

Analysis of the Public Prosecutor's legal considerations in the criminal prosecution of child sexual intercourse by educators

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Received: 16/03/2026

Revised: 05/04/2026

Accepted: 29/04/2026

Abstract

The purpose of this research is to analyze the juridical basis used by Public Prosecutors in formulating criminal charges and to assess its conformity with the principles of justice and child protection. The research method employed is normative legal research, utilizing statutory, case, and conceptual approaches. Data were collected through library research and analyzed qualitatively. The results of the study indicate that in formulating criminal charges, the Public Prosecutor does not merely focus on the normative fulfillment of the elements of the offense but also considers the power relation between the perpetrator and the victim, the perpetrator's position as an educator, as well as the psychological and social impacts on the victim. The criminal charges are constructed systematically by linking legal facts, evidence, and relevant legal norms. The conclusion of this study shows that the juridical considerations of the Public Prosecutor reflect a proper application of law and are oriented toward victim protection. However, there is still a need to strengthen the integration of a restorative justice approach to achieve more substantive justice.

Keywords

Public Prosecutor; criminal charges; sexual intercourse against children; educators and child protection

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1. INTRODUCTION

Children constitute a vulnerable legal subject whose rights must be protected comprehensively by the state, society, and family, particularly from all forms of sexual violence. Indonesian law has explicitly guaranteed such protection through Law Number 35 of 2014 concerning Child Protection, which affirms that crimes of sexual intercourse against children constitute serious criminal offenses requiring strict legal enforcement (Aprilianda, N., Farikhah, M., & Krisna, 2021). However, despite the existence of a strong normative framework, cases of sexual violence against children continue to occur and show increasingly complex patterns, especially when committed by individuals who hold positions of authority over children. (Hariyanto, H, 2024)



One particularly serious form of such crime is sexual intercourse against children committed by educators. Educators occupy a position of trust, authority, and moral responsibility within the educational environment. When that authority is abused to commit sexual offenses, the crime no longer constitutes merely a violation of criminal law, but also reflects an abuse of power and betrayal of institutional trust. This unequal power relation places child victims in a particularly vulnerable position, both legally and psychologically, thereby justifying a stronger legal response and stricter criminal accountability. (Shakeshaft, 2020)

Within the criminal justice system, the Public Prosecutor holds a strategic role in determining how legal norms are translated into criminal charges. Criminal charges are not merely procedural demands for punishment, but represent the state's legal reasoning in assessing criminal responsibility, aggravating circumstances, and the degree of protection afforded to victims. (Raharjo, 2010) In cases involving child victims and educator-offenders, the formulation of criminal charges becomes especially important because it reflects how the prosecution interprets legal norms concerning child protection, abuse of authority, and substantive justice. (Marzuki, 2021)

Previous studies have largely focused on legal protection for child victims of sexual violence, sentencing policy, and victimological impacts of sexual abuse. Other studies have examined restorative justice and child-oriented criminal policy in broader contexts. However, there remains limited research specifically examining the juridical considerations of Public Prosecutors in constructing criminal charges in cases of child sexual intercourse committed by educators, particularly regarding how prosecutors integrate statutory provisions, power relations, and victim protection into prosecutorial reasoning. This constitutes the central research gap addressed in this study. (Evelyn Brody, 2019)

Moreover, Decision Number 61/Pid.Sus/2025/PN Agm presents a relevant case for examining this issue because it involves the prosecution of an educator who committed sexual intercourse against a child, thereby raising important legal questions concerning aggravating factors, prosecutorial legal construction, and the orientation of criminal charges toward justice and victim protection. Accordingly, this study seeks to analyze the juridical considerations employed by the Public Prosecutor in formulating criminal charges and to evaluate whether such prosecutorial reasoning reflects the principles of legality, justice, and child protection. (Mark Hall, 2018)

The urgency of this research also lies in its distinctive analytical focus, which differs from that of previous studies. Earlier research has generally examined child sexual violence from broader perspectives, such as legal protection for child victims (Aprilianda, 2017a), victimological impacts and prevention of child sexual abuse (J. H. A. van Apeldoorn, 1958), and restorative justice approaches in criminal law policy (Aprilianda, 2017b). While these studies provide important theoretical foundations, they primarily emphasize normative child protection, sentencing policy, and victim recovery

mechanisms within the broader criminal justice discourse. They have not specifically analyzed how Public Prosecutors construct juridical arguments in criminal charges, particularly in cases where the perpetrator is an educator who holds authority over the child victim.

