

The Impact of Prosecution Plans on Disparities of Criminal Prosecutions by The Public Prosecutor

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Abstract

Indonesia is a rule of law country founded on Pancasila and the 1945 Constitution, which highly upholds human rights and equal standing before the law and government. This also entails that any conduct of state administration must always be based on the law, including in resolving a criminal case, every stage of it must be based on the applicable law (due process of law). Essentially, disparity in criminal charges is a normal phenomenon, as there is no single case that is identical. However, disparity becomes problematic when the difference in sentences proposed between similar cases is too significant, leading to injustice and undermining public confidence in the justice system. This research is a normative juridical research utilizing the literature study method. Results of the study show that one of the causes of disparity in prosecution is the prosecution plan policy adopted by the prosecutor's office. The Rentut, which was first regulated in a Circular Letter of the Attorney General in 1985, is implemented hierarchically from the local to the national level, depriving the Public Prosecutor of independence in determining criminal charges. The Rentut is also often used by prosecutorial leaders to determine criminal charges based on the social and economic status of the defendant, ignoring the principle of equality before the law.

Keywords: *Disparity, Prosecution, Procedural Criminal Law*

I. INTRODUCTION

The 1945 Constitution ("UUD 1945") mandates Indonesia to be a Unitary State in the form of a Republic based on the rule of law. This means that every activity of state administration must always be based on the law, both written and unwritten. Likewise, in resolving a criminal case, every process must be based on applicable law (due process of law). As a state of law, Indonesia is also committed to upholding the principle of equality before the law and the principle of justice, as stated in Article 28 D paragraph (1) of the 1945 Constitution. Equality before the law under the 1945 Constitution is the right of all Indonesian citizens without exception and therefore is also the right of citizens who are involved in legal proceedings either as suspects, defendants or convicts.

Equality before the law is one of the most basic forms of human rights ("HAM") and its existence cannot be separated from the principle of justice. The principle

of equality before the law means that law enforcement officials (including public prosecutors) must treat everyone fairly, regardless of the social status, position, position and religion of the person or individual. Thus, every person has the right to be treated equally before the law so that justice can be felt by everyone who is in conflict with the law and does not distinguish anyone who asks for justice.

Unfortunately, in the practice of criminal law enforcement in Indonesia many issues and challenges persist, one of which is the disparity in criminal charges filed by the Public Prosecutor. As an institution mandated by law to exercise state power in the field of prosecution, the Public Prosecutor's Office is the only institution that may determine whether a case has sufficient evidence and can be prosecuted in Court (Dominus Litis).

In exercising the authority mandated by the law as a Public Prosecutor, disparity in charges is often found in various types of criminal offenses filed by Public Prosecutors. Disparity of charges means that there is a difference in the amount of criminal charges filed by the Public Prosecutor in cases that have the same characteristics. Disparity (disparity: dis-parity) is basically the negation of the concept of parity, which means equality in amount or value. Thus disparity is the inequality of punishment between similar offenses in comparable circumstances.

The existence of differences in criminal charges is basically a natural thing, because it can be said that almost no cases are really the same. Disparity in criminal charges becomes a problem when the range of differences in sentences proposed or demanded between similar cases is so large that it creates injustice and triggers suspicion and jealousy in the community. In addition, disparity in criminal charges will lead to inconsistency in judicial decisions, contrary to the concept of rule of law,¹ violates the principle of equality before the law, and injures the human rights of the defendant, and the sense of justice of the community.

Therefore, disparity in criminal charges brings its own problems in law enforcement in Indonesia. Although the disparity of criminal charges is a form of prosecutorial discretion where the Public Prosecutor has the freedom to determine the type of punishment, the method of execution of the punishment and the high or low level of criminal charges filed against the defendant. However, this freedom does not mean that the Public Prosecutor may impose criminal charges at his own will without a certain measure.² This is because the criminal charges filed by the

¹ Benny Leonard Saragih, dkk. 2019. Disparitas Penuntutan Pada Perkara Tindak Pidana Penganiayaan dalam Sistem Pemidanaan di Indonesia. *ARBITER: Jurnal Ilmiah Magister Hukum*, Vol. 1 No. 1: 59.

