

**THE PRINCIPLES OF PUBLIC PROSECUTOR'S
DISCRETION NOT PROSECUTING THE NON PUBLIC
INTEREST CRIMINAL CASES**

ADULYAKHUP THONGJEAN

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Thesis
entitled

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A. Thm

.....
Mr. Adulyakhup Thongjean
Candidate

Punchada Sirivunnabood

.....
Miss Punchada Sirivunnabood, Ph.D.
Major advisor

Sunee Kanyajit

.....
Asst. Prof. Sunee Kanyajit, Ph.D.
Co- advisor

K. Phollawan

.....
Prof. Kullaphol Phollawan, LL.M.
Co- advisor

P. Moolsilpa

.....
Asst. Prof. Poom Moolsilpa, S.J.D.
Co- advisor

B. Mahaisavariya

.....
Prof. Banchong Mahaisavariya,
M.D., Dip Thai Board of Orthopedics
Dean
Faculty of Graduate Studies
Mahidol University

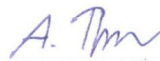
Sunee Kanyajit

.....
Asst. Prof. Sunee Kanyajit, Ph.D.
Program Director Doctor of Philosophy
Program in Criminology, Justice
Administration and Society
Faculty of Social Science and Humanities
Mahidol University

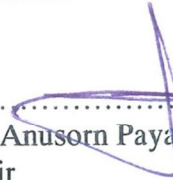
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(Criminology, Justice Administration and Society)

on
July 19, 2013



.....
Mr. Adulyakhup Thongjean
Candidate



.....
Mr. Anusorn Payakkakom, Ph.D.
Chair



.....
Miss Punchada Sirivunnabood, Ph.D.
Member



.....
Asst. Prof. Sunee Kanyajit, Ph.D.
Member



.....
Prof. Kullaphol Phollawan, LL.M.
Member



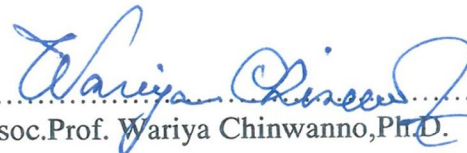
.....
Asst. Prof. Poom Moolsilpa, S.J.D.
Member



.....
Mr. Chatchom Akapin, Ph.D.
Member



.....
Prof. Banchong Mahaisavariya,
M.D., Dip Thai Board of Orthopedics
Dean
Faculty of Graduate Studies
Mahidol University



.....
Assoc. Prof. Wariya Chinwanno, Ph.D.
Dean
Faculty of Social Science and Humanities
Mahidol University

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Adulyakhup Thongjean

THE PRINCIPLES OF PUBLIC PROSECUTOR'S DISCRETION NOT PROSECUTING THE NON PUBLIC INTEREST CRIMINAL CASES

ADULYAKHUP THONGJEAN 5236857 SHCJ/D

Ph.D. (CRIMINOLOGY, JUSTICE ADMINISTRATION AND SOCIETY)

THESIS ADVISORY COMMITTEE: PUNCHADA SIRIVUNNABOOD ,Ph.D.,
SUNEE KANYAJIT,Ph.D., POOM MOOLSILPA,S.J.D., KULLAPHOL PHOLLAWAN,LL.M.**ABSTRACT**

This research intends to study the attitude of public prosecutors and personal factors that could affect the use of their discretion in deciding not to prosecute the non public interest criminal cases, including, analyzing the laws and regulations relating to the discretion of public prosecutors in deciding not to prosecute the non public interest criminal cases. It also seeks an appropriate principle of public prosecutor's discretion in deciding not to prosecute the non public interest criminal cases in order to improve the criminal justice administration by using a combination of research that focuses on quantitative research as a core and also supplemented by qualitative research. The quantitative research studies the population based on the public prosecutor who is responsible for the issuance of order relating to the criminal case, in Provincial Chief Public Prosecutor operating in the regional area in Thailand and Executive Director operating in the Central of Bangkok with a total amount of 235 persons. The qualitative research studies documents and in-depth interview on target population, including the prosecutor in charge of the management in the Office of the Attorney General with an amount of 20 persons. Qualified persons in the field of law, criminal justice system, criminology with at least 10 years of experience an amount of 10 persons.