In contrast, this study focuses specifically on the prosecutorial stage of criminal justice by examining the juridical considerations underlying criminal charges in Decision Number 61/Pid.Sus/2025/PN Agm. This focus is significant because prosecution constitutes a decisive stage in criminal proceedings, shaping judicial consideration and ultimately influencing sentencing outcomes. (Jan de Vries, 2017) By analyzing prosecutorial legal reasoning, this research offers a more specific contribution to criminal law scholarship, particularly in understanding how statutory norms, aggravating circumstances, abuse of authority, and victim protection are translated into prosecutorial argumentation. (Anderson, 2018) Therefore, this study not only complements previous scholarship but also provides a more focused perspective on the role of Public Prosecutors in realizing substantive justice for child victims of sexual violence.

The legal basis for handling criminal acts of sexual intercourse against children in Indonesia is primarily regulated under Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection, particularly Article 76D, which prohibits any person from using violence, threats of violence, coercion, deception, a series of lies, or persuasion to engage a child in sexual intercourse, in conjunction with Article 81, which stipulates criminal sanctions for perpetrators of such acts. (Neil Andrews, 2018) Furthermore, Article 81, paragraph (3), provides for aggravated punishment when the perpetrator is a parent, guardian, caregiver, educator, or another party with authority or a trust relationship with the child victim.

In addition, the prosecution process is institutionally grounded in Law Number 11 of 2021, which amends Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia. It affirms the authority of the Public Prosecutor to conduct prosecutions within the criminal justice system. These provisions collectively establish a strong juridical foundation for prosecuting child sexual offenses, particularly those involving educator-offenders, while emphasizing legal protection, aggravation of criminal responsibility, and the state's obligation to safeguard the best interests of the child. (World Health Organization, 2022)

Based on the background outlined above, this study focuses on two main research questions. First, it examines how the juridical considerations of the Public Prosecutor are constructed in formulating criminal charges for the offense of sexual intercourse against a child committed by an educator, particularly in Decision Number 61/Pid.Sus/2025/PN Agm. Second, it analyzes the extent to which the criminal charges formulated by the Public Prosecutor reflect the fundamental principles of legality, justice, and legal protection for child victims within the Indonesian criminal justice system.

In line with these research questions, the objectives of this study are clearly formulated. This study aims, first, to analyze the juridical considerations employed by the Public Prosecutor in constructing criminal charges in cases of sexual intercourse against children committed by educators, with specific reference to Decision Number 61/Pid.Sus/2025/PN Agm. Second, this study seeks to examine whether the criminal charges formulated by the Public Prosecutor have adequately reflected the principles of legality, substantive justice, and sufficient legal protection for child victims within the broader framework of the Indonesian criminal justice system.

This article is systematically organized into several sections. The Introduction presents the study's background, legal issues, research gap, legal basis, formulation of the problems, and research objectives. The Method section explains the type of research, the approaches employed, the sources of legal materials, the techniques for collecting legal materials, and the methods of legal analysis used in this study. (Jimly Asshiddiqie, 2014) The Findings and Discussion section elaborates on the research findings concerning the juridical considerations of the Public Prosecutor in formulating criminal charges in cases of sexual intercourse against children committed by educators, followed by an analytical discussion from the perspectives of criminal law, victim protection, and substantive justice. Finally, the Conclusion summarizes the study's principal findings and presents recommendations for strengthening prosecution practices that are more oriented toward child protection and substantive justice. (Kathleen Daly, 2006)

