

LEGAL ANALYSIS OF THE APPLICATION OF ALTERNATIVE CHARGES IN SEXUAL VIOLENCE CASES FOLLOWING THE ENACTMENT OF THE TPKS LAW (Study of Decision Number 99/Pid.Sus/2024/PN Lubuk Pakam)

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ABSTRACT

The enactment of Law Number 12 of 2022 (UU TPKS) creates a legal intersection with the Criminal Code (KUHP) in prosecuting sexual violence, necessitating strategic alternative indictments. This research analyzes the juridical application of alternative charges in Decision Number 99/Pid.Sus/2024/PN Lubuk Pakam to determine the validity of applying the KUHP after the enforcement of UU TPKS. Utilizing a normative juridical method with a case study approach, this study evaluates the judge's considerations regarding the *lex specialis derogat legi generali* principle. The discussion reveals that while the Public Prosecutor presented alternative charges combining Article 285 KUHP and Article 6 of UU TPKS, the Panel of Judges prioritized the KUHP indictment. This decision was grounded in the specific facts the use of a sharp weapon and physical force which aligned more precisely with the element of violence in the KUHP rather than the abuse of authority emphasized in the UU TPKS. The analysis confirms that enforcing general law is legally justified when factual violence outweighs relational exploitation. The conclusion asserts that the 12-year imprisonment satisfies the sense of justice. It is suggested that law enforcers maintain flexibility in selecting articles that best represent the *modus operandi* to ensure effective prosecution.

Keywords: Juridical Analysis, Alternative Indictment, Sexual Violence, UU TPKS, Court Decision.

INTRODUCTION

Sexual violence is a crime against humanity that violates a person's dignity and is contrary to human rights values. This phenomenon has become a national urgency in Indonesia, considering its destructive impact on victims both physically and psychologically.¹ The complexity of proving and protecting victims often poses an obstacle

¹ Siti Shalima Safitri, Mohammad Didi Ardiansah, and Andrian Prasetyo, "Quo Vadis Keadilan Restoratif Pada Perkara Tindak Pidana Kekerasan Seksual Pasca Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual (Studi Terhadap Pasal 23 UU TPKS)," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 1 (2023): 29–44.

to conventional criminal law enforcement. Therefore, legal reforms are continuously being pushed to create more responsive and just instruments.²

The enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes marks a new historical milestone in Indonesia's criminal justice system.³ This regulation is expected to fill the legal vacuum and address the limitations found in the Criminal Code. The TPKS Law brings a new paradigm that is victim-centered and expands the types of sexual violence offences that were not previously specifically accommodated in the KUHP.⁴

New challenges emerged at the implementation level, particularly regarding the overlap between articles in the Criminal Code and the TPKS Law.⁵ Prosecutors are often faced with strategic choices when drafting indictments, whether to use general articles from the Criminal Code (*lex generalis*) or to directly apply specific articles from the TPKS Law (*lex specialis*). This strategy is crucial because it will determine the direction of the evidence and the severity of the sanctions that can be imposed. The principle of *lex specialis derogat legi generali* states that special laws override the validity of general laws.⁶

One common form of prosecution strategy is the drafting of alternative indictments.⁷ This form of indictment gives the judge the flexibility to choose which charge is best proven based on the facts of the trial.⁸ While offering flexibility, the application of alternative charges combining the Criminal Code and the TPKS Law has sparked legal discourse regarding the appropriateness of applying the principle of *lex specialis derogat legi generali*.⁹

An interesting case study to analyse in this context is the Lubuk Pakam District Court Decision Number 99/Pid.Sus/2024/PN Lbp. In this case, the defendant Robbi Hariagus is

² Afric Stanley Simamora, "Pengaturan Pemidanaan Tindak Pidana Kekerasan Seksual Dalam Hukum Positif Di Indonesia," *Locus: Jurnal Konsep Ilmu Hukum* 3, no. 4 (2023): 204–217.

³ K Shapira et al., "Perlindungan Hukum Terhadap Perempuan Dan Anak-Anak Yang Menjadi Korban Tindak Pidana Kekerasan Seksual (Studi Terhadap UU No. 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual)," *J. Pahlawan* 6, no. 2 (2023): 9–20.

⁴ M Chaerul Risal, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual Pasca Pengesahan Undang-Undang Tindak Pidana Kekerasan Seksual: Penerapan Dan Efektivitas," *Al-Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* 11, no. 1 (2022): 75–93.

⁵ Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170–196.