² Marlya Retta Bangun, *Disparitas Tuntutan oleh Jaksa Penuntut Umum Terhadap Penyalah Guna Narkotika di Kejaksaan Negeri Toba Samosir*. Universitas Muhammadiyah Sumatera Utara: Thesis. 2022.

Public Prosecutor directly affect the judge's decision. The demands of the Public Prosecutor are the basis for the judge to make a decision, and the judge's decision without the demands of the Public Prosecutor will result in the decision being null and void.³

II. LITERATURE REVIEW

A. Definition Prosecution

The definition of prosecution is regulated in the Criminal Procedure Code ("KUHAP") Article 1 point 7 which states that prosecution is *"The action of the public prosecutor to submit a criminal case to the authorized district court in the case and in the manner provided for in this law with a request that it be examined and decided by a judge at a court session."*

It should be noted that the Criminal Procedure Code does not explicitly state when a prosecution begins or is considered to have existed. However, Moeljatno suggests that what can be said to be an act of prosecution is as follows:⁴

1. When the prosecutor has sent the list of cases to the judge along with the indictment.
2. When the defendant is detained and an extension of the period of detention is requested by the judge, because if the fifty day period of detention is still being requested, morally it can be assumed that the prosecutor has sufficient grounds for prosecution.
3. When the prosecutor informs the judge in one of the ways that a case will be brought before him.

The definition of prosecution is also regulated in Article 1 point 3 of Law No. 16/2014 on the Prosecutor's Office of the Republic of Indonesia ("Law 16/2014"), which is the action of the public prosecutor to submit a case to the competent district court with a request that it be examined and decided by a judge at a court session in the terms and manner provided for in the Criminal Procedure Law. So it can be concluded, prosecution in a criminal case is a process of submitting or giving the defendant's case file to the judge, then a request is made to the judge and the judge makes a decision on the defendant. Thus a prosecution can be started since the process of giving the file and being

³ Yudi Kristiana, 2006, *Independensi Kejaksaan dalam Penyidikan Korupsi*, PT. Citra Aditya Bakti, Bandung, hlm. 52.

⁴ Rusli Muhammad, *Hukum Acara Kontemporer*, PT. Citra Aditya Bakti, Bandung, 2007, hlm. 76

processed and in other words this process is in accordance with what is contained in the legislation.

B. Legal Principle of Prosecutions

The exercise of prosecutorial power, as previously explained, is the responsibility of the Attorney General's Office led by the Attorney General in accordance with the provisions of the law governing the Attorney General's Office. In several laws and regulations, there has been a shift in the role of the prosecution power, which was initially considered as an instrument of the state. However, through Law No. 5 of 1991 on the Prosecutor's Office of the Republic of Indonesia ("Law 5/1991"), the prosecution power was placed as part of a government institution within the executive power family. This political-legal situation continues to this day, as seen in Law 11/2021. Although the prosecutorial power is supposed to be free and independent, independent of the influence of any power, especially the executive power, in fact it continues to be "controlled" and "unwilling" to be released from the "control" of the executive power. As a result, there has been a compromise in legal politics, emphasizing that although the Attorney General's Office exercises prosecutorial power as an executive agency, its exercise remains free and independent.

In exercising their authority, public prosecutors are not only guided by the applicable laws and regulations, but can also refer to legal principles related to prosecution. Legal principles are derivatives of legal values that become the basic thoughts underlying a norm and/or legislation, even a judge's decision. While legal values are very abstract, legal principles are more concrete. These two elements, legal values and legal principles, are the basis of justification that underlies a concrete legal regulation. Therefore, a legal regulation is said to be good and acceptable to the community if it contains legal values and legal principles.⁵

1. The principle of prosecution as a judicial power (*Asas Penuntutan Sebagai Kekuasaan Peradilan*)

The principle of prosecution as a judicial power implies that prosecution is a judicial authority or power within the realm of justice. The concept of the state emerged as a result of a social contract, in which the people agreed to cede some of their rights, freedoms and powers to a common entity known as the

⁵ Muh. Ibnu Fajar Rahim, *Asas-Asas Hukum Penuntutan*, (Jakarta: Guepedia, 2023), hlm. 25-136.