2. METHOD

This study employs normative legal research, which examines law as a system of norms contained in statutory regulations, court decisions, and legal doctrines relevant to the issues under study. (Marlina, 2015) This research focuses on analyzing the juridical considerations of the Public Prosecutor in formulating criminal charges for the offense of sexual intercourse against a child committed by an educator. The research is descriptive-analytical, aiming not only to describe the legal construction of criminal charges but also to critically analyze their conformity with the principles of legality, justice, and child protection within the Indonesian criminal justice system. (Hutchinson, 2018)

This study applies a statutory, case, and conceptual approach. The statutory approach is used to examine legal provisions relevant to child protection and criminal liability, particularly Law Number 35 of 2014 concerning Child Protection and other applicable criminal law norms governing sexual offenses against children. The case approach is employed through an analysis of Decision Number 61/Pid.Sus/2025/PN Agm, focusing on how the Public Prosecutor constructed criminal charges, identified aggravating circumstances, applied Article 76D in conjunction with Article 81 paragraph (3), and linked factual findings with statutory provisions in formulating prosecutorial demands. (Hans

Kelsen, 2002) For example, the analysis examines whether the prosecutor explicitly treated the defendant's status as an educator as an aggravating factor and whether the prosecutorial argument adequately reflected the principles of child protection and substantive justice. Meanwhile, the conceptual approach is used to analyze relevant legal concepts, including juridical considerations, criminal responsibility, victim-oriented justice, and legal protection for children. (McLeod, 2021)

This study employs normative legal research with a descriptive-analytical nature, focusing on the examination of legal norms contained in statutory regulations, court decisions, and legal doctrines relevant to the issues under study. The research specifically analyzes the juridical considerations of the Public Prosecutor in formulating criminal charges for the offense of sexual intercourse against a child committed by an educator, while critically assessing their conformity with the principles of legality, justice, and child protection within the Indonesian criminal justice system. (Terry Hutchinson & Nigel Duncan, 2012a)

The legal materials used in this study are categorized into three main types: primary, secondary, and tertiary. Primary legal materials consist of binding legal sources, including Law Number 35 of 2014 amending Law Number 23 of 2002, as well as relevant provisions of the Indonesian Criminal Code relating to sexual offenses against children. In addition, this study refers to Law Number 11 of 2021 amending Law Number 16 of 2004, as well as Decision Number 61/Pid.Sus/2025/PN Agm as the principal case analyzed.

Secondary legal materials include scholarly sources that explain and interpret primary legal materials, such as legal textbooks on criminal law, child protection law, victimology, and theories of prosecution. Additionally, this study utilizes scientific journal articles addressing issues of sexual violence against children, prosecutorial discretion, and substantive justice, as well as research findings, legal commentaries, and expert opinions relevant to the topic. Meanwhile, tertiary legal materials serve as supporting references to clarify legal terms and concepts used in this research, including legal dictionaries, encyclopedias, and other relevant reference sources. *Technique of Collecting Legal Materials*

The collection of legal materials in this study was carried out through library research, involving the identification, review, and selection of legal sources relevant to the research issues, including statutory regulations, court decisions, legal literature, and scientific journal articles. Furthermore, this study employed a data recording technique (note-taking) to systematically record important legal norms, judicial considerations, prosecutorial arguments, and doctrinal opinions relevant to the subject matter. (Rebecca Lee, 2022) The recorded legal materials were then classified according to thematic categories, such as statutory basis, juridical considerations, aggravating circumstances, and child

protection principles, in order to facilitate a structured and comprehensive legal analysis. (Mike McConville & Wing Hong Chui. (Eds.), 2017)

The collection of legal materials in this study was conducted through library research, involving the identification, selection, and examination of statutory regulations, court decisions, legal literature, and scientific journal articles relevant to the research topic. (Matthew Harding, 2020) In addition, this study applied a data recording technique (note-taking), in which important legal provisions, judicial considerations, prosecutorial arguments, and relevant scholarly opinions were systematically recorded, classified, and organized according to the research focus. This recording process facilitated categorization of legal materials into themes, such as statutory basis, aggravating circumstances, prosecutorial legal reasoning, and child protection principles, thereby enabling a more structured and comprehensive legal analysis. (Terry Hutchinson & Nigel Duncan, 2012b)

