

Public Prosecutor's Sentencing Demand in a Father-Daughter Sexual Violence Case: A Juridical and Maqashid Al-Sharia Analysis

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ABSTRACT

Sexual violence committed by a father against his adult daughter raises a difficult question of statutory choice when the parties remain biologically related but no longer share an active household. This study examines Case Reg. No. PDM-28/SIPIROK/Eku.2/11/2024 and the Public Prosecutor's decision to rely on Article 6(c) in conjunction with Article 15(1)(a) of Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS), rather than Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT). Using a qualitative single-case design, the study draws on a semi-structured interview with the handling prosecutor, the indictment as a supporting case document, and relevant legal literature. The statutory comparison indicates that, within the prosecutor's legal construction, UU TPKS more directly addresses abuse of position, trust, and influence without requiring proof of direct physical force. Through Imam Asy-Syathibi's maqashid al-sharia framework, the sentencing demand is assessed against *hifz al-din*, *hifz al-nafs*, *hifz al-aql*, *hifz al-nasl*, and *hifz al-mal*. The analysis further shows that the absence of physical violence cannot be equated with consent because non-physical coercion may arise from psychological domination, economic dependency, and unequal family power relations.



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INTRODUCTION

Rape and other forms of sexual violence disproportionately affect women, particularly younger women and adolescents. Such violence occurs across social strata and may be associated with environmental influences, long-standing psychological patterns of perpetrators, and situational sexual stimuli (Nasution et al., 2024, p. 1). Although sexual offences were once commonly imagined as acts committed by strangers, contemporary cases also demonstrate the danger posed by persons within the victim's closest social environment, including immediate family members. Indonesian judicial practice has addressed such intrafamilial violence in, among others, Decision No. 3156/Pid.Sus/2017/PN.Mdn (Aida & Mahzaniar, 2022, p. 26), Mahkamah Syar'iyah Jantho Decision No. 16/Jn/2021/Ms.Jth, and Decision No. 148/Pid.Sus/2023/PN.Bln. These cases illustrate that the domestic sphere, which normatively should function as a place of protection, can also become a site in which unequal authority and dependency facilitate sexual abuse.

This article focuses on a case involving a biological father and his daughter. In March 2024, a 44-year-old man identified by the initials ERL was alleged to have committed sexual violence against his 20-year-old biological daughter, EGL. The case was brought to trial by the Public Prosecutor at the South Tapanuli District Prosecutor's Office under Case Registration No. PDM-28/SIPIROK/Eku.2/11/2024. The prosecutorial construction relied on Article 6(c) in conjunction with Article 15(1)(a) of Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS), rather than Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT). The choice is legally significant because Article 2(1)(a) of UU PKDRT expressly refers to children as persons within the household sphere, while Articles 8, 46, and 47 regulate sexual violence within domestic relationships (Republic of Indonesia, 2004). The case therefore presents an important problem of statutory characterization rather than a simple absence of legal regulation.

The choice between these two statutes deserves close examination because each may appear relevant to violence occurring in a family relationship, yet each carries a different normative structure,

evidentiary emphasis, and sanctioning framework. Previous scholarship has shown that domestic-violence law was developed with a gender-justice orientation tied to a continuing household relationship, creating interpretive difficulties when the formal or factual configuration of the family has changed (I. Harahap, 2016, p. 41). Studies of incestuous sexual violence likewise demonstrate that Indonesian positive law has not always responded seamlessly to the complexity of power relations within families (Nuroniya, 2022, p. 225). The present case is therefore useful for examining how a prosecutor moves from a general family relationship to the more specific legal concept of sexual violence based on abuse of position, trust, or influence.