"state," "state power," "organization of power," or similar terms. The people grant the state the power to organize and protect their interests, including the right to justice. If an act occurs that harms the state, society, or an individual, and violates the law, the state has an obligation to pursue law enforcement against the perpetrator in order to create justice.

The concept that prosecution is a free and independent state authority is explained in various regulations governing the functions of the Public Prosecutor's Office, as outlined above in Article 1 point 1 of Law 11/2021 which states that "The Public Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Public Prosecutor's Office, is a government institution whose functions are related to judicial power which exercises "state power in the field of prosecution" as well as other authorities based on law. These legal regulations recognize prosecution as one of the state's authorities, referred to as prosecutorial power. Although not spelled out in detail, this prosecutorial power is linked to the judicial power, as both are integral parts of the judicial power that operates independently and freely.

2. Single Prosecution Principle (*Asas Penuntutan Tunggal*)

The principle of single prosecution is one that positions the Attorney General as the highest public prosecutor in a country, where only the public prosecutor is authorized to conduct prosecutions, and investigations are considered an integral part of the prosecution process. Within the framework of the principle of sole prosecution, the state grants the exclusive right of prosecution to the Attorney General, who may delegate prosecutorial authority to individuals of his or her choosing. In accordance with the concept of no authority without accountability, any recipient of delegated authority must be accountable to the Attorney General.⁶ The implementation of prosecution must be supervised and controlled by the Attorney General in terms of policy, technical implementation, and supervision, and the Attorney General must be accountable for the exercise of prosecutorial power to parliament as the representative of the people who have power.

The principle of sole prosecution is a universal legal principle. Although in the Constitutions of Ukraine, Finland, Russia, Vietnam, the People's Republic of China, South Africa, and Ghana, there are several nomenclatures that mention the principle of sole prosecution, such as unified system, highest prosecutor,

⁶ Sufriadi, "Tanggung Jawab Jabatan Dan Tanggung Jawab Pribadi Dalam Penyelenggaraan Pemerintahan Di Indonesia", *Jurnal Yuridis*, Vo. 1 No. 1 (2014): 57-72,

single centralized system, chief procurator of the Supreme People's Organ of Control, the highest procuratorial organ, and single national prosecuting authority, but all of them have the same meaning, namely the principle of sole prosecution that regulates the Public Prosecution Service as the only prosecuting institution and places the Attorney General as the highest public prosecutor who controls the prosecution.⁷ The statement reflects constitutional principles in various countries. This means that the constitution, as a constitutional norm derived from community consensus, establishes the regulation of prosecutorial power with various prosecutorial policies within it under the control of the Attorney General as the highest public prosecutor. In addition to the constitutional regulations in several countries, the position of the Attorney General as the highest public prosecutor is also explained in a number of laws and regulations in Indonesia that regulate the Public Prosecution Service, as described in the background. Most recently through Article 18 paragraph (1) of Law 11/2021 which states "The Attorney General is the highest Public Prosecutor and state lawyer in the Unitary State of the Republic of Indonesia".

In practice, the principle of single prosecution is applied in a system called a single prosecution system. There are several models of single prosecution systems that reflect the application of this principle. The first model is a pure single prosecution system. In this model, the prosecution process is carried out absolutely by the prosecuting institution, namely the Public Prosecutor's Office. Absolute authority in this case is owned by the Attorney General as the highest public prosecutor who controls and is responsible for the entire prosecution process, although the investigation and investigation stages can be carried out by other institutions. The second model is a single prosecution system that is not pure. Impurity occurs because prosecutorial authority is given to the prosecuting agency (the Attorney General's Office). Although prosecutorial authority is delegated to other institutions, its implementation remains under the coordination and control of the Attorney General who will be responsible for the course of the prosecution process.⁸

In addition to the described structure of a single prosecution system, there are two scopes of a single prosecution system. First, a single prosecution system in

⁷ EQ. RM. Surachman dan Jan S. Maringka, *Eksistensi Kejaksaan Dalam Konstitusi Di Berbagai Negara*, (Jakarta: Sinar Grafika, 2015), , hlm. 119-403.