The legal materials in this study were analyzed qualitatively through legal interpretation, legal systematization, and legal argumentation (Ian McLeod, 2021). The dominant method of legal interpretation employed in this research is systematic interpretation, (Neil MacCormick, 2008) by examining legal provisions in relation to one another within the broader framework of Indonesian criminal law, particularly the interconnection between Article 76D and Article 81 paragraph (3) of Law Number 35 of 2014 concerning Child Protection, as well as relevant provisions governing prosecutorial authority.

In addition, grammatical interpretation was used to understand the textual meaning of statutory norms. In contrast, a teleological interpretation was applied to examine the legislative purpose behind aggravated punishment for educator-offenders, particularly to ensure child protection and substantive justice. (Brian Bix, 2012) Through these interpretative methods, the juridical considerations of the Public Prosecutor were analyzed in a structured manner to assess their conformity with the principles of legality, justice, and victim protection. (Frederick Schauer, 2021a)

This legal analysis process prioritizes deductive reasoning, applying general legal rules from the Child Protection Act to the specific legal facts found in Decision Number 61/Pid.Sus/2025/PN Agm. (Brian Leiter, 2015). Furthermore, a note-taking technique is employed to ensure that all legal considerations from both the Prosecutor and the Judge are classified thematically. This approach yields an objective conclusion regarding the quality of criminal charges brought against educators who commit acts of sexual violence. (Lee Epstein & Gary King, 2002)

3. FINDINGS AND DISCUSSION

3.1. Research Findings

Based on a comprehensive analysis of Decision Number 61/Pid.Sus/2025/PN Agm, the study found

that the Public Prosecutor, in formulating the criminal charges, transcended mere formal compliance with the elements of the offense. Instead, the Prosecutor engaged in a profound and multidimensional juridical analysis. The criminal charges articulate a systematic endeavor to bridge the empirical legal facts uncovered during the trial with the applicable legal norms—specifically, the stringent provisions of Article 76D, in conjunction with Article 81, paragraph (3), of Law Number 35 of 2014 concerning Child Protection. (Angela J. Davis, 2020)

First, the Public Prosecutor explicitly and strategically positioned the defendant's status as an educator as an aggravating factor in determining criminal liability. This positioning was anchored not only in the law's normative prescriptions but also in broader sociological and moral paradigms regarding the pivotal role of educators. Educators are inherently mandated to protect, nurture, and guide children. The betrayal of this mandate creates a severely asymmetrical power dynamic between the perpetrator and the victim, granting the perpetrator a dominant position that inherently facilitates the egregious abuse of authority. (Charol Shakeshaft, 2020)

Second, the Prosecutor intrinsically wove the dimension of victim protection into the very fabric of the criminal charges. This is vividly reflected in the profound emphasis placed on the psychological, social, and moral devastation endured by the child victim. Within the charges, the Prosecutor did not merely present a sterile, factual recitation of the legal events; rather, they extensively elaborated on the profound suffering inflicted upon the victim. This included detailed accounts of enduring trauma, acute fear, and severe disruptions to the child's psychological and emotional development. (Ben Mathews & Delphine Collin-Vézina, 2019)

Third, the research identified that the Public Prosecutor employed a highly systematic and structured argumentative approach in drafting the indictment. The charges were meticulously organized in a coherent trajectory: commencing with a granular description of the legal facts, proceeding to a rigorous analysis of the evidentiary materials, seamlessly linking these elements with the pertinent legal norms, and culminating in a well-reasoned determination of the specific type and quantum of punishment demanded. (Nancy J. King, 2019)

Fourth, the charges demonstrate a sophisticated integration of both normative and substantive legal approaches. This dual approach is evident in the Prosecutor's diligent effort not only to satisfy the formal, dogmatic elements of the criminal offense but also to actively pursue the fundamental philosophical objectives of punishment—namely, specific and general deterrence, the safeguarding of societal order, and the essential recovery of the victim. (Michael Tonry, 2019)