Existing studies generally leave three analytical gaps. First, scholarship on UU PKDRT has discussed limitations in its scope when the victim-perpetrator family relationship changes, but has not systematically tested whether UU TPKS can provide a more suitable normative basis in such circumstances (I. Harahap, 2016, p. 41). Second, studies of incest have demonstrated the complexity of family power relations but have often remained at the phenomenological or substantive level rather than treating the prosecutor's choice of statutory basis as an object of doctrinal comparison (Nuroniya, 2022, p. 225; Anamaloka Bakara et al., 2023, p. 201). Third, research on power relations in personal sexual violence has explained how a victim's will may be constrained without visible physical violence, but has rarely connected that insight to a direct comparison of potentially overlapping criminal-law regimes (Aryana, 2022, p. 58; Hayati & Nurunnisa, 2026, p. 2844). The novelty of this article lies in directly comparing the object, elements, scope, and interrelationship of UU PKDRT and UU TPKS in a concrete prosecution, and subsequently evaluating that prosecutorial construction through an indicator-based *maqashid al-sharia* analysis rather than a merely descriptive mapping of the five objectives.

The statutory-choice problem also engages the principle *lex specialis derogat legi generali*. In general, the principle gives priority to a more specific rule over a more general rule when the provisions operate at the same hierarchical level and regulate materially related objects (Sucipta et al., 2020, p. 141). Its use in the present case, however, should not be presumed. It must be tested by comparing the relevant protected interests, offence elements, relational requirements, and regulatory purposes of the two statutes. *Lex posterior derogat legi priori* may provide an additional interpretive consideration because UU TPKS is the later statute, but chronological priority alone cannot establish that an earlier statute has been displaced in its entirety. Accordingly, this study treats *lex specialis* as the principal doctrinal framework and *lex posterior* as a supplementary consideration.

The evaluation of a prosecutorial sentencing demand also cannot stop at formal conformity with positive law. From an Islamic legal perspective, it may be assessed against the more fundamental objective of realizing welfare and preventing harm, which lies at the core of *maqashid al-sharia*. Imam Asy-Syathibi classifies the objectives of the Sharia into *daruriyat* (necessities), *hajiyyat* (needs), and *tahsiniyat* (complementary interests). At the *daruriyat* level, the classical framework identifies five essential interests (*al-kulliyat al-khams*): protection of religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*) (Siregar, 2018, p. 1; Djalaluddin, 2015). This study focuses on *daruriyat* because the alleged conduct potentially affects the victim's most fundamental personal, familial, psychological, and economic interests.

Against this background, the article addresses two questions. First, why did the Public Prosecutor prefer UU TPKS to UU PKDRT in Case Reg. No. PDM-28/SIPIROK/Eku.2/11/2024? Second, how should the prosecutor's sentencing demand be evaluated through Imam Asy-Syathibi's *maqashid al-sharia* framework? By answering these questions, the study seeks to contribute to the doctrinal understanding of statutory choice in family-based sexual violence and to demonstrate how *maqashid al-sharia* can function as an evaluative framework for positive-law enforcement without displacing the requirements of criminal legality.

RESEARCH METHOD

This research is a qualitative field study using a single-case study design. The case is Case Reg. No. PDM-28/SIPIROK/Eku.2/11/2024. To avoid conflating different procedural documents, the principal analytical object is the Public Prosecutor's sentencing demand (*requisitoir*) and the legal reasoning underlying the choice of statutory basis, as reconstructed through the prosecutor's interview. The indictment is used as a supporting case document because it records the formal legal construction of the alleged offence. The study does not evaluate the final judicial judgment. At the time the research was conducted, the case had not produced a final and binding judgment (*inkracht*); consequently, the

conclusions are confined to the prosecutorial stage and should not be read as findings regarding the court's final determination of guilt or legal characterization.

The research participant was the Public Prosecutor who handled the prosecution (H. A. Nasution, personal communication, May 6, 2026). The informant was selected purposively because he directly formulated and presented the prosecutorial position and was therefore the relevant institutional source for explaining the reasons behind the statutory choice. Primary data were obtained through a semi-structured interview and examination of the available prosecutorial case documents. Secondary data consisted of legislation, books, and scholarly articles concerning sexual violence, domestic violence, power relations, criminal-law preference principles, *fiqh jinayah*, and *maqashid al-sharia*. Data collection was conducted through interview and document analysis.

