

The Disparity in Criminal Prosecution against Acid Attack on Investigator of Corruption Eradication Commission: "Novel Baswedan" Case

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Abstract: This study aims to analyze the causes of the disparity in the criminal prosecution against acid attack. It is suspected that there has been a conspiracy of abuse of power between investigators and prosecutors, which reflects injustice in the criminal procedure law. This research clarifies a case study of the disparity of prosecution through mutually acknowledged norms and values. Case studies also enable the researchers to study the real thing, and gain a better understanding of what disparities in criminal prosecution. The result of the research showed that it was suspected that there had been a conspiracy of abuse of power between the investigator and the prosecutor, so that there was no justice for the victim. The researchers suggest limiting the prosecutors' discretion and the existence of an independent institution for prosecutors' supervisory functions.

Keywords: Prosecution disparity, Severe Persecution, Discretion of Power, Abuse of Power, Novel Bawesdan.

1. INTRODUCTION

The prosecutor's discrepancy of one year criminal charges occurs against two police officers who attack the Corruption Eradication Commission investigator Novel Baswedan. However, the panel of judges sentences two years and 1.5 years in prison for criminal proceedings at the North Jakarta District Court, on Thursday, July 16, 2020. In the verdict of the panel of judges, the criminal Rahmat Kadir has been sentenced to two years in prison and the perpetrator criminal offense Ronny Bugis has been sentenced to 1.5 years in prison. Both are found guilty of acid attack on the victim Novel Baswedan, a criminal case on Tuesday, April 11, 2017¹

Disparity of sentencing is the application of different crimes against the same crime or crimes that have a dangerous nature that can be compared.² Disparity is basically the negation of the parity concept, which means equality of amount or value. In the context of punishment, parity means equal punishment between

similar crimes under similar conditions.³ Thus, disparity is the inequality of punishment between similar crimes in similar conditions or situations.⁴

The enabling act and legislative history of the Sentencing Reform Act refer to reducing unwarranted disparity as "the major premise of the sentencing guidelines. Neither in statute nor legislative history does the Congress define or explain what is meant by "unwarranted disparities among defendants with similar records, who have been found guilty of similar criminal conduct". As the Senate Report accompanying the Sentencing Reform Act noted, "The keyword in discussing unwarranted sentence disparities is 'unwarranted'".⁵

To avoid confusion, we distinguish between three distinct types of sentencing variation: proportionality, disproportionality, and disparity. Proportionality, under our definition, is sentencing variation among a set of decision-makers in the criminal justice system that is justified by relevant differences among offenders and their crimes. Conventionally, these differences include various characteristics of the criminal offense (such as the amount of harm caused) and of the criminal offender (such as prior criminal record). Conversely,

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¹Heyder Affan *et al.* (2020) Novel Baswedan: Who is the actor behind the attack, the issue of the talibanization' of the Corruption Eradication Commission, to accusations of 'politics' by dragging President Jokowi's name, <https://www.bbc.com/indonesia/indonesia-53174677>.

²Allan Manson, (2014), *The Law of Sentencing*, Irwin Law, page 92-93.

³Research and Development of the Supreme Court, (2011). Position and Relevance of Jurisprudence to Reduce Disparities in Court Decisions, Center for Law and Judiciary Research at the Supreme Court of the Republic of Indonesia, Jakarta. page 6.

⁴Allan Manson, *The Law...Op.Cit.*, page 82.

⁵James M. Anderson (1999) Measuring Inter Judge Sentencing Disparity Before and After the Federal Sentence Guidelines. *Journal of Law and Economics*, forthcoming. Yale Law School. Page 2.

disproportionality, is any variation in sentencing outcomes for a given set of decision-makers that is not attributable to the relevant sentencing factors; in this sense, disproportional variation is akin to what many previous commentators have referred to as disparity. In contrast, we define disparity as variation in sentencing between the sets of hypothetical decision-makers that could potentially be involved in the disposition of an offender's case. This difference can be considered as variation in the sentence that will result if a single offender is processed through the criminal justice system by every possible combination of sentencing decision-makers.⁶

According to Harkristuti Harkrisnowo, Professor of Criminal Law, in University of Indonesia, followed by Mahrus Ali, criminal disparities can occur in several categories, which are: disparity between the same crimes; disparity between criminal acts which have the same seriousness; disparity in the crimes imposed by one panel of judges; The disparities in the crimes imposed by different judges for the same crime.⁷ According to Muladi and Barda Nawawi, criminal disparity means: application of the criminal penalties are not the same for the same criminal act; unequal application of penalties to criminal acts of comparable severity; imposition of different crimes against those who have jointly committed a criminal act.⁸

The disparity in the prosecution of sentencing is one of the popular themes in criminal law. The disparity in the prosecution of convict means that there are differences in the number of sentences given by the prosecutor in cases with the same characteristics. In principle, disparity is the concept of parity, which means equality of amounts or values. Thus disparity is inequality of punishment between similar crimes in similar conditions or situations.