⁸ *Ibid*

the narrow sense, which focuses prosecution policy exclusively on pre-prosecution activities and the prosecution itself. Second, a single prosecution system in the broadest sense, involving the authority of the Attorney General in determining technical and administrative policies throughout the series of processes of investigation, investigation, prosecution, proof at trial, up to the legal remedy stage. In this context, to fulfill the needs of prosecution at the prosecution stage, the public prosecutor can involve a series of investigative actions, in line with the investigation function. Whether the single prosecution system model is pure or impure, as well as the prosecution system in the broad sense or the narrow sense, all of them place the Attorney General as the highest public prosecutor who fully controls the prosecutorial power. The single prosecution principle plays a crucial role in preventing prosecutorial disparities by ensuring consistent access to justice, reflecting the application of the principle of equality before the law and the principle of non-discrimination.

3. Dominus Litis Principle

This principle indicates that the public prosecutor is the party who has authority over a case or has a real interest in it. This authority gives the public prosecutor the right to determine whether or not a case can be submitted for examination and trial. Within the framework of the criminal justice system, dominus litis refers to the party who has a significant interest in bringing, examining and trying a case to trial, which in this case is the public prosecutor. The implication of this tangible interest is the obligation for the public prosecutor, as the owner of the interest, to actively defend its interests.⁹

The dominus litis principle is a principle that applies universally and is contained in Article 11 of the Guidelines on the Role of Prosecutors which states "Prosecutors shall perform an active role in criminal proceedings," The activeness of the public prosecutor is a consequence of the public prosecutor as the owner of the case who has the obligation or burden to prove the charges.

In Indonesia, this principle is regulated in various laws and regulations, among others in Article 139 of the Criminal Procedure Code which basically states "the public prosecutor determines whether a criminal case can/not be submitted to the court based on valid evidence as per the criminal procedure law". Article 1 point 6 letters a and b of the Criminal Procedure Code explicitly states that only prosecutors have the authority to act as public prosecutors and conduct

⁹ Gita Santika Ramadhani, "Peran Kejaksaan Mewujudkan Keadilan Restoratif Sebagai Upaya Penanggulangan Kejahatan", *Progresif: Jurnal Hukum*, Vol. 15 No. 1 (2021): 77-91,

prosecutions in criminal cases, thus becoming the party with a real interest in a criminal case. By detailing the various articles, it can be honestly recognized that KUHAP serves as the operational foundation of the criminal justice system that establishes the public prosecutor as the owner of the case, while also recognizing the applicability of the *dominus litis* principle as a legal principle that applies in criminal procedure law in Indonesia.

4. Principle of No Punishment without Prosecution (*Asas Tidak Ada Pidana Tanpa Penuntutan*)

A criminal offense can only be punished after it has gone through a prosecution process that starts from the investigation phase. In the investigation phase, investigators are tasked with determining whether a criminal event has occurred to determine whether it is necessary to proceed with an investigation. In the investigation phase, the determination of whether a criminal offense actually occurred and whether the suspect is the perpetrator of the criminal offense is based on sufficient evidence, with instructions from the public prosecutor as a guide for the investigator. Furthermore, the public prosecutor has a key role in determining whether the case is appropriate to be submitted to the court for examination and trial. Therefore, there can be no court without a prosecution process conducted by the public prosecutor. The existence of prosecution is a strategic and crucial stage in the criminal justice system to decide whether or not a perpetrator can be punished.