However, a critical review of these findings also reveals certain functional limitations in the prosecutorial strategy, most notably the suboptimal integration of a restorative justice framework. While the devastating impact on the victim was thoroughly articulated, the charges lacked clear,

actionable demands or concrete mechanisms aimed directly at facilitating the victim's holistic recovery. Furthermore, in certain segments of the indictment, there remained a discernible reliance on generalized legal arguments, missing an opportunity to delve even deeper into the unique, individualized circumstances and specific vulnerabilities experienced by the child victim. (Kathleen Daly, 2020)

3.2. Discussion

Juridical Analysis and Critical Argumentation. From a strictly normative standpoint, the formulation of the criminal charges by the Public Prosecutor is entirely consistent with Indonesian positive law, particularly with respect to the targeted application of Article 81, paragraph (3), in conjunction with Article 76D of the Child Protection Law. However, applying a critical legal lens reveals that implementing the law must go beyond mere compliance with the principle of legality. According to the eminent criminal law scholar, criminal law enforcement must not remain stagnant within the confines of "procedural (formal) justice"; rather, it must vigorously strive to realize "substantive justice." Consequently, criminal charges must embody a delicate yet robust balance between the macro-level protection of society and the micro-level protection of the individual victim. (Andrew Ashworth, 2021)

A critical evaluation of the Prosecutor's argument suggests that, while the defendant's culpability (*schuld*) was masterfully constructed, the underlying philosophy of the sentencing demand remains heavily steeped in the paradigm of retributive justice (retaliation). In the specific context of sexual crimes against minors, a progressive legal framework dictates that criminal charges should push the boundaries of conventional prosecution by actively demanding restitution or direct compensation for the victim, a concept heavily endorsed by witness and victim protection laws. The stark absence of concrete recovery or restorative measures in the charges suggests that the prevailing law enforcement paradigm still predominantly views the crime as a sovereign offense against the state, rather than recognizing it as a profound, tangible injury requiring direct remediation for the victim. (John Braithwaite, 2020)

Victim Perspective (Victimology Theory) Through the lens of victimological studies, adopting a victim-oriented approach is not merely an option but an absolute necessity to prevent the criminal justice system from becoming myopically perpetrator-centric. According to a leading proponent of victim protection theory, victims of crime are the primary bearers of suffering and, as such, possess an inherent right to undivided attention, comprehensive protection, and state-sponsored recovery. In harrowing cases of child sexual abuse, the victimization process is twofold: the victim suffers from primary victimization (the direct, immediate trauma of the crime) and is simultaneously at high risk of secondary victimization exacerbated by a prolonged, insensitive judicial process. The Public Prosecutor's commendable effort to detail the victim's psychological trauma aligns well with this

theoretical framework. Nevertheless, from a strict victimological perspective, these narrative descriptions must be aggressively coupled with formal demands to compel medical and psychological rehabilitation facilities. Failure to do so risks reducing the victim to a mere evidentiary instrument (a witness) utilized solely to secure a conviction, rather than a human being in urgent need of healing. (Sandra Walklate, 2018)

Power Relations and the Abuse of Power Theory. The imposition of a sentence enhancement in this case provides a textbook application of the Abuse of Power theory. Invoking the timeless wisdom of Lord Acton—"Power tends to corrupt, and absolute power corrupts absolutely"—it becomes evident that the inherent power an educator wields over a student creates an environment of total authority and immense trust, making it highly susceptible to catastrophic exploitation. In the realm of sexual offenses, the abuse of power crystallizes when the perpetrator maliciously manipulates their structural authority, moral standing, and dominant hierarchical position to coerce, intimidate, or psychologically paralyze a victim who is trapped in a subordinate, inherently powerless state. This systemic exploitation of power relations strikes at the very core and integrity of educational institutions. Consequently, the imposition of the one-third sentence enhancement, as explicitly mandated by the Child Protection Law, constitutes a proportionate and necessary form of legal accountability for the perpetrator's egregious breach of fiduciary duty and societal trust. (Michel Foucault, 1980)(Steven Lukes, 2021)