From this study, it was found that the different backgrounds of public prosecutors or the personal factors; such as, gender, age, highest education background, the maximum amount of time working in the prosecutor to consider criminal responsibility would not affect the discretion in deciding not to prosecute the non public interest criminal cases in any way. Although public prosecutors have positive attitudes towards the use of discretion in deciding not to prosecute the non public interest criminal cases, the process of laws and legislation regulations relating to the non public interest criminal cases do affect the discretion of the prosecutor in deciding not to prosecute the non public interest criminal cases.

To protect the rights of offenders and achieve the purpose of maintaining peace and order of the society, the Office of the Attorney General should clearly amend laws and regulations related to definition or nature of the non public interest criminal cases. By reducing steps or procedures in proposing opinions to not prosecute in a brief statement based in a way as to decentralize the power from the top to the bottom and equip a training course for public prosecutor on the principles of public prosecutor's discretion not prosecuting the non public interest criminal cases and published the guidelines for public prosecutor in order to raise awareness and understanding in this regard. In addition, there should be a public relations exercise to enhance understanding about the authority of public prosecutor in this part. This can be done through the media by arranging a seminar involving all sectors to take part.

KEY WORDS: PUBLIC PROSECUTORS/DISCRETION NOT PROSECUTING THE NON PUBLIC INTEREST CRIMINAL CASES/ATTITUDE/PERSONAL BACKGROUND OF PUBLIC PROSECUTORS

223 pages

หลักการใช้ดุลพินิจของพนักงานอัยการในการสั่งไม่ฟ้องคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชน
THE PRINCIPLES OF PUBLIC PROSECUTOR'S DISCRETION NOT PROSECUTING THE NON PUBLIC INTEREST CRIMINAL CASES

อดุลยคุปต์ ทองจีน 5236857 SHCJ/D

ปร.ด.(อาชญาวิทยา การบริหารงานยุติธรรมและสังคม)

คณะกรรมการที่ปรึกษาวิทยานิพนธ์: พรพนชญา ศิริวรรณบุษย์,Ph.D. ,สุณีย์ กลัยะจิตร,ปร.ด.,ภูมิ มูลศิลป์,S.J.D.(DOCTOR OF JURIDICAL SCIENCE),กุลพล พลวัน,น.ม.,น.บ.ท..

บทคัดย่อ

การวิจัยเรื่องนี้มีวัตถุประสงค์เพื่อศึกษาถึงปัจจัยส่วนบุคคลและเจตคติของพนักงานอัยการที่ส่งผลการใช้ดุลพินิจในการสั่งไม่ฟ้องคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชน ตลอดจนวิเคราะห์กระบวนการทางกฎหมายและระเบียบที่เกี่ยวกับการสั่งไม่ฟ้องคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชนที่ส่งผลการใช้ดุลพินิจของพนักงานอัยการในการสั่งไม่ฟ้องคดีอาญา และศึกษาหาหลักการในการใช้ดุลพินิจของพนักงานอัยการในการสั่งไม่ฟ้องคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชนที่เหมาะสม เพื่อนำไปพัฒนาการบริหารงานยุติธรรมในส่วนของพนักงานอัยการต่อไป โดยใช้รูปแบบการวิจัยแบบผสมผสานที่เน้นการวิจัยเชิงปริมาณเป็นหลักแล้วเสริมด้วยการวิจัยเชิงคุณภาพ โดยการศึกษาวิจัยเชิงปริมาณได้ทำการรวบรวมข้อมูลโดยใช้แบบสอบถามกับพนักงานอัยการทั่วประเทศที่ทำหน้าที่ออกคำสั่งเกี่ยวกับคดีอาญาในตำแหน่ง อัยการจังหวัด และอัยการพิเศษฝ่าย จำนวน 235 คน ส่วนการศึกษาวิจัยเชิงคุณภาพได้ทำการรวบรวมข้อมูลจากเอกสาร และสัมภาษณ์ในเชิงลึกจากพนักงานอัยการที่รับผิดชอบงานบริหารในสำนักงานอัยการสูงสุด จำนวน 20 คน และผู้ทรงคุณวุฒิทางด้านกฎหมาย ด้านการบริหารงานยุติธรรม ด้านอาชญาวิทยาหรือทัณฑวิทยา อีกจำนวน 10 คน