Data credibility was examined through methodological triangulation by comparing the prosecutor's account with the legal construction contained in the case documents. The study recognizes an important limitation in source triangulation: complete transcripts of witness examination and a final judicial decision were not available at the research stage. For that reason, this article avoids treating the prosecutor's narrative and the indictment as independently verified 'trial facts.' Expressions such as case information, prosecutorial account, or information recorded in the documents are used to distinguish the evidentiary status of the material from findings that have been judicially tested. The data were analyzed through qualitative description, reduction of relevant information, thematic categorization of the prosecutor's principal legal considerations, doctrinal comparison of UU PKDRT and UU TPKS, and interpretation through *lex specialis*, *lex posterior*, and *maqashid al-sharia*.

Ethical considerations were particularly important because the case concerns sexual violence. The victim and defendant are identified only by initials (EGL and ERL), personal details unrelated to the legal analysis are omitted, and the interview was conducted with permission in the prosecutor's official capacity. The interview was used to explain institutional legal reasoning rather than to disclose the victim's private information. These limitations are also relevant to the interpretation of the results: the analysis evaluates the legal adequacy and normative coherence of the prosecutorial construction rather than reconstructing the victim's experience beyond what is supported by the available sources.

RESULTS AND DISCUSSION

The Public Prosecutor's Juridical Considerations in Choosing UU TPKS Rather than UU PKDRT

According to the handling prosecutor, although the victim is biologically the defendant's daughter, she was 20 years old, legally an adult, married, and no longer living in the same household when the relevant events occurred (H. A. Nasution, personal communication, May 6, 2026). On that basis, the prosecutor considered the continuing-household element of UU PKDRT insufficiently aligned with the case and preferred UU TPKS. This statement should be understood as the prosecutor's legal construction rather than as an automatic proposition that adulthood, marriage, or separate residence alone always excludes a biological child from the statutory concept of a household. The analytical question is therefore whether, when the relationship no longer operates as an active household but continues to create authority and dependency, UU TPKS provides a more precise offence structure for the alleged conduct.

The prosecutor's reasoning can be organized into five considerations. First, UU PKDRT provides broad protection for persons within the household but does not elaborate every post-marital or post-residential configuration of a parent-child relationship. Second, Article 2(1)(a) does not itself provide a detailed age-based definition of 'child' for every possible household situation, leaving room for interpretive debate when an adult married child no longer resides with the parent. Third, the prosecutor considered the sexual-violence provisions in Articles 8, 46, and 47 of UU PKDRT less well suited to conduct alleged to have operated primarily through authority, trust, psychological manipulation, and economic influence rather than direct physical force. Fourth, the prosecutor viewed the elements of Article 6(c) in conjunction with Article 15(1)(a) of UU TPKS as corresponding more closely to the alleged abuse of position and family influence. Fifth, UU TPKS explicitly places sexual violence, victim protection, equality, and abuse of power relations at the center of its regulatory design. These considerations do not erase UU PKDRT, but they explain why the prosecutor regarded UU TPKS as the more specific charging framework for this particular factual construction.

To test this reasoning systematically, Table 1 compares the principal elements relied upon in the prosecutorial analysis. The table does not purport to establish a universally binding interpretation of the two statutes; rather, it organizes the textual and systemic considerations that support the prosecutorial choice in this case.

Table 1. Comparison of Relevant Elements of UU PKDRT and UU TPKS in the Prosecutorial Construction

No.	Compared Element	UU PKDRT (Art. 2(1)(a); Art. 8; Arts. 46/47)	UU TPKS (Art. 6(c) jo. Art. 15(1)(a))	Relevance to the Case Construction
1	Legal relationship	Regulates violence within the statutory household sphere; the continuing scope of the relationship becomes interpretively important when an adult married child no longer resides with the parent.	Does not require an active shared household where the offence is established through abuse of position, trust, or influence; a family relationship may constitute the source of such power.	The prosecutor treated adulthood, marriage, and separate residence as reasons to question the fit of UU PKDRT, while viewing the continuing father-daughter authority relationship as relevant under UU TPKS.
2	Mode of conduct	The prosecutor regarded the relied-upon provisions as less directly tailored to non-physical domination in the circumstances of this case.	Article 6(c) covers abuse of position, authority, trust, or influence and is not dependent on proof of direct physical violence.	The alleged conduct involved paternal authority, psychological manipulation, and economic influence rather than direct physical force.
3	Aggravation	Does not frame this post-residential family power relation in the same manner as the aggravating structure relied upon by the prosecutor.	Article 15(1)(a) provides an aggravating circumstance where the offence is committed within a family relationship.	The father-daughter relationship remains relevant to aggravation even when the parties no longer share a household.
4	Normative scope	General statutory regime addressing forms of domestic violence within its defined household sphere.	Specific statutory regime addressing sexual violence, including sexual conduct enabled by abuse of power relations.	The alleged object and mode of wrongdoing correspond more directly to the specific sexual-violence framework.
5	Temporal relationship	Enacted in 2004.	Enacted in 2022 as the later statute specifically regulating sexual violence.	Lex posterior provides supplementary support, but does not by itself extinguish UU PKDRT or resolve statutory overlap.