To many Guidelines' critics, this empowerment of prosecutors is a serious flaw, leading to harsh results for defendants generally and is undermining the Sentencing Reform Act's disparity-reduction goals. As Albert Alschuler argues, "The price of whatever success the Guidelines have achieved in reducing judge-created sentencing disparities is the increase prosecutor-created disparities." Scholars often refer to

discretion in the criminal justice system as being "hydraulic," thus the attempts to constrain it in one place will merely shift it to another. Stephanos Bibas, for example, writes, the criminal justice system operates like a toothpaste tube, and the violation coming from the judge final decision (of the tube) will end up in the prosecutor's domain. This hydraulic pressure means that violation will still exist, but they will now occur more often on prosecutors' terms." This theory has long pervaded scholarship about the Guidelines. As Terance Miethe wrote in 1987, this 'hydraulic' or 'zero-sum' effect was so firmly entrenched as a criticism of current reform efforts that most researchers begin with the assumption that the displacement of discretion exists.⁹

Based on Law Number 16 of 2004 which replaces Law Number 5 of 1991 on the Republic of Indonesia Attorney General's Office, the Attorney General's Office as one of the state institutions has the power to enforce the law to act as prosecution.¹⁰ Before a criminal case is carried out by the prosecutor, the prosecutor is obliged to make a plan of charges which is ratified by the Head of the State Prosecutor's Office. If the criminal case is handled at the High Prosecutor's Office, the prosecution is planned to be carried out in the area of High Prosecutor's Office.

The disparity in the prosecution of criminal acts by prosecutors can affect the view of the wider community as a form of injustice. The disparity in decisions can be separated from the discretion of the prosecutors. The power and duties of the prosecutor must enforce law, truth and justice in accordance with the code of ethics. Prosecutors are not allowed to differentiate between claims that everyone is equal before the law.

The negative view by the community that has emerged so far is because the function of law is seen as more of a tool of state power, both in law enforcement and in the law making process, not directed at protecting the society. Furthermore, there is a cynical view saying that law as a tool for those in power tends to abuse power.

Research tends to focus on the influence of courtroom actors, such as the judge and the

⁶James M. Anderson (1999) Measuring Inter Judge Sentencing Disparity Before and After the Federal Sentence Guidelines. Ibid. Page 3.

⁷Mahrus Ali (2011) Corruption Criminal Law in Indonesia, UII Press, Yogyakarta, page 57.

⁸Muladi and Barda Nawawi Arief (1982), Crime and Criminalization, Faculty of Law, Sultan Agung Islamic University, Semarang. page 78.

⁹Sonja B. Starr and M. Marit Rehavi (2013) Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of *Booker* University of Michigan Law School University of Michigan Law School Scholarship Repository/: <https://repository.law.umich.edu/articles/1498>. accessed 28 August 2020 at 01:35 AM.

¹⁰Law of the Republic of Indonesia Number 16 of 2004 concerning the Attorney General's Office.

prosecutor, but often ignores the importance of how other criminal justice actors may influence courtroom decisions. One key factor that has been largely overlooked in previous sentencing literature is law enforcement officers. This is problematic because an offender's sentence is decided through a collaborative process, involving interactions with both courtroom actors and law enforcement actors. In fact, law enforcement is essential to criminal cases because these cases would not be brought to the attention of courtroom actors without an arrest (Spohn 2009). Thus, if it is not for law enforcement initiating contact with offenders, the following steps in the criminal justice system will be irrelevant.¹¹

Crime as a social symptom, especially violent crime, is an eternal problem in human life, because it develops along with the development of the human civilization. Therefore, crimes, especially crimes against the body or violence, are always faced by the community and cannot possibly be completely eliminated, so the efforts that must be made by humans in dealing with crimes are overcoming in nature, which means that these efforts aim to reduce the intensity and frequency of crimes. Crimes in Indonesia, especially in terms of criminalization, should refer to the approach of legal norms that punish criminals so that they can provide a deterrent effect on the perpetrators and serve as a strong warning for potential perpetrators of criminal acts, especially those who are perpetrators of planned persecution. This provides a discourse for law enforcers to take firm action against the perpetrators of crime.

The crime of persecution has become a phenomenon in social life. Various acts of persecution that often occurred, such as acid attack, beatings, and physical violence often resulted in injuries to the body or limb of the victim, sometimes even causing the victim to become physically disabled for life, including death. In addition, acts of persecution also often cause psychological effects or impacts on the victim, such as trauma, fear, threats, and sometimes even the victims of abuse have mental disorders.

The research problem for those seeking criminal justice is that it is suspected that there is a conspiracy between prosecutors and investigators of the

Indonesian police, for victims of serious assault that resulted in disability for the victim Noval Bawesdan and the investigators of corruption in the Republic of Indonesia.