จากการศึกษาวิจัยครั้งนี้พบว่า ความแตกต่างกันของพนักงานอัยการเกี่ยวกับภูมิหลังส่วนบุคคลหรือปัจจัยส่วนบุคคล ได้แก่ เพศ อายุ ระดับการศึกษาสูงสุด ระยะเวลาการปฏิบัติงานในตำแหน่งพนักงานอัยการที่รับผิดชอบพิจารณาสั่งคดีอาญา และประสบการณ์ทำงานในตำแหน่งพนักงานอัยการ ไม่อาจมีผลการใช้ดุลพินิจสั่งไม่ฟ้องคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชนแต่อย่างใด และถึงแม้ว่าพนักงานอัยการจะมีเจตคติทางบวกต่อการใช้ดุลพินิจสั่งไม่ฟ้องคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชน ก็ไม่ได้ทำให้ใช้ดุลพินิจสั่งไม่ฟ้องคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชนไปด้วย โดยกระบวนการทางกฎหมายและระเบียบที่เกี่ยวกับการสั่งไม่ฟ้องคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชนส่งผลการใช้ดุลพินิจของพนักงานอัยการในการสั่งไม่ฟ้องคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชน ดังนั้น เห็นควรกำหนดความหมายหรือลักษณะของคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชนถ้ามีการฟ้องคดีให้ชัดเจนและลดขั้นตอนต่างๆในการเสนอความเห็นเพื่อออกคำสั่งไม่ฟ้องให้สั้นกระชับลง ง่ายต่อการปฏิบัติ ประชาสัมพันธ์หรือทำความเข้าใจเกี่ยวกับอำนาจหน้าที่ของพนักงานอัยการในส่วนนี้ บรรลุเรื่องดังกล่าวไว้เป็นหลักสูตรหนึ่งในการฝึกอบรมอัยการผู้ช่วย จัดทำคู่มือแนวทางในการปฏิบัติงาน ตลอดจนเผยแพร่คำวินิจฉัยคดีประเภทดังกล่าว

เพื่อเป็นการคุ้มครองสิทธิผู้กระทำความผิดและบรรลุดุลพินิจประสงค์ในการรักษาไว้ซึ่งความสงบเรียบร้อยของสังคมอย่างแท้จริง สำนักงานอัยการอัยการสูงสุดควรแก้ไขกฎหมายและระเบียบที่เกี่ยวข้องโดยกำหนดความหมายหรือลักษณะของคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชนถ้ามีการฟ้องคดีให้ชัดเจน และลดขั้นตอนต่างๆในการเสนอความเห็นเพื่อออกคำสั่งไม่ฟ้องให้สั้นกระชับในลักษณะกระจายอำนาจจากส่วนบนลงไปสู่ส่วนล่าง และบรรลุเรื่องหลักการใช้ดุลพินิจของพนักงานอัยการในการสั่งไม่ฟ้องคดีอาญาที่ไม่เป็นประโยชน์แก่สาธารณชนไว้เป็นหลักสูตรหนึ่งในการฝึกอบรมพนักงานอัยการ ตลอดจนจัดทำคู่มือแนวทางในการปฏิบัติงาน ทั้งนี้ เพื่อเป็นก่อให้เกิดความตระหนักรู้และเสริมสร้างความเข้าใจในเรื่องดังกล่าว นอกจากนี้ควรมีการประชาสัมพันธ์หรือทำความเข้าใจเกี่ยวกับอำนาจหน้าที่ของพนักงานอัยการในส่วนนี้ ซึ่งอาจจะดำเนินการผ่านสื่อต่างๆ จัดสัมมนาให้ทุกภาคส่วนได้รับรู้ด้วย