The comparison indicates that *lex specialis* cannot simply be invoked by labeling one statute 'special' and the other 'general.' The preference must be justified through the relationship between the regulated conduct and the offence elements. In the prosecutor's construction, the central feature of the case is not merely that the parties are relatives, but that the alleged sexual conduct was enabled by an asymmetrical relationship of position, trust, and influence. UU TPKS directly formulates that mechanism as part of the offence structure, whereas the prosecutor considered the household configuration under UU PKDRT less congruent with the parties' actual living arrangement. This supports the use of *lex specialis* as an argument of normative specificity. Lex posterior adds contextual support because UU TPKS is the later statute specifically devoted to sexual violence, but it should remain secondary: the later law does not automatically repeal the earlier domestic-violence regime in all family cases.

The prosecutor's account and the case documents further describe the victim's statement as coherent and supported by several family witnesses, including her mother, husband, and sibling. At the same time, the materials indicate an absence of direct threats or physical violence during the sexual acts. The prosecutor nevertheless considered Article 6(c) satisfied because the defendant allegedly used his position as a father, a pretext of examining the victim's virginity, feigned illness to induce visits, and maintained economic influence as a provider. Taken together, these circumstances were understood as placing the victim in an unequal position from which refusal was constrained. On that basis, the prosecutor sought a fifteen-year term of imprisonment, close to the maximum penalty discussed in the prosecutorial construction under UU TPKS. Importantly, this description is derived from prosecutorial information and the available documents; it is not presented as an independent judicial finding.

From a doctrinal perspective, the decisive point is that the absence of direct physical force does not necessarily remove criminal coercion from the analysis. A conventional rape framework centered on overt violence may inadequately capture sexual conduct achieved through dependency and abuse of influence. The specific contribution of UU TPKS is precisely its recognition that sexual autonomy may

be undermined by position, trust, authority, and psychological or economic domination. The family relationship therefore does not reduce responsibility. In the prosecutor's reasoning, it is the source of the power imbalance and, under Article 15(1)(a), may also aggravate the offence. This reading is consistent with scholarship emphasizing that intrafamilial sexual abuse requires attention to unequal dependency rather than a narrow search for visible physical resistance (Prasnatari et al., 2023, p. 380).

Maqashid al-Sharia Analysis of the Prosecutor's Sentencing Demand

This section applies Imam Asy-Syathibi's maqashid al-sharia framework at the daruriyat level. Rather than merely stating that all five essential values are affected, the analysis identifies the concrete form of harm and its causal connection to the alleged mode of conduct. The framework is used as an evaluative perspective on protection and proportionality, not as a substitute for the legality requirements of positive criminal law.

Hifz al-Din (Protection of Religion)

The sexual conduct alleged in this case occurred between persons within a prohibited mahram relationship. Classical fiqh literature treats sexual intercourse between mahram relatives as a grave violation of religious and familial norms. In the present analysis, however, the term zina mahram must be used carefully because the case materials also indicate non-physical coercion. The relevant maqashid harm is therefore better formulated as prohibited sexual conduct within a mahram relationship occurring under an allegedly coercive power structure, rather than as consensual zina. This formulation protects the analytical distinction between the biological-family dimension of the act and the absence of meaningful consent. Asy-Syathibi's framework distinguishes preservation from the side of existence (min janib al-wujud) and protection from the side of prevention or removal (min janib al-'adam). A substantial criminal response to a serious intrafamilial sexual offence can be understood as operating through the latter dimension by preventing and sanctioning conduct that undermines both sexual morality and the protective character of kinship (Juliansyahzen & Ocktoberinsyah, 2022, p. 279).