⁶ Mursyid Djawas et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review* 10, no. 1 (2025): 64–82.

⁷ Sri Wahyuni Laia and Mompang L Panggabean, "Sentencing in Narcotics Criminal Offenses from the Perspective of Certainty and Justice," *JURNAL AKTA Vypedumenu: Universitas Islam Sultan Agung* 11, no. 4 (2024): 1112.

⁸ Pengadilan Negeri Lubuk, *Putusan Pengadilan Negeri Lubuk Pakam Nomor 99/Pid.Sus/2024/PN Lbp*, ed. Morailam Purba, Dewi Andriyani, and Iman Budi Putra Noor (2024).

⁹ Irda Nur Khumaeroh, "Kebijakan Hukum Pidana Terhadap Perkembangan Tindak Pidana Kekerasan Seksual Yang Bertujuan Menciptakan Keadilan Gender," *Jurnal Hukum Indonesia* 2, no. 2 (2023): 53–59.

brought to trial for the alleged crime of rape against the victim Nayla Artika Dwi Kesya. This case occurred in October 2023, when the TPKS Law was fully in effect as positive law in Indonesia.

Legal facts show that the defendant used the modus operandi of entering the victim's boarding room, hiding, and then physically attacking. The defendant used violence and the threat of a sharp weapon to incapacitate the victim before having. This event clearly contains elements of real physical violence, but it also occurred within a relationship where the defendant is the child of the owner of the boarding house where the victim lives.

The public prosecutor in this case drafted the indictment in the alternative. The First Indictment uses Article 285 of the Criminal Code regarding violent rape, while the Second Indictment uses Article 6 letter c of Law of the Republic of Indonesia No. 12 of 2022 regarding Sexual Violence Crimes. This construction of the indictment places the old rules alongside the new rules as equal options for the Panel of Judges.

The uniqueness arises when the panel of judges, in their decision, chose to prove the First Indictment (Article 285 of the Criminal Code) and impose a sentence based on that article, rather than using the TPKS Law. This raises theoretical questions about the effectiveness of the TPKS Law as a *lex specialis* in rape cases with a dominant element of physical violence. Is the use of the Criminal Code still relevant and appropriate when special laws are available? Judges' considerations in sentencing can take into account various factors including the form of the perpetrator's fault, motives, method of committing the crime, and the impact on the victim or their family.¹⁰

This research will investigate three primary issues based on this context. What is the applicability of alternative charges in sexual violence cases in Decision Number 99/Pid.Sus/2024/PN Lubuk Pakam following the implementation of the TPKS Law? Secondly, has the implementation of these alternative charges complied with criminal law rules and the principle of *lex specialis derogat legi generali*? Third, what factors did the judge contemplate in adjudicating the alternatively charged sexual violence case?

This research aims to provide a legal analysis of judicial practices in handling sexual violence cases during the transition and coexistence between the Criminal Code and the TPKS Law. The expected benefits of this research are to provide input for law enforcement agencies in formulating precise indictments and to ensure legal certainty in applying just criminal sanctions for victims and defendants. Ensuring that legal actors like prosecutors and

¹⁰ Riza Alifianto Kurniawan, Iqbal Felisiano, and Astutik Astutik, "Penafsiran Victim Precipitation Untuk Pemidanaan Kekerasan Seksual," *Masalah-Masalah Hukum* 52, no. 1 (2023): 86–96.

judges have comprehensive understanding of gender issues and sexual violence is crucial for handling such cases.¹¹

Theoretically, the indictment is the judge's crown, serving as the basis for examination in court proceedings. Alternative charges are a form of indictment where several criminal offences are charged against the defendant simultaneously, but the judge only needs to prove one of the charges considered to best meet the elements of the crime. The selection of articles in alternative indictments must be careful so as not to disregard the principle of *lex specialis*, where specific rules must take precedence over general rules, unless the characteristics of the act are more appropriately addressed by the elements in those general rules.

METHOD

This research is a normative legal research (doctrinal research).¹² The main data sources used are secondary data in the form of primary legal materials, namely the Lubuk Pakam District Court Decision Number 99/Pid.Sus/2024/PN Lbp (Putusan Nomor 99/Pid.Sus/2024/PN Lbp, 2024), as well as secondary legal materials in the form of relevant legal literature. The data collection technique was carried out through document study (library research),¹³ where the data obtained was then analyzed qualitatively.¹⁴ Drawing conclusions is done using the deductive logic method, moving from the major premise in the form of legal rules and doctrines, to the minor premise in the form of legal facts in the decision, to answer the formulation of the proposed problem.