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CHAPTER I

INTRODUCTION

1.1 Background and Rationale

Emile Durkheim said that crime as normal behavior in society and is closely related to the living conditions of any human, therefore, Crime is inevitable. No society is a crime-free society, if so, that society will considered to be rather bizarre or should not considered to be a society. This is because crime was the result of a complicated social and human needs which has no boundaries and limitless. (Emile Durkheim as cited in Sopa Chupikulchai,2525:14-15) In theory, when there was any crime committed, Society, therefore, need a kind of measures to deal with offenders. However, measures taken against offenders depends on the belief of the people in each era. In previous time, it is believe that since the perpetrator is evil in its nature. Punishment as a response to crime must act with brutality and violence. The aim of punishment is to cause fear in order to prevent the re-occurring crime and to create an example for ordinary people to see and deter them from committing any wrong doing. (Natee Jitsawang,2546:1) The evolutionary of punishment theory in the traditional society intended to punish the offenders in order to revenge or retribution to the society. By means of torture, cruel and inhuman punishment as a mean to punish the offenders equally to the offense they have committed. The offender will be punished in a way that is brutally tortured against body. It is therefore considered to be a personal matters not the state. Later on, there was an idea that the state should act on behalf of their citizen, revenge then was done towards the offender since it was believe that crime is a vast majority impact rather than a personal matter.(Kanya Tansiri, 2550:10) In present, if considered in terms of utility (as refers in Utilitarian Theory). The goal of punishment is to deter crime from re-occurring. Also, it will result in a correction and rehabilitation of the offenders. It intends to re-channel or change the attitude or values of perpetrators to listen and obey to the law. (Narong Jaiharn,2543:25) The two objectives were to protect the society and improve the

offenders' behavior by detaining offenders in prison in order to take them away from the society. It is hopefully that imprisonment will be the most effective means for the offenders who have served their sentences to adjust themselves as a good citizen. However, in reality, it seems that short term imprisonment usually cause adverse effects than good, since imprisonment would not be suitable to all types of offenders. Those who do not have a criminal characteristic trait and have been sentenced to imprisonment, when they were released, usually change their behavior into a real criminal more or less depending on the time-length of imprisonment. Short-term imprisonment could not be use as a corrective means against offenders. Prison is an education center for learning new techniques of crime and imprisonment may also cause stigma and labeling for both offenders' and family. When the offender has been released, he will be label or considered as prisoner and he might not be able to fit into the society. He may return in the bad habit and eventually to the criminal justice process once again. Therefore, the process of public prosecutor's discretion whether to prosecute or not prosecute the offenders in criminal case is very important to the criminal justice process. Public Prosecutor, as a "State Attorney" shall acknowledge and recognized this matters.

To bring legal proceedings against any individual is a critical issue. Therefore the fair and effective proceedings are very significant to maintain law and order in the society. Even in a case involving a petty offense, the criminal proceedings will affect all parties involved, including the defendant, family and relatives of the defendant as well as victims, witnesses and criminal justice personnel.

Here are examples of the criminal proceedings under the Film and Videotape Act (B.E. 2551) first paragraph in section 38 and 79¹ which a person

¹ The Film and Videotape Act (B.E. 2551)

Section 38 (first paragraph): "Prohibits the sale, exchange or lease of any films with remuneration, except with the permission of the Registrar."