2. RESEARCH METHODS

This research clarifies a case study of the disparity of prosecution through mutually acknowledged norms and values. Case study findings can be used to generate hypotheses or to cast doubt on theory-based hypotheses'. Case studies also enable the researchers to study the 'real thing', and gain a better understanding of what disparities in prosecution mean in the criminal law environment in which it is committed.

This research approach method was a qualitative method. Creswell defines a qualitative method as a research method that is based on the perspective of constructivism, where various meanings are socially and historically constructed with a view to developing a theory or pattern. The researchers collected open and developing data, with the aim of developing a theme from the data obtained.

The reason for choosing a qualitative approach was because this research emphasized more on answering research questions through formal and argumentative ways of thinking. In other words, qualitative data processing and analysis emphasized its analysis on deductive and inductive inference processes as well as on the dynamics of relationships between observed phenomena, using scientific logic. In this regard, the reasons for the disparate prosecution of acid attack criminals resulting in serious injury to the victim will be looked for.

The qualitative approach used in this study aimed to determine the conspiracy between investigators and prosecutors on the abuse of power through criminological theory. This is based on the basic idea that reality is subjective, that is, every human being builds an individual, personal view of the world based on his/her specific interactions with the outside world (including people who are part of this world). As a result, as what most people, including researchers, perceive as reality is actually made up of a series of impressions, conclusions, and opinions in that person's mind.

The research approach methods were: statutory approach, historical approach, case approach, conceptual approach. The data collection technique in

¹¹Katherine Ray. et.al (2017) What Happens When Investigating A Crime Takes Up Too Much Time? An Examination of How Optimal Law Enforcement Theory Impacts Sentencing, *International Journal of Criminology and Sociology* Vol.6. page 215.

this research was documentation study method. Data collection was done by looking for data contained in statutory regulations, expert opinion written in books, and research reports that had been published in scientific articles. The collected data were then using qualitative method and finally concluded using deductive method. Deductive method was used to draw conclusions from general statements into specific statements.

Analysis of research data with the theory of power and the tendency to abuse power are focused on secondary data by studying and examining prosecutions in the same criminal case.

3. DISCUSSION

3.1. Review of Noval Bawesdan and the Victims of Severe Persecution

Novel Baswedan, one of the investigators of the Corruption Eradication Commission of the Republic of Indonesia, has handled major corruption cases such as the e-Identity Card corruption case, the corruption case of the former chairman of the Constitutional Court "Akil Mochtar," the corruption case of the Secretary General of the Supreme Court of the Republic of Indonesia, a corruption case against Buol District Head, and a corruption case against the construction of the Athlete's House.

During the aforementioned cases rolling, Novel Baswedan as an investigator of the Corruption Eradication Commission has been reported several times to the Indonesian Police, in order to weaken the Corruption Eradication in Indonesia. The cases and accusations vary from abuse of authority, defamation, to fake wounds on the left eye. In addition, the case of theft of swallow's nest in 2004 was asked to be reopened. In this case, Novel Baswedan was accused of torturing one of the suspects to death when he was a Chief of Staff of the Criminal Investigation Department at the Bengkulu Regional Police as follows:

1. On July 25, 2017, Nico Panji Tirtayasa, a witness in a bribery case involving the former Chief Justice of the Constitutional Court, Akil Mochtar reported Novel as an investigator of the Corruption Eradication Commission on the accusation of forcing people to testify under false oath as well as abuse of power and authority.
2. On 13 August 2017, Aris Budiman, Director of Investigation of the Corruption Eradication

Commission reported Novel Bawesdan to the police on charges of defamation. Aris was offended by the contents of Novel Baswedan's electronic letter which violated the mechanism for appointing investigators from the police.

3. On September 5, 2017, Erwanto Kurniadi, Deputy Director of Corruption Crime, Indonesian Police Criminal Investigation Agency reported Novel Baswedan to the police. He objected to Novel Bawesdan's statement in one of the media which was said to undermine the integrity of Indonesian Police investigators.
4. On November 6, 2019 Dewi Tanjung, a politician from the Democratic Party of Struggle reported Novel to the police on charges of spreading false news. Dewi suspects that the wound from acid attack on Novel's left eye was a fabrication.
5. On November 8, 2019, convicted of bribery and lawyer, OC Kaligis, sued the Attorney General's Office of the Republic of Indonesia and the Bengkulu District Attorney for opening the case of theft of swallow's nest in 2004. Novel Baswedan was accused of being involved in the persecution of one of the suspects to death.¹²

3.2. Review of the Severe Persecution Crime in Indonesia

Definition of crime which is used by criminal law experts in Indonesia are various, among others are criminal acts and criminal events. Based on the definition of a criminal act, it can be categorized into several elements.

a. Formal Elements

1. Actions (human);
2. The act is prohibited by a legal rule;
3. The prohibition is accompanied by threats (sanctions) in the form of certain crimes;
4. The prohibition is violated by humans¹³

¹²Muhammad Irfam and Dwiki Marta (2020) Novel Baswedan: The facts in the 1,192 days case, the waiting 'without the touch of intellectual actors' BBC Indonesia. July 16th. <https://www.bbc.com/indonesia/indonesia-53269896>. Accessed 31 August 2020 at 03:17 am.