DISCUSSION

Construction of the Public Prosecutor's Alternative Charge in the A Quo Case

In the criminal justice system, an indictment serves a fundamental function as a delimitation of the scope of the trial.¹⁵ An indictment is a letter or document that states the alleged criminal act being charged and serves as the basis for the judge to conduct an examination and, if successful, issue a verdict that sentences the defendant to death. Adami Chazawi stated that an indictment is a letter prepared by the public prosecutor based on the BAP received from the investigator and which provides a complete, precise, and

¹¹ Azza Fitrahul Faizah and Muhammad Rifqi Hariri, "Pelindungan Hukum Terhadap Korban Revenge Porn Sebagai Bentuk Kekerasan Berbasis Gender Online Ditinjau Dari Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Jurnal Hukum Lex Generalis* 3, no. 7 (2022): 520–541.

¹² Batahan Fransciskus Sihombing, "Indonesian Law: Development and Renewal," *Beijing L. Rev.* 15 (2024): 1.

¹³ Achmad Irwan Hamzani et al., "Legal Research Method: Theoretical and Implementative Review," *International Journal of Membrane Science and Technology* 10, no. 2 (2023): 3610–3619.

¹⁴ Dinda Keumala, "The Dialectic of Notary Inheritance Deed Arrangement," *Yuridika* 38, no. 1 (2023): 143–158.

¹⁵ Ramiyanto Ramiyanto, "Ultra Petita Decisions In The Context Of Criminal Law Enforcement In Indonesia," *Jurnal Hukum dan Peradilan* 10, no. 1 (2021): 173–196.

comprehensive description of the elements of the crime committed by a person or several people. The indictment contains a description of the relationship or connection between the crime and certain events that serve as the basis for examination in court. From this perspective, it can be concluded that the indictment is very important because it contains information about the crime committed by the defendant, which serves as the basis for assessing the criminal case and establishing parameters that can be used by the judge to issue a verdict in a criminal case.¹⁶

In the context of criminal law, there are several recognized forms of indictment. First, a single indictment is the easiest form in terms of proof. This is because it contains no other crimes and there is only one crime that the prosecutor believes can prove the crime. An example is a simple theft case. Second, an indictment that excludes one another. Third, a subsidiary indictment is a form of indictment in which the criminal acts are listed sequentially, from the most serious to the least serious. Fourth, a cumulative indictment is a form of indictment that includes several criminal acts committed by only one person.¹⁷

In case No. 99/Pid.Sus/2024/PN Lbp, the Public Prosecutor presented defendant Robbi Hariagus with an alternative indictment. The alternative indictment is characterized by the use of the word "OR" between the charges, indicating that although the defendant is charged with multiple articles, only one article needs to be proven for conviction.¹⁸ This type of indictment is generally used when the public prosecutor is unsure which specific legal qualification or article is most appropriate for the alleged criminal act, thereby reducing the chance of the defendant evading legal consequences.

The first indictment was Article 285 of the Criminal Code. This article regulates the crime of rape, with the element of "violence or the threat of violence forcing a woman to have sexual intercourse with him outside of marriage".¹⁹ The description of the facts in the first indictment emphasizes the defendant's physical actions: entering the victim's room, hiding, gagging the victim's mouth, and the forced sexual intercourse under threat. The narrative in this indictment heavily emphasizes the aspect of physical violence (gagging, kicking the dish rack, and the victim's collapse) as a means of coercion.

¹⁶ M.Muhibin Asshoha, Nisbati Sandiah Humaeroh, & Rahma Eka Fitriani, Analisis Penetapan Surat Dakwaan Terhadap Suatu Tindak Pidana, *Al-Jinayah: Jurnal Hukum Pidana Islam*, Vol 8 No 1 (2022), hlm 40

¹⁷ Ibid

¹⁸ B Humendru, D Ginting, and R Sitorus, "Analisis Yuridis Penentuan Jenis Dakwaan Yang Disangkakan Kepada Terdakwa Dalam Perkara Tindak Pidana Narkotika," *Journal of Education, Humaniora and Social Sciences (JEHSS)* 3, no. 1 (2020): 222–226.

¹⁹ Aulia Maharani, "Sexual Harassment Cases in the Indonesian Broadcasting Commission Against Victims: How Is the Law Enforcement?," *Journal of Creativity Student* 7, no. 1 (2022): 113–132.