Hifz al-Nafs (Protection of Life and Personal Integrity)

Repeated sexual abuse within an unequal family relationship threatens not only bodily security but also psychological integrity. The prosecutor's reliance on Article 6(c) in conjunction with Article 15(1)(a) and the demand for a severe custodial sentence may therefore be assessed in light of the scale and duration of harm, not merely visible bodily injury. Mustafid et al. (2023) argue that sanctions for sexual violence against children should take account of psychological damage and enduring trauma, while Islamy and Harahap (2021) emphasize that contemporary maqashid-oriented responses to sexual offences should combine punishment with victim protection and recovery. Although the victim in the present case was legally an adult, the continuing father-daughter power relationship makes the same protective concern relevant: hifz al-nafs requires recognition of personal safety and psychological well-being as substantive interests rather than treating the absence of physical injury as evidence of low seriousness. This orientation is also consistent with maqashid-based scholarship placing protection of victims' life and dignity above purely formalistic indicators of harm (Herawati et al., 2023, p. 55).

Hifz al-'Aql (Protection of Intellect and Autonomy)

Hifz al-'aql is especially important because the case concerns the victim's ability to exercise autonomous judgment under conditions of psychological and relational domination. The absence of direct violence does not establish free choice when the surrounding relationship is structured by paternal authority, manipulation, and economic dependency. Aryana (2022, p. 58) explains that a victim's will may be weakened without visible violence through psychological domination arising from an unequal personal relationship. Hayati and Nurunnisa (2026, p. 2844) similarly show that coercion within a family can operate through manipulation, dependency, and structural subordination. In this sense, the relevant harm to hifz al-'aql is not literal damage to cognitive capacity but the impairment of meaningful deliberation and free sexual decision-making. UU TPKS is normatively significant because it recognizes abuse of position, trust, or influence as a mechanism capable of vitiating genuine sexual autonomy.

Hifz al-Nasl (Protection of Lineage)

The case materials state that the victim became pregnant as a result of the alleged conduct. This creates a direct lineage-related dimension. Islamic legal scholarship has long treated clarity of nasab

and protection of family lineage as essential interests because uncertainty or disruption in lineage may create consequences extending beyond the immediate parties (Fauzi, 2021, p. 112; Khakim & Ardiyanto, 2020, p. 24). Nelli and Hasanah (2024, p. 190) likewise discuss the need for legal clarity concerning children born from incestuous relationships. The maqashid analysis should nevertheless avoid language that stigmatizes the child. The harm lies in the unlawful conduct and the complex legal and social consequences generated by the adult perpetrator's actions, not in the status or dignity of the child who may be born. The pregnancy also potentially affects the victim's existing marital and family life, demonstrating why *hifz al-nasl* concerns the stability and dignity of family relations as well as formal genealogy.

Hifz al-Mal (Protection of Property and Economic Security)

The economic dimension is visible in the allegation that the defendant maintained a role as a principal provider even after the victim had married, thereby sustaining a dependency that restricted her practical capacity to resist. The causal connection is significant: control over family resources allegedly functioned not merely as background economic support but as an instrument that preserved access and influence. From the perspective of *hifz al-mal*, property should serve welfare and lawful support rather than become a means of domination. Economic dependency therefore contributes to the power-relation analysis under Article 6(c) because a victim may experience constrained choices even in the absence of express threats. This reading also explains why a purely physical conception of coercion would be inadequate for the alleged conduct.