¹³Moeljatno, (2002) Principles of Criminal Law, PT. RinekaCipta, Jakarta, page 54.

b. Material Elements

The criminal act must be against the law and it must really be felt by the community as an act that cannot or should not be done. If the act fulfills the formulation of statutory regulations, but is not against the law or against the law, then the act is not a criminal act.

In Indonesian criminal law, there are two kinds of elements of criminal acts as follows.

c. Objective Element

Objective element is an element that is outside the side of criminal act perpetrator. The objective is the element which has to do with the circumstances under which the actions of the doer must be carried out. The objective elements include

1. Human actions or behavior
2. The result which makes an absolute condition or offense
3. Elements against the law
4. Other elements that determine the nature of crime
5. Elements that are incriminating to a criminal act
6. Additional elements that determine the criminal act.

d. Subjective Elements

Subjective elements are elements in the perpetrator of a criminal act. These subjective elements include:

1) Deliberate (*dolus*)

This includes: violating decency as regulated in article 281 of the Criminal Code, murder as regulated in article 338 of the Criminal Code and others.

2) Negligence (*culpa*)

This is like the deprivation of freedom as regulated in article 334 of the Criminal Code, causing death, as regulated in article 359 of the Criminal Code and others.

3) Intention (*voornemen*)

This is in the experiment (poging) as regulated in article 53 of the Criminal Code.

4) Purpose

This includes theft, as regulated in article 362 of the Criminal Code, fraud as regulated in article 372 of the Criminal Code and others.

5) By Planning Ahead (met voorbedachte rade)

This is as in the murder by plot as stipulated in article 340 Criminal Code.

6) Fear (*vrees*)

This is like in the crime of abandoning one's own child away, as regulated in Article 308 of the Criminal Code, the crime of killing one's own child, as regulated in article 341 of the Criminal Code and others.

Persecution is regulated in Article 351 to Article 358 of the Criminal Code, however, in this Law there is no official explanation for what is meant by persecution, because there is no definition described in this law.

So Indonesian criminal law experts in discussing the notion of persecution are always guided by the formulation of *Memorie Van Toelichting*, which states that what is meant by persecution is "causing suffering to the body or health in several forms, which are: ordinary persecution, light persecution, severe persecution and persecution with advanced plan.

As regulated in the criminal law book, persecution can be categorized into six types as follows:

1. Ordinary persecution, as stipulated in article 351 of the Criminal Code, namely causing illness or being unable to perform a position or work or disturbing the mind which is not longer than four weeks, the illness can be expected to be cured and does not present any danger of death;
2. Persecution that is planned in advance, as regulated in Article 353 of the criminal code.
3. Serious persecution as regulated in Article 354 of the criminal code, which is persecution according to Article 90 of the criminal code in this article is stated in a limited manner;
4. Serious persecution that is planned in advance, as regulated in Article 352 of the criminal code;
5. Minor persecution, as regulated in Article 352 of the criminal code, which does not cause pain or is unable to carry out a position or job;
6. The persecution that is qualified as in article 356 of the criminal code.

Severe persecution as regulated in article 354 of the Criminal Code is as follows:

1. Anyone who deliberately seriously injures another person will be punished for serious persecution with a maximum imprisonment of 8 years.
2. If the act results in death, the perpetrator shall be punished with a maximum imprisonment of 10 years.

The definition of persecution is as explained above by relating it to the formulation of serious persecution above. While in severe persecution, the following elements are: fault: deliberate; act: seriously injure; object: another person's body; result: serious injury. To sum up, it can be called a serious injury to another person's body if it is done deliberately. Intentional here must be interpreted broadly, meaning it includes the three forms of intent. If in the formulation of a criminal act the element of intent is formulated, then deliberation must be interpreted as three forms of intent.

In the Novel Baswedan case, it is a planned persecution by attacking him using acid on the face as stipulated in Article 353 paragraph 3 of severe persecution and Article 354 of planned persecution so that it increases the crime of major persecution.

3.3. Review of the Law on the Prosecution of Criminal Actions by the Prosecutor

The Attorney General's Office of the Republic of Indonesia is a state institution that exercises state power. As the body authorized in law enforcement and justice, the Attorney General's Office is led by an Attorney General who is elected by and responsible to the President. The Attorney General's Office, the High Prosecutor's Office, and the State Attorney General's Office are the powers of the state, especially in the field of prosecution, where all of them constitute a complete and inseparable unit.