Section 79 : "Whoever violates first paragraph section 38 or operates such a business during the suspension or revocation of their license shall be liable to a fine between two hundred thousand and one million baht and a further fine not exceeding ten thousand baht throughout the period of violation."

commits the offenses of trading cinematographic films without authorization and receives an amount of income in return. The defendant was a garbage collector, a temporary worker, at the Bangkok Metropolitan Administration. He was arrested and prosecuted by police officers because he has collected old VCDs from the garbage dump and resold them at an occasional market for 20 baht per each VCD in order to feed his pregnant wife and his three kids. The public prosecutor has filed a lawsuit against him and since he has confessed, the court has ordered him to face a fine of 133,400 bath. There is another case in Lop Buri Province, Thailand. The defender was a poor housewife with two kids who earned her living as a seamstress. One day she sold 10 of her own unwanted DVDs which she had bought for her children to watch during the school holidays at the market in order to earn a bit more income. As a result of that action, she was arrested by police officers and had a lawsuit filed against her. The court has ordered her to pay 100,000 baht in fines. For these two cases the sentence of imprisonment shouldn't have been imposed. But the two accused had no money to pay their fines so both of them were sent to jail instead. From these examples, the prosecutions gave dreadful impacts on the defendants and their families.

As a consequence, the process of judgment had been severely criticized by the society and media whether consideration of the public interest is involved and whether public prosecutors who prosecute criminal actions on behalf of the state only have a duty to put someone in a prison even though they can use their discretion not to prosecute if the cases are not in the public interest.

This can be compared with the following criminal charges which public prosecutors have used their discretion not to prosecute since the cases would not be in the public interest. The first case, a 15-year-old accused who worked at Tesco Lotus sneakily gave a leftover Chinese bun to his mother who came to the store to buy buns for his brother. After the mother had bought some buns, the accused gave her just one leftover bun for free to bring to his brother who loves to eat buns. The accused however had no intention to resell the bun. In this case, the price for the bun was just 10 baht and the store had already received the stolen bun back and the accused did not have any criminal history. When considering the reported age, background, behavior, intellect, educational background, mental state, habit, career, status and the

environmental factors, it is clear that the defendant only had an intention to support his family and the crime did not affect the society. The prosecution therefore does not require for this case.

Another case is a 21-year-old pregnant woman who committed a crime by using a hammer to break a bank's glass door. She was in her last month pregnancy and wanted the money for the childbearing. The alarm went off and she was finally arrested before taking further action. When considering the age and behavior of the defendant, it appears that she committed the crime because she was desperate for money for her childbearing. Therefore, unconsciously, she would have done anything. Bringing the case to court and punishing the girl would not benefit both the accused and the public as stealing was not her nature and the crime was committed in her demented state. If she was sentenced it would rather do more harm to the society. Her child would be born and grow up in prison which might lead to an inferiority complex and might cause another future social problem as well.

From the two cases that public prosecutors exercised their discretions not to prosecute as they are not in the public interest, we can see that the cases are more serious than the old VCD cases under The Film and Videotape Act (B.E. 2551) which are not serious and both are a victimless crime that are not in the public interest. Besides, defendants did not have a commercial purpose and they have acquired the old VCDs honestly and have had the right of ownership. Both of them did not have any criminal record. They were just two innocent people who do not have enough money to support their families. The VCDs' prices were very low, compared with a fine of 200,000-1,000,000 baht and a further fine not exceeding 10,000 baht per day throughout the violation period. Since both defendants did not have enough money to pay the fine, they were sent to jail instead. In these cases, defendants were not supposed to face a stigma of prison. The Act however is intended to benefit capitalism or the economic system which in turn reduces the individual's rights. These reasons could be taken into consideration when the prosecutorial decisions were made. However, the cases had brought many questions and the process of judgment was criticized by the society. Some of the questions are "Are these actions really against the law?", "Does the court or sovereignty properly exercise its power?", "Was the Act

enacted to protect the capitalists by using the process of judgment as a tool?” and “Were the innocent people abused by the law or the process of judgment?”