5. The Principle of Free and Independent Prosecution (*Asas Penuntutan Yang Bebas Dan Merdeka*)

As is commonly recognized, prosecution is a state authority in the judicial realm, alongside the judicial power, both of which are exercised independently. Many constitutions in various countries regulate freedom in the implementation of the duties, functions and powers of public prosecutors. The principle of independent prosecution is also regulated in Article 2 paragraph (1) of Law 11/2021 which states "The Prosecutor's Office in carrying out its functions related to judicial power is carried out independently".

The function of the Public Prosecutor's Office related to judicial power is of course the power of prosecution and all actions taken for the benefit of prosecution. Although Law 11/2021 does not explain what is meant by independence, the Elucidation of Article 2 paragraph (1) of Law 16/2004 has explained the meaning of the word independence, which is "in carrying out its functions, duties and authorities independent of the influence of government power and the influence of other powers." The exercise of prosecutorial power

must be carried out independently and free from the influence of any power.¹⁰ The independence of the public prosecutor in exercising prosecutorial power is a manifestation of this freedom. Prosecutorial power is a state authority that is free to carry out prosecutions in order to maintain the sovereignty of law and justice, which is based on Pancasila and the 1945 Constitution, in order to support the functioning of the Republic of Indonesia Rule of Law.

6. Principle of Prosecution Conducted for Justice and Truth Under Almighty God (*Asas Penuntutan Dilakukan Untuk Keadilan Dan Kebenaran Berdasarkan Ketuhanan Yang Maha Esa*)

This principle is regulated in Article 8 paragraph (3) of Law 11/2021 which states that "For the sake of justice and truth based on the Almighty God, the prosecutor conducts prosecution". The deep meaning of this principle implies that the actions of the public prosecutor in carrying out the prosecution must be able to create a sense of justice based on the Almighty God, not only for justice seekers but also closely related to the spiritual relationship with the Creator. The phrase "For the sake of justice and truth based on the Almighty God" encompasses the responsibility of the public prosecutor not only towards justice seekers and the community, but also spiritually towards God Almighty.

In the judicial context, public prosecutors are expected to have high integrity, loyalty and faith. In addition, a public prosecutor is also expected to have a wise, honest, fair, professional personality, as well as expertise in the field of law, because every prosecutorial action has the potential to have a major impact. The responsibility of a public prosecutor is enormous, as his or her actions can have a serious impact on seekers of justice. If prosecutorial actions are inappropriate or unfair, the impact may violate individual human rights. Therefore, the guilty may not be prosecuted, while the innocent may be prosecuted, thus requiring the public prosecutor to act correctly and fairly.

III. METHODOLOGY

The research method adopted in this study is normative legal research with prescriptive and applied characteristics. The legal data sources used include primary legal materials, secondary legal materials, and non-legal materials. This research uses a conceptual approach with data collection techniques through

¹⁰ Ook Mufrohim dan Ratna Herawati, "Independensi Lembaga Kejaksaan Sebagai *Legal Structure* Di Dalam Sistem Peradilan Pidana (*Criminal Justice System*) Di Indonesia",

literature study. Legal data analysis is carried out by applying the syllogism method, which involves deductive thinking patterns.

IV. RESULT AND DISCUSSION

As previously explained, public prosecutors have the authority to conduct prosecutions. Article 182 paragraph (1) letter a of KUHAP then authorizes the public prosecutor to file a requisitor after the examination in court is declared complete by the presiding judge or chairman of the panel. A requisitor is a letter that contains proof of the indictment based on the evidence revealed at trial and the public prosecutor's conclusion about the defendant's guilt accompanied by criminal charges, either imprisonment, fines, or restitution. The indictment must contain the following points:¹¹

- a. The nature of the criminal offense charged;
- b. The facts obtained during the trial;
- c. Legal analysis of the facts to provide a legal construction of the events charged;
- d. Opinion on whether the charges have been proven or not;
- e. The public prosecutor's request to the panel of judges

The indictment is read out in the trial process after the examination of the defendant, witnesses, and other evidence related to the case. However, before the public prosecutor submits the indictment, the Attorney General's Guideline No. 24/2021 on the Handling of General Criminal Cases ("PJA 24/2021") stipulates that the public prosecutor must prepare an indictment plan which is submitted in stages. The charge plan ("Rentut") is submitted by the public prosecutor handling the case, to the Head of the General Crimes Section at the District Attorney's Office and then submitted to the Head of the District Attorney's Office.