As regulated in Law Number 8 of 1981 on Criminal Procedure Law, there is a stage of proceedings known as Prosecution. Based on Article 1 point 7 of the Criminal Procedure Code, what is referred to as Prosecution is an action by a public prosecutor to delegate a criminal case to the competent district court in matters and according to the method regulated in this law with a request to be examined and decided by a judge at a court session.

In the process of prosecuting a suspect who has committed a criminal act, the act of prosecution is

carried out by a public prosecutor, based on Article 1 number 6 letter b of the Criminal Procedure Code. Public prosecutors are prosecutors who are given the power and authority by this law to carry out prosecutions and carry out judges' orders. Prosecution is carried out by the public prosecutor, and the public prosecutor is a prosecutor, based on Article 1 number 6 letter a of the Criminal Procedure Code. Prosecutors are officials who are empowered by this law to act as public prosecutors and carry out court decisions that have obtained permanent legal force.

Based on Article 14 of the Criminal Procedure Code, the Public Prosecutor is given the following power and authority:

1. receive and examine investigation case files from investigators or assistant investigators;
2. conduct a pre-prosecution if there is a deficiency in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in the framework of improving the investigation of the investigator;
3. provide extended detention, carry out detention or further detention and or change the status of a detainee after the case is transferred by the investigator;
4. make an indictment;
5. delegate cases to court;
6. submit notification to the accused regarding the stipulations on the day and time the case is being heard, accompanied by a summons, both to the accused and to witnesses, to appear at the determined trial;
7. prosecute;
8. close cases for legal purposes;
9. take other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this law;
10. carry out the judge's order.¹⁴

In addition to the power and authority mentioned in Article 14 of the Criminal Procedure Code, there are

¹⁴Law Number 8 of 1981 Concerning Criminal Procedure Law.

other power and authority mentioned in the Criminal Procedure Code, including:

1. Public prosecutor has the power to detain or further detain a suspect. There is a clause "Continued Detention", which means because previously the suspect is detained by the investigator, the suspect is detained by the public prosecutor, carried out for prosecution purposes, and the public prosecutor has the authority to carry out further detention, as regulated in Article 20 paragraph (2).
2. Public prosecutor has the authority to transfer from one type of detention to another as regulated in Article 23 paragraph (1) of the Criminal Procedure Code.
3. Public prosecutor has the authority to give a detention order to a suspect or defendant who is suspected of committing a criminal act as regulated in Article 25 paragraph (1) of the Criminal Procedure Code.
4. Public prosecutor has the authority to submit requests for a suspension of detention with or without money guarantee or personal guarantees, based on the conditions as stipulated in Article 31 paragraph (1) of the Criminal Procedure Code.
5. Public prosecutor has the authority to revoke the suspension of detention of a suspect or an accused who violates the stipulated conditions as regulated in Article 31 paragraph (2) of the Criminal Procedure Code
6. Public prosecutor also has the right to appeal against decisions of the first instance court except for acquittals, apart from all lawsuits concerning the problem of inaccurate application of the law and court decisions in rapid proceedings as regulated in Article 67 of the Criminal Procedure Code.
7. Public prosecutor has the right to make a request addressed to the Head of the District Court by stating the reasons for a case to be examined in order to ascertain whether or not a termination of the investigation or prosecution is legal as regulated in Article 80 of the Criminal Procedure Code.
8. Prosecutor has the right to submit a new request for a pretrial decision at the level of investigation,

so that another pretrial hearing is held at the examination level by the public prosecutor as stipulated in Article 82 paragraph (1) letter e of the Criminal Procedure Code.

9. Public prosecutor has the authority to prosecute anyone who is accused of committing a crime within his/her jurisdiction by delegating the case to a court that has the authority to adjudicate as regulated in Article 137 of the Criminal Procedure Code.¹⁵

The analysis of the researchers is so wide that the power and duties of the prosecutor in the prosecution of criminal acts can be said to be super power in criminal prosecution, regarding the tendency of the prosecutors to abuse their power

3.4. Disparity in the Prosecution of "Novel Baswedan" Case Compared to Several Similar Cases

According to Estu Dyah Arifianti, the prosecutor's charges against the defendant in the Novel Baswedan acid attack case are considered too light. Acid attack does not only occur in Indonesia. These cases are found in many countries in South Asia and the punishment for the perpetrators is severe.¹⁶

Estu says that in the international world, this action is known as acid attack. The motives for the attack also vary, ranging from grudges to war between gangs, a number of countries have their own rules on acid attack. In India, the perpetrator is threatened with 10 years in prison and can be extended to life imprisonment, while in Bangladesh, the offender of acid attack results in injuries. The perpetrator is imposed by imprisonment with a minimum threat of 7 and a maximum of 14 years, and in Pakistan, the perpetrators of violent assault can be punished with imprisonment of 14 years and a fine of 1 million rupees.¹⁷

Persecution using acid results in injuries and disabilities for life in Indonesia, and it is classified as serious persecution, as regulated in the Criminal Code Article 354 as follows¹⁸:

¹⁵Law Number 8 of 1981 on Criminal Procedure Law.