The second indictment was formulated using Article 6 letter c of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence. The core element of this article involves the abuse of position, authority, trust, or circumstances, or taking advantage of someone's vulnerability, inequality, or dependence, to force or mislead them into sexual intercourse or obscene acts.²⁰ In the description of the second charge, although the facts of the incident are the same, the legal emphasis is directed at how the defendant abused the circumstances or vulnerability of the victim to achieve his goals. The use of this alternative charge demonstrates the Public Prosecutor's strategy to anticipate the burden of proof; if the element of physical violence in Article 285 of the Criminal Code is difficult to prove, then the element of abuse of circumstances in the TPKS Law can serve as a safety net, or vice versa.²¹

Review of the Principle of *Lex Specialis Derogat Legi Generali* in Article Selection

The application of the alternative charge, which juxtaposes Article 285 of the Criminal Code (*Lex Generalis*) and Article 6(c) of the TPKS Law (*Lex Specialis*), is interesting to test for its validity. Theoretically, the principle of *lex specialis derogat legi generali* mandates that special rules must override general rules.²² This principle is recognized in Indonesian criminal law, for instance, through Article 103 of the Penal Code. However, in criminal justice practice, the application of this principle depends heavily on the alignment of the facts of the act (*daad*) with the elements of the crime. In this case, the legal facts revealed at trial strongly reflected nuances of real physical violence, not merely a subtle abuse of power.

The defendant was proven to have used a knife to threaten the victim, saying, "YOU SHUT UP, DON'T SCREAM." Furthermore, the defendant also used a cloth to gag the victim's mouth and threw her body. These brutal facts—the use of a sharp weapon and a direct physical attack—more accurately fulfill the element of "violence or threat of violence" as rigidly defined in Article 285 of the Criminal Code.²³ Article 285 KUHP specifically defines rape as forcing a woman to have sexual intercourse outside of marriage through

²⁰ Fuadi Isnawan, "Quid Pro Quo Sexual Harassment Involving an Employee Through Staycation Modus," *Jurnal Ius Constituendum* 10, no. 3 (2025): 453–470.

²¹ W Edie, Nur Dwi, and Gunarto Gunarto, "Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82/Pid. B/2019/PN. Blora)," *Jurnal Daulat Hukum* 3, no. 1 (n.d.): 324302.

²² Cholidah Baghos and Rizki Fida Lestari, "Imposition of Fines Converted to Confinement for Juvenile Sex Offenders (Case Study Decision Number 1/Pid. Sus-Anak/2019/PN. Pts)," *KnE Social Sciences* (2022): 653–662.

²³ Velisia Putri Natalie and I Made Wirya Darma, "Visum et Repertum as Evidence in Sexual Violence Prosecutions: A Criminal Law Literature Review," *JUSTISI* 9, no. 3 (2023): 303–325.

violence or threats of violence.²⁴ What constitutes "violence" in this context includes physical power or actions that render a person physically helpless. Meanwhile, Article 6(c) of the TPKS Law emphasizes abuse of position or authority.²⁵ While the TPKS Law broadly addresses various forms of sexual violence, including those involving abuse of position, authority, or vulnerable circumstances,²⁶ the primary instrument used to paralyze the victim in this case was not the power relationship, but rather the physical threat that instantly destroyed the victim's will.

The Public Prosecutor's choice to use Article 285 of the Criminal Code as the First Charge and the Judge's choice to use it as the basis for sentencing do not necessarily violate the principle of *lex specialis*. This is because Article 285 of the Criminal Code contains the element of "violence," which more specifically describes the defendant's modus operandi than the element of "abuse of authority" in Article 6 of the TPKS Law. The TPKS Law does not automatically nullify the applicability of Article 285 of the Criminal Code if the act purely meets the elements of conventional rape with physical violence. Therefore, the application of Article 285 of the Criminal Code in this decision reflects the appropriate subsumption of facts into the legal norms most relevant to the characteristics of the defendant's actions. Alternative indictments are a common strategy when the prosecutor is uncertain which specific criminal act can be best proven, allowing the judge to choose the charge that is best supported by the evidence.

Judge's Legal Considerations and Sanction Imposition

In its deliberations, the Panel of Judges firmly chose the First Alternative Charge, Article 285 of the Criminal Code, after reviewing the facts revealed at trial. The judges concluded that the "whosoever" element had been fulfilled because the defendant confirmed his identity and was capable of taking responsibility. The "whosoever" element in Article 285 KUHP refers to the subject of the criminal act, which is a person who can be held criminally responsible.²⁷

The judges' primary focus lay in proving the element "by force or threat of force, forcing a woman to have sexual intercourse". The judges considered the victim's witness

²⁴ Zainurohmah Zainurohmah et al., "Provisions of Legal Aid as a Form of Protection for Child Victims of Rape," *The Digest: Journal of Jurisprudence and Legisprudence* 4, no. 1 (2023): 21–46.