The concept of a charge plan is not explicitly regulated in the Criminal Procedure Code (KUHAP) or other criminal regulations. However, the details of the charge plan can be found in the Attorney General's Guideline Number 24 of 2021 on Criminal Charges for General Crimes ("PJA 24/2021"). The principle of a charge plan is not new to the prosecution, as the concept was first introduced in 1985 through the Attorney General's Circular Letter (SEJA) Number 009/A/JA/12/1985 on Guidelines for Criminal Charges ("SEJA 09/1985"). Over time, the provisions regarding charge plans have continued to evolve in line with changing times. Although the charge plan is not explicitly regulated by KUHAP, this policy has

¹¹ Adami Chazawi. *Kemahiran Dan Keterampilan Praktik Hukum Pidana*. Malang: Bayumedia. 2005. halaman 151

become an internal mechanism applied by the Public Prosecution Service and is not a direct implementation of KUHAP. This condition shows that there is a legal vacuum related to the policy of the prosecution plan in the Criminal Procedure Code. This situation can be interpreted as under legislation, which occurs when a regulation is not specifically regulated in the law, in this case the Criminal Procedure Code, but instead is regulated in more specific regulations under the law.¹²

Initially, the charge plan mechanism was intended as a guide for public prosecutors to align cases, facilitate performance and minimize obstacles. However, this has opened the door to new polemics and potential irregularities. It is possible that the charge plan policy could become a source of 'bargaining' in criminal charges against defendants, which in turn could shape a culture of corruption within the Public Prosecution Service. In addition, this policy has the potential to hamper the judicial process which should be quick, simple and economical in order to provide protection, legal certainty and justice. The centralized bureaucratic characteristics of the Prosecutor's Office, which are reflected in the prosecution plan mechanism, pose a risk of abuse of power by the leadership of the Prosecutor's Office. Therefore, the independence of the AGO is very important to ensure moral law enforcement and restore public confidence in the law enforcement system in Indonesia.¹³

A. Independency of Prosecutor

Independence of a prosecutor who is authorized as a public prosecutor is essential. This independence includes independence from the influence of power, both from the government and the authorities in general, with the aim of achieving the values of justice, legal certainty and expediency in accordance with the dynamics of society. However, the independence of the Prosecutor's Office, both as an institution and individual Prosecutors, can be questioned for the following reasons. First, based on Article 2 paragraph (1) of Law 11/2021, it is stated that the Public Prosecutor's Office is part of the government or executive power in charge of carrying out the functions of judicial power, especially in prosecuting criminal cases. Meanwhile, law enforcement is based on the principles of independence and independence. With this arrangement, it appears that the Attorney General's Office, as a law enforcer and government apparatus, is dependent and co-opted by government power, so that its independence can be questioned. Thus, in the implementation of law enforcement, including prosecution, the Attorney General's Office

¹² Muhammad Rustamaji, *Oekonstruksi Asos Pradugo Tidok Bersalah Pemboruan Tekstua/itas Formulasi Norma dan Kandungan Nilainya*. Yogyakarta: Thafa Media, 2019, hlmn. 144

¹³ Appludnopsanji; Pujiyono, *Restrukturisasi Budaya Hukum Kejaksaan do/am Penuntutan Sebagai Independensi di Sistem Peradilan Pidana Indonesia*, Jurnal SASI Vol. 26 No. 4 2020