The proportionality of the fifteen-year sentencing demand can be assessed through the cumulative nature of the harms identified above. *Hifz al-din* is implicated by prohibited sexual conduct within a mahram relationship and the destruction of the protective moral meaning of kinship; *hifz al-nafs* by repeated psychological and personal harm; *hifz al-'aql* by the alleged impairment of meaningful autonomy through domination; *hifz al-nasl* by pregnancy and the resulting lineage and family consequences; and *hifz al-mal* by the alleged instrumentalization of economic dependency. In maqashid terms, proportionality does not depend on mechanically counting five interests, but on examining the gravity, interconnectedness, and persistence of the harms. The prosecutor's demand for a sentence near the statutory maximum can therefore be normatively understood as a response to accumulated serious harm, subject ultimately to the sentencing authority and evidentiary findings of the court.

Additional Finding: Tension between Formal Legal Characterization and the Reality of Power Relations

Fiqh jinayah-oriented analysis of criminal adjudication underscores the importance of carefully distinguishing the legal characterization recorded in procedural documents from the broader relational context in which an offence occurs (Sari et al., 2025, p. 9). In the present case, the indictment and the prosecutor's interview indicate an absence of direct physical threats or overt violence during the sexual acts (H. A. Nasution, personal communication, May 6, 2026). That proposition must be interpreted with caution. It describes the form of coercion recorded in the available sources; it does not establish consent, and it is not presented here as a final judicial finding.

Three analytical frameworks should therefore be separated. First, under positive law, the absence of physical force does not negate Article 6(c) of UU TPKS if the offence is established through abuse of position, trust, or influence. Second, within fiqh jinayah, coercion (*ikrah*) need not be limited to visible physical compulsion (*ikrah hissi*). The relational circumstances described in the sources are more appropriately examined through the idea of non-physical coercion (*ikrah ma'nawi*), arising from psychological domination, economic dependency, and abuse of familial authority (Aryana, 2022, p. 58; Hayati & Nurunnisa, 2026, p. 2844). Third, the classical category of consensual zina presupposes willingness rather than coercion. Where meaningful consent is undermined by non-physical coercion, describing the victim as a willing participant would be conceptually inconsistent with the power-relation analysis.

Accordingly, references to incest or prohibited intercourse in this article identify the biological-kinship dimension of the conduct; they do not attribute responsibility to the victim or imply mutual consent. The analytical difficulty instead demonstrates a limitation of conventional criminal-law language when sexual domination operates through psychological manipulation and economic control rather than visible violence. Scholarship on evidentiary difficulties in jinayat rape cases similarly shows that formal legal categories may fail to capture the full reality of coercive relationships (A. A. Harahap

et al., 2026, p. 12). The defendant's alleged criminal responsibility under the prosecutor's UU TPKS construction therefore remains grounded in abuse of power relations, notwithstanding the absence of overt physical force.

CONCLUSION

The study concludes that the Public Prosecutor's choice of UU TPKS in Case Reg. No. PDM-28/SIPIROK/Eku.2/11/2024 can be doctrinally explained through the greater specificity of Article 6(c) in addressing sexual conduct enabled by abuse of position, trust, and influence. The conclusion should not be overstated as a universal rule that an adult married child living separately is automatically outside UU PKDRT. Rather, within the prosecutor's legal construction and the textual-systematic comparison conducted in this study, the changed household arrangement weakened the fit of the domestic-violence framework, while the continuing paternal power relationship directly corresponded to the offence structure of UU TPKS. Lex specialis therefore provides the principal preference argument, with lex posterior functioning only as supplementary support. From the perspective of Imam Asy-Syathibi's maqashid al-sharia, the sentencing demand addresses interconnected harms to hifz al-din, hifz al-nafs, hifz al-'aql, hifz al-nasl, and hifz al-mal. The alleged conduct undermined the protective meaning of kinship, psychological integrity, meaningful autonomy, lineage-related interests, and economic security. The absence of direct physical violence must not be equated with consent: the case materials instead support analysis through non-physical coercion (ikrah ma'nawi) involving psychological domination, dependency, and abuse of familial authority. References to incest in this article therefore describe the prohibited biological-kinship relation and do not transfer responsibility to the victim. For law-enforcement practice, sexual-violence cases involving family power relations should be assessed through a victim-protection approach that examines psychological, relational, and economic coercion alongside formal offence elements. Future research should revisit the analysis when a final judgment and fuller evidentiary record become available, allowing the prosecutorial construction examined here to be compared with the court's final legal reasoning.

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