¹⁶Estu Dyah Arifianti (2020) Criminal Threats of Sprinkling Hard Water in Indonesia and Other Countries, TEMPO.CO, Jakarta, <https://nasional.tempo.co/read/1353215/ancaman-pidana-penyiraman-air-keras-di-indonesia-and-other-countries> / full & view = ok. accessed, August 31, 2020 at 01.35 am.

¹⁷Estu Dyah Arifianti (2020) *ibid*.

¹⁸Indonesian Criminal Code.

1. Anyone who deliberately seriously injures another person is punished for serious persecution, with a maximum imprisonment of eight years.
2. If the said act results in the death of the victim, he will be sentenced to a maximum imprisonment of ten years.

The serious injury in this element is the wound as referred to in Article 90 of the Criminal Code, which are;

1. Getting sick or having a wound that gives no hope of recovery, or that poses a deadly danger.
2. Not being able to continue to carry out job duties or work.
3. Losing one of the five senses.
4. Has serious disabilities.
5. Suffering from paralysis.
6. Suffering from mental disorder for more than four weeks.
7. The death or death of fetus.¹⁹

Thus, based on the formulation of article 354 paragraph (1) of the Criminal Code emphasizes "Whoever deliberately seriously injures another person, is punished for severe persecution with imprisonment of eight years". Therefore the word "deliberately seriously injures another person" itself is qualified as serious persecution by law. In the case of acid attack on investigator from the Corruption Eradication Commission "Novel Baswedan", the prosecution should have been held at the North Jakarta District Court, Jakarta. Article 354 on severe persecution using acid should be applied to article 354 Juncto article 90 paragraph 3 and 4 of the Criminal Code Juncto Article 90 paragraph 3 and 4 of the Criminal Code.

The criminal verdict handed down in the "Novel Baswedan" case on July 16, 2020 occurs after a series of incidents since April 2017. The following are the facts and chronology of the case of acid attack on Novel Baswedan.²⁰

1. On April 11, 2017, Novel Baswedan, a victim of severe persecution, was attacked using acid on his face, resulting in a lifelong disability. North Jakarta. Two of the perpetrators of the crime used motorbikes, and immediately fled.
2. Furthermore, on April 12 2017, Novel Baswedan was flown to Singapore to undergo treatment for his left eye which was exposed to acid.
3. On November 24, 2017, the Indonesian National Police Headquarters announced the facial sketches of two suspected perpetrators of acid attack.
4. On March 9, 2018, the National Human Rights Commission formed a monitoring team, then in December 2018, the National Human Rights Commission recommended the formation of a Joint Fact-Finding Team. On July 27, 2018 Novel Bawesdan returned to his activity as an investigator for the corruption eradication commission of the Republic of Indonesia.
5. On December 26, 2019, the two suspected perpetrators of acid attack, Rahmat Kadir Mahulette and Ronny Bugis were arrested. Both are active members of the Indonesian National Police.
6. On June 12, 2020, the prosecutors charged two suspects with one year in prison. Instead of giving serious charges, the public prosecutor only asked the panel of judges to sentence the two defendants, Ronny Bugis and Rahmat Kadir Mahulette, to one year in prison. The charge is based on the subsidiary indictment of Article 353 paragraph (2) of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code.²¹

As regulated in Article 353 paragraph (1) of the Indonesian Criminal Code, it explains that persecution with a prior plan is punishable by a maximum imprisonment of four years. Paragraph (2) adds that if the act results in serious injuries, the perpetrator will be subject to a maximum imprisonment of seven years. However, the public prosecutor considers that the two

¹⁹Indonesian Criminal Code.

²⁰Muhammad Irham and Dwiki Marta (2020) Novel Baswedan: *Op.Cit.*

²¹Yogi Bayu Aji (2020), The Difference in the Fate of the Defendant of Sprinkling Hard Water Outside the Novel, Media.Com 13 June 2020 08:26. <https://www.medcom.id/nasional/hukum/ObzMzpxN-beda-nasib-terdunjuk-penyiram-air-keras-di-luar-kasus-novel>. Accessed on August 31, 2020 at 03:15 am.

defendants did not fulfill the elements of the primary indictment regarding serious persecution in Article 355 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code. Article 355 states that perpetrators of serious persecution are threatened with imprisonment for a maximum of 12 years or 15 years if the victim dies

In their indictment, the public prosecutor assessed that the two defendants were proven to have mistreated Novel in a planned manner which resulted in serious injuries. However, the light charges were given because the public prosecutor thought the defendants felt guilty for their actions. According to prosecutor, the reason for this charge is because first, the persons concerned admitted frankly in the trial. Second, they apologized and regretted their actions and in court apologized to Novel Baswedan's family and apologized to the police institution. The Indonesian Police Institution is tarnished, "said Jakasa Public Prosecutor" Ahmad Patoni: at the North Jakarta District Court, on Thursday, June 11, 2020.²²