may not be able to operate independently. Secondly, the Public Prosecutor in determining criminal charges, based on the Circular Letter of the Attorney General Number 03 of 2019 concerning Criminal Charges Guidelines ("SEJA 03/2019"), is considered not to have full independence. In the guidelines, the Public Prosecutor is required to obtain an opinion from the Head of the Criminal Section, obtain guidance from the Head of the District Attorney's Office, or in certain cases, ask the Attorney General for guidance on charges. This shows that a prosecutor, in carrying out prosecution duties, is still influenced by other parties. In fact, the Public Prosecutor, who is directly involved in the case, better understands the level of guilt or loss arising from the defendant's actions. Leaders, from the Head of the Crime Section to the Attorney General, only get a summary of the case, which may not fully reflect the actual circumstances as known by the Public Prosecutor. In addition, the centralized structure of the Public Prosecution Service makes the Public Prosecutor only a field executor under the control of the head of the Public Prosecution Service. This raises significant concerns, especially if there are individuals from the executive branch involved in criminal offenses. In such a situation, control of the prosecution would be directly exercised by the Attorney General, so that the Public Prosecutor who is supposed to conduct the prosecution could lose his independence. In this context, the independence of the Public Prosecution Service is crucial to ensure honest, fair, accountable and transparent law enforcement, in line with the principle of fair trial and the principle of equality before the law.

Should the Attorney General not remain independent, the Public Prosecutor, who receives delegated authority from the Attorney General to conduct prosecutions, will also lose his independence. In the prosecution process, especially in determining charges, the Public Prosecutor is still under the control of the Attorney General, either directly or indirectly. As a result, the independence of the judge is also compromised, as the judge's decision depends on the charges filed by the Public Prosecutor.¹⁴

Thus, the tiered charge plan policy, as stipulated in SEJA 03/2019 and PJA 24/2021, causes the Public Prosecutor to lose its independence and responsibility. In addition, this tiered structure can hamper the judicial process which should run quickly, simply, and at low cost to provide protection and legal certainty for justice seekers. A clear example of the impact of this can be seen in the case of Bahasyim, a former employee at the Directorate General of Taxes, who experienced repeated

¹⁴ Hamzah, A. (2003). Kemandirian dan Kemerdekaan Kekuasaan Kehakiman. In *Makalah dalam seminar Pembangunan Hukum Nasional VIII*.

delays in his trial on the grounds that the Public Prosecutor had not finalized his prosecution plan.¹⁵

B. Prosecution Plan (Rentut) And Charge Disparity

As previously explained, disparity in criminal charges filed by public prosecutors still often occurs in legal practice in Indonesia. Although disparity in criminal charges is basically a common thing because each case has its own characteristics, it becomes a problem when the difference in sentences proposed for similar cases is very large, causing injustice, suspicion and jealousy in the community.

The widespread disparity in criminal charges in Indonesia can be caused by several factors, one of which is the charge plan policy. The submission of the Rentut (Prosecution Plan) is carried out hierarchically to the superior in the prosecutor's office handling the case. The Public Prosecutor submits the Rentut with tiered stages, starting from making the Rentut proposal, submitting the Rentut to the head of the criminal section, and the head of the District Attorney's Office. The Rentut must also be submitted to the Attorney General or Deputy Attorney General in certain cases, such as cases prosecuted with acquittal, death penalty, life imprisonment, cases with national or regional scale, and cases that receive special attention from the leadership.¹⁶

As previously explained, KUHAP only regulates the obligation of the Public Prosecutor to submit criminal charges in accordance with Article 182 paragraph (1) letter a of KUHAP which states, "after the examination is declared complete, the public prosecutor submits criminal charges." In addition, Article 182 paragraph (1) letter c of KUHAP emphasizes that the indictment must be made in writing and read out in court. Therefore, it can be understood that criminal charges are part of the prosecution process, but the existence of a charge plan is not mandated by law (under legislation), and therefore, cannot be considered an obligation.

Thus, legally, the Public Prosecutor is not obliged to follow the Rentut issued by the head of the Public Prosecution Service. If the Public Prosecutor considers that the Rentut is potentially suspicious or detrimental to the public's sense of justice, they have the freedom to not follow it in accordance with their legal considerations and professional ethics.

