts (antitherapeutic consequences) and optimize the victim's psychological rehabilitation. When the panel of judges at the Tilamuta District Court elected to impose a 17-year custodial sentence surpassing the prosecutorial demand, the court effectively operationalized this therapeutic function. This enhanced sentence confers judicial validation upon the victim's suffering, dissipates the profound self-blame that frequently afflicts child victims of domestic abuse, and facilitates their trajectory of psychological healing.

This progressive maneuver is concurrently aligned with the reconstructive paradigm of justice articulated by Kathleen Daly concerning the reconceptualization of sexual violence and justice.<sup>18</sup> Daly contends that conventional justice frameworks, predicated upon formal retribution against the offender (retributive justice), frequently fail to address the substantive needs of victims of sexual violence, who necessitate formal acknowledgment of their suffering and assurances of future security. The Tilamuta District Court decision effectuates a convergence between a stringent retributive framework and a victim-oriented justice paradigm.

Although domestic literature, such as Priyambudi et al., routinely calls for the legal protection of child victims of sexual abuse, such scholarship frequently remains confined to passive legislative recommendations, failing to proffer tactical judicial resolutions.<sup>19</sup> District Court ruling demonstrates that rather than awaiting protracted legislative reform, judges can immediately operationalize victim-oriented justice principles through their adjudicative function by positioning the remediation of the victim's psychological trauma as a primary determinant of sentencing severity. Consequently, child protection

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<sup>17</sup> Frailing, Alfonso, and Taylor, "Therapeutic Jurisprudence in Swift and Certain Probation."

<sup>18</sup> Daly, "Sexual Violence and Justice."

<sup>19</sup> Priyambudi, Wijaya, and Purwati, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Di Indonesia."

doctrine is transformed from a rigid normative text into a living instrument that rehabilitates the victim's life—a paradigm concurrently articulated in the scholarship on victim rights restoration by Irene Wijayanti et al., wherein the court functions as the ultimate bastion that refuses to compromise with child predators.<sup>20</sup>

## 2. The Construction of Sentencing Guidelines Based on Therapeutic Jurisprudence as *Ius Constituendum*

The absence of uniform and structured sentencing guidelines in adjudicating domestic child sexual abuse cases frequently precipitates sentencing disparities that undermine legal certainty. Hitherto, absent measurable parameters, judicial discretion has remained susceptible to oscillation between rigid formalistic positivism and the imperatives of moral justice. To resolve this normative impasse, the Tilamuta District Court Decision Number 14/Pid.Sus/2024/PN Tmt emerges as a critical empirical milestone. The panel of judges' fortitude in bypassing the Public Prosecutor's *requisitoir*—effectively rendering an *ultra petita* judgment that escalated the sentence from 12 to 17 years—must not be viewed merely as a judicial anomaly; rather, it should be conceptualized as the embryo for formulating specialized sentencing guidelines. This case demonstrates that the abuse of domestic fiduciary relationships engenders a compounded vulnerability for child victims. As underscored by Scott & Chen in their family law scholarship, the breach of protective trust by a domestic authority figure, such as a stepfather, does not constitute a conventional criminal offense; rather, it represents an absolute betrayal of a fiduciary mandate that necessitates a significantly heightened legal sanction.<sup>21</sup>

The transformation of the *ratio decidendi* from the aforementioned precedent into future sentencing guidelines (*ius constituendum*) necessitates the integration of therapeutic jurisprudence principles as its core ethos. This concept, as extensively elaborated by Frailing et al., positions legal rules and procedures not merely as punitive instruments, but rather as therapeutic agents that must actively facilitate the victim's clinical and psychological rehabilitation.<sup>22</sup> Within the framework of sentencing guidelines

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<sup>20</sup> Henny Wijayanti et al., “Legal Effectiveness and Power Relations in Implementing Campus Sexual Violence Prevention Policies,” *Nusantara: Journal of Law and Islamic Law* 1, no. 3 (April 25, 2026): 25–44, <https://doi.org/10.65101/nusantara.v1i3.191>.

<sup>21</sup> Elizabeth S. Scott and Ben Chen, “Fiduciary Principles in Family Law,” in *The Oxford Handbook of Fiduciary Law*, ed. Evan J. Criddle, Paul B. Miller, and Robert H. Sitkoff (Oxford University Press, 2019), 225–48, <https://doi.org/10.1093/oxfordhb/9780190634100.013.11>.