Connection Between the Charges and the Judge's Considerations in the Verdict. Ultimately, the substantive quality and legal weight of the criminal charges drafted by the Public Prosecutor are tested and validated through the judge's final verdict. A thorough review indicates that the judge's legal reasoning (*ratio decidendi*) in adjudicating case Number 61/Pid.Sus/2025/PN Agm was fundamentally shaped by the legal architecture meticulously constructed within the Prosecutor's indictment. In formulating their considerations, the panel of judges explicitly adopted and echoed the Public Prosecutor's central arguments for sentence enhancement due to the toxic power dynamic (the educator-student relationship) and the catastrophic, enduring impact inflicted on the victim. (Frederick Schauer, 2021b)

This crucial intersection proves that highly argumentative, analytically rigorous, and comprehensive criminal charges function far beyond their role as mere administrative documents. They serve as potent intellectual instruments that actively guide and solidify the judge's inner conviction. As articulated by the respected legal authority Yahya Harahap (2006), a judge's considerations must be grounded in objective, rational reasoning, inextricably linked to the empirical facts uncovered during the trial. The seamless alignment between the Public Prosecutor's indictment—which forcefully highlighted the abuse of power and the depth of the victim's suffering—and the judge's rationale for imposing the maximum statutory sanction, powerfully illustrates a cohesive synchronization of

paradigms among law enforcement officials. This unified front is essential to delivering a form of justice that not only punishes the offender with the full weight of the law but also broadcasts an unequivocal moral imperative to society to protect children. (Neil MacCormick, 2008)

4. CONCLUSION

Based on the comprehensive research and discussion regarding the Public Prosecutor's juridical considerations in formulating criminal charges for child sexual abuse committed by an educator, the following core conclusions are drawn is Systematic and Normative Legal Construction: The formulation of the criminal charges demonstrates a highly rational and systematic legal construction. Firmly grounded in positive law (Article 81 paragraph (3) in conjunction with Article 76D of Law Number 35 of 2014 concerning Child Protection), the Prosecutor successfully integrated the formal elements of the offense with multidimensional juridical aspects.

Recognition of Asymmetrical Power Relations: The Prosecutor astutely positioned the defendant's status as an educator as an aggravating factor. This reflects a profound juridical awareness that crimes facilitated by an abuse of power carry a significantly heightened degree of culpability, as they simultaneously violate criminal norms and shatter public trust in educational institutions.

Emergence of Victim-Oriented Justice: Substantively, the indictment reflects a progressive shift towards victim-oriented justice. The severity of the charges was deliberately correlated with the profound psychological and social impacts endured by the child victim, recognizing the victim's rights as an essential, rather than peripheral, component of the criminal justice process.

Persistent Dominance of the Retributive Paradigm: Despite these positive developments, the prosecutorial approach remains predominantly retributive (punishment-focused). Crucial restorative justice elements—specifically, concrete legal demands for the holistic recovery, protection, and rehabilitation of the victim—have not yet been optimally integrated into the charging process.

To realize a criminal justice system that is substantively just, humane, and unequivocally oriented toward the best interests of the child, the following academic and practical recommendations are proposed is Integration of Restorative Demands: Future prosecutorial practices must transcend purely punitive orientations. Prosecutors should actively and formally integrate restorative demands into their criminal charges, explicitly requesting restitution, compensation, and state-facilitated medical/psychological rehabilitation for child victims.

Formulation of Specialized Prosecutorial Guidelines: It is recommended that the Attorney General's Office develop and implement specific, trauma-informed prosecutorial guidelines for handling child sexual abuse cases within educational settings. These guidelines should mandate the inclusion of victim recovery instruments alongside the most severe punitive measures.

Enhancement of Victimological Competence: There is an urgent need for continuous institutional capacity-building to deepen prosecutors' understanding of victimology and the abuse-of-power theory. This ensures that legal considerations consistently achieve a balance between penalizing the offender and healing the victim.

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