Initially, the Rentut policy was intended as an implementation of the hierarchical responsibilities of Prosecutors in carrying out their functions and duties, as set out

¹⁵ Adam Ilyas. 2021. Independensi Penuntut Umum dalam Kebijakan Rencana Tuntutan Berjenjang untuk Menentukan Tuntutan Pidana. *Pandecta*, Vol. 16 No. 1: 121

¹⁶ Adam Ilyas. *Op. Cit.*

in Article 8 paragraph (2) of Law 16/2004. The Rentut was expected to be a control tool used by the Attorney General to provide guidance, supervision, quality control, and alignment of the charges filed by the Public Prosecutor. However, in reality, the brief is often used by the head of the prosecution to determine criminal charges based on the social status and economic circumstances of the defendant.

The facts show that often the head of the prosecutor's office sets higher charges than the Rentut submitted by the Public Prosecutor, especially if the defendant does not have high power, social status or economic capacity. On the other hand, for defendants with high social status and economic means, the head of the prosecution tended to set lower criminal charges, even though the offenses were the same. This suggests that the chief prosecutor may not have direct knowledge of the facts of the trial, having only read a resume of the case, which may not reflect the full extent of the actual circumstances as known to the Public Prosecutor.

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. Sociologically, the disparity in criminal charges is perceived by the public as evidence of the absence of societal justice. Unfortunately, in formal juridical terms, this condition cannot be considered unlawful. However, it is often forgotten that the element of "justice" should be attached to the charges filed by the prosecution. Regardless of the many factors that influence the prosecution's case, an unfair prosecution can result in physical and mental suffering for the justice seeker throughout his or her life. In practice, public prosecutors are expected to be able to make the law not only as a mouthpiece of the law, but also as a tool to translate and accommodate legal aspirations. Public prosecutors who have these qualities will be able to present fair prosecution actions. Ideally, a Public Prosecutor should be able to be accountable for criminal charges in a transparent manner to justice seekers and the community. This can be achieved by conducting objective prosecutions, so that criminal charges can function as a control over the judge's verdict in the criminal process.

V. CONCLUSION

The independency of public prosecutors, both as individuals and as an institution, to ensure justice, legal certainty, and efficiency in alignment with societal dynamics is indispensable. However, there are concerns raised regarding the

independence of the Public Prosecutor's Office. Firstly, the legal framework positions the office as part of the government, raising questions about its autonomy. Secondly, the guidelines for determining criminal charges suggest that prosecutors may not have full independence, as they are required to seek opinions and guidance from higher authorities. The centralized structure of the Public Prosecution Service, where prosecutors act as field executors under the control of higher officials, poses significant worries, especially if individuals from the executive branch are involved in criminal activities. This centralized control may compromise the independence of prosecutors and, consequently, the fairness and transparency of law enforcement. The tiered charge plan policy, outlined in SEJA 03/2019 and PJA 24/2021, is criticized for potentially undermining prosecutorial independence, responsibility, and hampering the judicial process. The Bahasyim case is presented as an example, illustrating how delays in the trial were attributed to the prosecutor's unfinished prosecution plan, emphasizing the need for a swift, simple, and cost-effective judicial process for justice seekers.

the persistence of disparities in criminal charges filed by public prosecutors in Indonesia, is attributed to various factors, including the charge plan (*Rentut*) policy. The hierarchical submission of the *Rentut* (Prosecution Plan) is detailed, highlighting the tiers involved, from proposal to higher authorities, including the head of the District Attorney's Office and, in certain cases, the Attorney General. Critically, the author clarifies that, legally, Public Prosecutors are not obligated to adhere to the *Rentut*, providing them the freedom to deviate based on legal considerations and professional ethics. The initial intention behind the *Rentut* policy, as a hierarchical control tool for the Attorney General, is contrasted with its practical misuse by the head of the prosecution, who sometimes sets charges based on the defendant's social status and economic circumstances. The impact of such disparities on societal perceptions of justice is underscored, suggesting a discrepancy between formal juridical evaluations and sociological perspectives. The author advocates for public prosecutors to embody legal aspirations, ensuring transparent and accountable actions to foster fair prosecutions that, ideally, serve as a check on the judiciary's decisions in the criminal process.

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