<sup>22</sup> Frailing, Alfonso, and Taylor, “Therapeutic Jurisprudence in Swift and Certain Probation.”

reform, and aligned with Julian V. Roberts and Andrew Ashworth's comparative analysis regarding the imperative for frameworks responsive to shifting criminal dynamics, Indonesian judges require a measurable matrix to legitimize the exercise of their maximum discretion—particularly when the systematic manipulation of power dynamics distorts the evidentiary process at trial.<sup>23</sup>

To translate this conceptualization into an applicable framework, the comparison between contemporary conventional practices and the proposed progressive construction is delineated through the sentencing guidelines matrix below:

**Table 2. The Construction of Sentencing Guidelines Based on Therapeutic**

<b>Jurisprudence in Domestic Sexual Abuse</b>			
<b>Judicial Consideration Variables</b>	<b>Conventional Practice (Ius Constitutum)</b>	<b>Progressive Construction (Ius Constituendum)</b>	<b>Therapeutic Jurisprudence Indicators</b>
<b>Qualification of Offender-Victim Relations</b>	Domestic relations are viewed merely as an administrative aggravating factor.	Vertical power dynamics (e.g., stepfather) serve as an absolute basis for sentencing enhancements.	Prevents psychological manipulation during trial proceedings.
<b>Evidentiary Proof of Harm</b>	Relies primarily upon physical anatomical evidence ( <i>Visum et Repertum</i> ).	Mandates the inclusion of long-term forensic psychological assessments.	Validates the victim's latent trauma.
<b>Limitations on Sentencing Discretion</b>	Constrained by the Public Prosecutor's maximum sentencing demand.	Judges are granted attributive authority to render <i>ultra petita</i> judgments to facilitate remediation.	Adjudication is oriented toward healing, rather than mere retribution.

The formulation of the Sentencing Guidelines in Table 2 directly addresses the research gap regarding the friction between procedural legal certainty and substantive justice delineated in the introduction. Hitherto, conventional criminal justice doctrine (*ius constitutum*) has tended to minimize familial relations merely as an additional administrative aggravating factor that does not absolutely dictate the severity of the verdict. The progressive construction proposed in the matrix above deconstructs this rigidity by asserting that vertical power dynamics (such as the stepfather's authority in the Talamuta District Court case) must be elevated to an absolute basis for sentencing enhancements. This functions as an institutional safeguard to prevent the offender from

<sup>23</sup> James Roffee, "Andrew Ashworth and Julian V. Roberts, Sentencing Guidelines: Exploring the English Model," *Australian & New Zealand Journal of Criminology* 48, no. 4 (December 7, 2015): 589-91, <https://doi.org/10.1177/0004865815582302>.

utilizing their dominance to intimidate or psychologically manipulate the victim during the trial process.

Furthermore, these guidelines operationalize the principles of therapeutic jurisprudence by shifting the material evidentiary paradigm. Moving away from an exclusive reliance on the proof of physical anatomical injury (*Visum et Repertum*), this matrix mandates the incorporation of forensic psychological assessments that capture long-term destructive impacts. By substantiating the victim's latent trauma, these guidelines establish a robust legal-dogmatic foundation for judges to emancipate themselves from the constraints of the prosecutorial indictment (*requisitoir*). Consequently, *ultra petita* discretion is no longer subjected to suspicion as an abuse of power; rather, it is academically and judicially legitimized as an indispensable instrument of rehabilitation. Through the adoption of these guidelines, the state can ensure that future judicial determinations are consistently oriented toward holistic healing (victim-oriented justice) rather than mere mechanical retribution.

### **C. CONCLUSION**

The imposition of *ultra petita* sentences in cases of child sexual abuse perpetrated by stepfathers can be doctrinally justified through judicial activism, which shifts the legalistic paradigm toward substantive justice by establishing domestic power dynamics as an absolute dogmatic aggravating variable. Through the construction of this *ratio decidendi*, judicial independence is transformed into an instrument of therapeutic jurisprudence oriented toward the remediation of the victim's latent trauma and the provision of absolute protection, transcending mere mechanical retributive punishment. To legitimize such progressive discretion in the future and preclude sentencing disparities, the formulation of specialized sentencing guidelines predicated upon therapeutic jurisprudence must be unconditionally realized as *ius constituendum*. Operationally, these ideal guidelines must construe vertical power dynamics as the absolute foundation for sentencing enhancements, mandate longitudinal forensic psychological assessments as evidentiary proof, and confer attributive authority upon judges to render *ultra petita* decisions to facilitate the holistic healing of the victim.

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