Although, Thailand has used the principle of discretion in prosecuting the case, but in reality, prosecutor usually prosecute if he/she has enough evidence to prosecute, therefore, causing great deal of cases in the court. It was found that before B.E. 2528, prosecutor has exercised their discretion not to prosecute the case which will not be beneficial to the public with as less amount as 5 cases only, even there was enough evidence within the case. (*Criminal Justice Journal, second year, 2545:22*) such as;

1. Case of non-prosecution against old lady who has possessions large sum of red satang more than the law has allowed (Thai currency of cents) .

2. Case of non-prosecution against a store which sell Opium

3. Cases of non-prosecution against petty trade of citizen in border area, with a reason of justice, since there was an order of Minister of Finance to allow citizen to bring in and take out small items of goods outside of kingdom without the need to pay tax, this case appears to be that the defendant has sneaked out small items of good outside of the kingdom.

4. Court order not to prosecute against the state witness, by claiming that if the prosecution will be against them, not one will be able to testify in order to press charges against those who were cooperate as a accomplice.

5. Court order not to prosecute against the people who demanded the government officials to crackdown on protesters who were in the making of rock salt. The prosecutor argued that it is not useful to the public and may have an impact on public order.

Regarding to the Department of the Attorney General at that time has not clearly determined which case is the legal case that may not be useful to the public both in a written statement or a manual. Therefore, Thailand has took the pattern of British Attorney General in terms of prosecution according to discretion, later on in year 1985, The Department of the Attorney General has issued regulations on the legal proceeding of prosecutor year 1958(2528 B.E.) section 51 which have said that “If the public prosecutor sees that any prosecution on legal case will not be useful or non

public interest, or any of that prosecution will bring about an obstacle to the public peace and order and good moral of the citizen or that prosecution may bring about an impact to the safety and stability of the country or national interest prosecutor should express their opinion together with attached documents to the Attorney General to issue an order” there was a part which stated about the order not to prosecute the criminal case which may not be beneficial to the public, however, it did not clearly stated to which type of case is not beneficial to the public, causing a low number of case which public prosecutor did not prosecute, from the statistic between 1985-1992, there is no case which has the order not to prosecute by adhering to those regulations, later in the year 1993 there were 2 cases, and in year 1994 there were 4 cases, in year 1995, there were 6 cases, in year 1996, there were 14 cases, in year 1997, there were 3 cases and in year 1998, there was 1 case (*Criminal justice journal, second year, B.E.2545:23*), it could have been said that approximately, there were about 5 cases per year, above all, in year 2004, the Department of the Attorney General has issue the regulations on the Attorney General’s regulation on legal proceeding on prosecutor year 2004(2547 B.E.), there was a part which stated about the order not to prosecute the criminal case which may not be beneficial to the public, however, it did not clearly stated to which type of case is not beneficial to the public. From statistic between 2007-2010 it could have been said that approximately, there were about 15.75 % annually, later on the 7 December, 2010, there were a statement offers the authority on not to prosecute the case which may not be beneficial to the public in section 21, paragraph 2 on the Public Prosecutor’s Organization and the Public Prosecutor Act 2553 B.E. and on 29 April 2011, Office of the Attorney General has enforced the Regulation on the Order to not Prosecuting the Non Public Interest Criminal Cases or the Case which may Affects the Safety and the Stability or National Security of the Country B.E. 2554, however, did not affects the discretion of the prosecutor on not prosecute against cases which may not be beneficial to the public that much.