²⁵ Febry Dwi Prehatiningsih et al., "Reconstruction of Legal Norms through Harmonization of Sexual Crime Laws," *Unnes Law Journal* 9, no. 1 (2023): 45–66.

²⁶ Deby Oktavia Yusrianti, Lies Sulistiani, and Soma Wijaya, "The Implementation of Law Number 12 of 2022 and the Role of State Institutions In Protecting Child Victims of Sexual Violence," *Journal of Public Representative and Society Provision* 5, no. 1 (2025): 222–237.

²⁷ Joko Susanto and Indah Sri Utari, "Children as Victims of Sexual Violence Committed by Parents: A Criminological Perspective," *Journal of law and legal reform* 1, no. 2 (2020): 353–363.

testimony and the post-mortem examination, which showed a torn perineum and an incomplete hymen. The *Visum et Repertum* is considered a crucial piece of evidence in sexual violence cases, especially in proving physical harm.²⁸ The judges' conviction was based on the fact that the defendant had planned his actions by entering the victim's room an hour earlier with the intention of raping her. The victim's resistance, which was met with gagging and threats with a knife, provided irrefutable evidence of the element of violence. Violence in the context of rape can manifest as physical force that renders the victim helpless, such as leaning, binding, or physical attacks. The judges concluded that all elements of Article 285 of the Criminal Code had been legally and convincingly fulfilled.

In sentencing, the judges disagreed with the length of the Public Prosecutor's demand but nevertheless imposed a heavy sentence of 12 (twelve) years' imprisonment. The maximum penalty for rape under Article 285 KUHP is 12 years of imprisonment.²⁹ The aggravating factors include the defendant's actions disturbing the community, involving sexual harassment, and causing deep and prolonged suffering to the victim. These factors are common considerations for aggravating sentences in sexual violence cases.³⁰ Meanwhile, mitigating factors considered by the judges included the defendant's polite behavior and his admission of his actions. The 12-year sentence reflects the Panel of Judges' seriousness in responding to sexual crimes. Although using the Criminal Code, the sanction imposed remains the maximum allowed by Article 285 KUHP and is in line with the spirit of increased punishment for sexual violence, which is also a goal of the TPKS Law.³¹

CONCLUSION

The flexibility of criminal procedural law in responding to sexual violence crimes during the transitional period of the implementation of the TPKS Law is illustrated by the application of alternative charges in Decision Number 99/Pid.Sus/2024/PN Lubuk Pakam. The Panel of Judges made the correct decision to prove the First Alternative Charge (Article 285 of the Criminal Code) over the Second Charge (Article 6 of the TPKS Law). This was due to the fact that the legal facts at trial, particularly the use of sharp weapons and physical

²⁸ Rosania Paradias and Eko Soponyono, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 61–72.

²⁹ Vivi Ariyanti, "Equity Sebagai Dasar Pertimbangan Putusan Hakim Dalam Menyelesaikan Perkara Pidana Perempuan," *Refleksi Hukum: Jurnal Ilmu Hukum* 5, no. 1 (2020): 63–84.

³⁰ Siti Nurhikmah and Sofyan Nur, "Kekerasan Dalam Pernikahan Siri: Kekerasan Dalam Rumah Tangga?(Antara Yurisprudensi Dan Keyakinan Hakim)," *PAMPAS: Journal of Criminal Law* 1, no. 1 (2020): 54–67.

³¹ Ermina Dwi Lestari, Achmad Adi Surya GS, and Rico Septian Noor, "Sexual Violence Crimes And Legal Protection For Victims: Law Number 12 Of 2022 On Sexual Violence Crimes And The Reality Of Handling Sexual Violence Cases In Indonesia," *Journal of Law, Politic and Humanities* 5, no. 6 (2025): 4683–4694.

violence, more dominantly fulfilled the elements of the crime of rape in the Criminal Code than the element of abuse of authority in the TPKS Law. This demonstrates that the use of the Criminal Code is not automatically rendered null and void by the existence of the TPKS Law as *lex specialis*, provided that the defendant's actions are factually more appropriately classified as conventional rape with physical violence and the imposition of a 12-year prison sentence is consistent with the educational, preventive, and repressive objectives of sentencing.

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