According to the Director of the Legal Culture Institute, M. Rizqi Azmi, the authority of Indonesian criminal law was "lost" in the verdict of acid attack case against investigator from the Corruption Eradication Commission "Novel Baswedan". The reason is that many irregularities have arisen in the court process. Rizqi said that since the beginning the demand for one year in prison against the perpetrators Rahmat Kadir Mahulette and Ronny Bugis, active members of the Indonesian National Police, gave a signal that the verdict to be handed down by the judge would not be much different. Because the prosecutors had given a frame in the logic of public law that *actus reus* (crime) and *mens rea* (mysticism) in this incident were not extraordinary things, "he said in a written statement, Friday, July 17, 2020²³.

According to Novel Baswedan, as a victim of persecution that resulted in serious injuries for life, blindness of his left eye, he was surprised by the prosecution's demands. The attack on him, said Novel, was persecution of the highest level. "I want to invite all circles of society to be able to criticize things like this, both my case and other cases that show injustice,

show an act that depicts a tattered portrait of law enforcement," said Novel.²⁴

The light suit from the public prosecutor immediately drew sharp criticism. A criticism emerged because the case that had been going on April 11, 2017, was threatened with an anticlimax end. This is unfortunate because Novel case received special attention from the President of the Republic of Indonesia Joko Widodo.

The researchers, based on the demands of the two acid attack perpetrators which resulted in Novel Baswedan being injured for life as a victim, the researchers can say that there has been discretion of power in prosecutors which resulted in abuse of power against disparity in prosecution compared to the same case. It is described as follows:

1. **Perpetrator of Acid Attack is Sentenced to 20 Years in Prison by the Public Prosecutor²⁵**

The Jakarta Legal Aid Institute (LBH) in their Twitter account @LBH_Jakarta shared several cases of acid attack. One of the cases highlighted was the criminal case of acid attack by the defendant Heriyanto which caused his wife, Yeta Maryati, to die in Bengkulu.

This incident occurred at Hotel Gumay, Ratu Agung, Bengkulu, Friday, July 12, 2019. Yeta suffered severe burns. She passed away while being treated at the Bengkulu Regional General Hospital on Sunday, July 14, 2019. The public prosecutor demanded that the perpetrator of the criminal act of acid attack to be prosecuted for 20 years in prison.

2. **Perpetrator of Acid Attack is charged with 15 years in prison by the public prosecutor²⁶**

A resident of Randubangu Village, Mojosari, Mojokerto, East Java, Lamaji, sat in a prisoner seat after abusing a man and his wife, Dian Wulansari, on Sunday, March 5, 2017.

This incident was due to jealousy because he saw the victim and another man, so the perpetrator poured acid water on Dian. The strong acid water caused Dian to suffer 54

²²Yogi Bayu Aji (2020), *Ibid*.

²³Ahmad Faiz Ibnu Sani (2020) An Observer Calls the Authority of Law Missing in the Novel Baswedan Case, TEMPO.CO, Jakarta. Friday, July 17 2020 10:41 WIB. <https://nasional.tempo.co/read/1366184/pengamat-sebut-wibawa-hukum-hilang-di-kasus-novel-baswedan/full&view=ok> accessed on 30 August 2020 at 02:37.

²⁴Yogi Bayu Aji (2020), The Different Fate of the Accused of Sprinkling Hard Water Outside the Novel Case. *Op.Cit*.

²⁵Yogi Bayu Aji (2020),. *Ibid*.

²⁶Yogi Bayu Aji (2020),. *Ibid*.

percent burns all over her face, middle chest, arms, stomach and part of her front thigh. The victim finally died after 26 days after intensive care. The public prosecutor charged the perpetrator of the acid attack with a prison sentence of 15 years.

3. Perpetrator of Acid Attack is charged with 15 years in prison by the public prosecutor²⁷

The Bengkulu Public Prosecutor's Office, sued Rika with 12 years of imprisonment for violating Article 355 paragraph (1) of the Criminal Code in conjunction with Article 55 of the Criminal Code, subsidiary to Article 354 paragraph (1) of the Criminal Code in conjunction with Article 55 of the Criminal Code, subsidiary to Article 351 paragraph 2 of the Criminal Code juncto Article 55 of the Criminal Code.

The perpetrator of the crime of abuse by Rika Sonata, who attacked her husband Ronaldo by hiring thugs in October 2018 to pour acid water on Ronaldo who was sleeping at home. This attack left Ronaldo's face permanently impaired.

4. Perpetrator of Acid Attack is charged with 8 years in prison by the public prosecutor

The public prosecutor in a trial at the Palembang District Court, charged the perpetrator, Israel who was guilty of torturing Rifai in a planned manner with 8 years imprisonment since he caused permanent impairment and made Rifai's left eye permanently impaired. It was done as regulated in Article 355 paragraph (1) of the Criminal Code with imprisonment for 8 years.

The incident began on Sunday, December 30 2018, when the perpetrator and the victim bickered over a parking lot. Irawan asked the victim for money, but he was refused. On Tuesday, January 1, 2019, the perpetrator then poured vinegar on the perpetrators.

Based on the description above, there is a very significant disparity in the prosecution of the punishment between the victim of acid attack from Novel Bawesdan and the same four cases, moreover

the entire incidents of these crimes have been regulated in the Indonesian Criminal Code. The researchers argue that there is an alleged conspiracy of conflict of interest so that the prosecutor abuses the power against the perpetrator of acid attack on Novel Baswedan. Abuse of power was done by the prosecutor because he had discretionary power in prosecution.

A conflict of interest occurs when the prosecutor's responsibilities as a public official clash with private economic matters. In a narrow sense, conflict of interest refers to an environment in which a prosecutor uses his/her full power or position on behalf of the state, either publicly or secretly, for personal financial gain. The conflict of interest between public duties and private interests has been the cause of many scandals involving public officials with very serious consequences.

In Indonesian criminal law, prosecutors as prosecutors in criminal cases have full powers. In the history of human civilization, the holder of power determine the situations and conditions, and the morality of the prosecutors serves as determinants of social control and public officials. The morality of prosecutors who hold power develops for personal and group interests in a system, so that it will have an impact on the conflicts of interest.²⁸

Regarding the legal implications of the abuse of power by the Public Prosecutor on the disparate discretion of prosecution for criminal offenders, the opinion of legal science expert Philipus M Hadjon calls it as authority, which is equated with the term "*bevoegdheid*". The difference between authority and the term *bevoegdheid* is that both are used in both the concept of public law and private law, whereas in Indonesia it is always used in the concept of public law where the use of authority is intended to control people's behavior as the legal subject. Authority must have legal legitimacy and suitability, and contains interpretation of authority standards, which are general standards and specific standards.²⁹ Robert Klitgaard once reminds that corrupt behavior due to abuse of

²⁷Yogi Bayu Aji (2020). The Different Fate of the Accused of Sprinkling Hard Water Outside the Novel Case. *Ibid*.

²⁸Bambang Slamet Riyadi (2020). Culture of Abuse of Power in Indonesia from the Perspective of Criminology and Law. *International Journal of Criminology and Sociology*, Volume 9. Page: 276.

²⁹Bambang Slamet Riyadi (2020). Culture of Abuse of Power Due to Conflict of Interest to Corruption for Too Long on The Management form Resources of Oil and Gas in Indonesia, *International Journal of Criminology and Sociology*, Volume 9. Page: 248.

power develops when actors as perpetrators have super powers³⁰.

According to Gois, white-collar crime involves the abuse of power by people who are situated in high position where they have the opportunity for such abuse. White-collar crime does not refer to the social positions of offenders, but rather to the context in which white-collar crimes are carried out or to the methods used in their violations of law. Here, the penalties is imposed on those who are involved in the use of a violator's position of significant power, influence, or trust in the legitimate economic or political-institutional order for the purpose of illegal gain, or to commit an illegal act for personal or organizational gain.³¹

4. CONCLUSION

The disparity in the prosecution of two active police officers who were suspected of being the perpetrators of acid attack so that the victim, Novel Bawesdan has been disabled for life, reflecting the law in Indonesia that there is no justice for victims. In this case, it was suspected that there had been a conspiracy between investigators and prosecutors to have the power of prosecution to commit abuse of power against material law and formal law. So that the decision of the panel of judges who had the power to handle this case was not too significant to take punitive action, which was 1.5 years and 2 years imprisonment, even though the law stated that the criminal offender should be punished over 5 years.

Legal injustice for the victim in the case of Novel Bawesdan occurred, and it was suspected that there were similar cases in the disparity of criminal charges. The researchers provide several suggestions as follows. First, a suggestion that the strict supervision of the power in prosecution must be in accordance with criminal material law, namely the Indonesian Criminal Law. Second, restriction must be imposed on the power of prosecution by prosecutors which causes abuse of power in terms of prosecution. Third, the communication relationship between police

investigators and prosecutors should be limited, so that there is no conspiracy to abuse power.

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³⁰Bambang Slamet Riyadi (2020). Culture of Abuse of Power in Indonesia from the Perspective of Criminology and Law. *International Journal of Criminology and Sociology*, Volume 9. *Op.Cit.*

³¹Bambang Slamet Riyadi and Muhammad Mustofa (2020). Corruption Culture on Managing Natural Resources: The Case Political Crime "Papa asking Stock of PT. Freeport Indonesia" *International Journal of Criminology and Sociology*. Vol 9 page 28.

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