In Britain, the prosecutor has used the concept of public interest to clearly consider the case which that prosecutor can used the public prosecution's discretion (opportunity principle) to determine The Code for Crown Prosecutors and Legal

Guidance for prosecutor to comply with the rules of evidence before trial. If the case does not have enough evidence to prosecute, the prosecutor must not prosecute without considering about the consequences, the seriousness of the offense or policies in any other way. However, if there were enough evidence to prosecute, public prosecutor still must consider whether the case will be conflict with public interest or not. If that case would be useful to the public, the consideration to prosecute shall be made, however, if the case appears to be not beneficial to the public, even with enough evidence to prosecute, prosecute must exercise their decision as not prosecute. Factors such as whether the case will be conflict with public interest or not will affect the public prosecutor to prosecute; for example, the seriousness of the offense. If the court will impose a heavy penalty, such as, the use of weapons or violence in the crime or offenders did some harm to officers, means that the Accused were guilty of the offense by virtue of duty or deliberate offense. The public interest factor which the prosecutor has adhered to use as a principle in consideration not to prosecute; such as if the court ruled out the judgment as to punishment, it will be a minor punishment, however, the action of offenders must be clearly prove that it is an offense (In a minor offense) The damage will be lightly, the offenders, if with senior age, must have already been rehabilitated or the prosecution may eventually affects the stability of the country or international relations; as such. (Office of the Attorney General, 2546:6).

Thailand has established the principle for the prosecutor to use discretion to prosecute, which Surasak Likkasitwatanakul (2549:226) has stated in the Code of Criminal Procedure Article 143, first paragraph that “When public prosecutor has received comments and expressions in the previous section from inquiry officer, shall proceed as follows.

(1) When (inquiry officers) have agreed not to prosecute, or issue the decree or ordered as not prosecute or there was an order to continue the investigation or even the prosecution, public prosecutor must inform the inquiry officer to hand in the offenders for further proceedings; depending on the case.

(2) When (inquiry officers) have agreed to prosecute, the order to prosecute or proceed offenders to trial must be issue, however, if there was a disagreement, the order not to prosecute shall be made.”

From those principle, it can be seen that it is not the requirement for the public prosecutor to prosecute, even if the evidence was sufficient, however, the power of public prosecutor to use discretion as to prosecute or not is without restriction. There was an adoption of the pattern of a Britain's prosecutor to use the principle of discretion (opportunity principle or expediency principle) which means that even if the right or authority to prosecute and the conditions in terms of punishment were matched, public prosecutor can exercise their discretion not to prosecute on criminal cases in a way which is known as "Quasi-judicial powers" by considering in terms of criminal charges which may be or may not be useful to the public. If the consideration was that the criminal case will not be beneficial to the public, public prosecutor may use their discretion power not to prosecute and report to the Attorney General in order to follow with proposal, however, in practice, public prosecutor usually prosecute when there were sufficient evidence.

The focus of this research study is to determine whether the criminal hearing that the accused is guilty, with sufficient evidence to prosecute, however, the public prosecutor has use discretion power as not to prosecute a criminal case since it was not beneficial to the public. Researcher intends to study the principle of discretion in terms of its usefulness and obstacles, and what do prosecutor has an attitudes about the use of such discretion, in order to propose appropriate principle to the development of justice administration on the part of the public prosecutor.

1.2 Research Objectives

1.2.1 To study personal background and attitudes of the public prosecutor which may affecting the use of discretion not prosecuting the non public interest criminal cases.

1.2.2 To study the processes and procedures relating to the criminal justice and any regulations which intends not to prosecute any criminal case which may not

be useful to the public in a way that affect the public prosecutor's discretion not prosecuting the non public interest criminal.

1.2.3 To study the principles of public prosecutor's discretion not prosecuting the non public interest criminal cases and leads to further development in the administration of justice system in part of public prosecutor.

1.3 Scope of the Research

The study population in year 2012 will be based on a public prosecutor who is responsible for the issuance of order relating to criminal case in a position of Provincial Chief Public Prosecutor (From region-wide) and Executive Director (in Bangkok area). Apart from this, in order to achieve further clarity in the study, researcher intends to study the public prosecutor in charge of the management within Office of the Attorney General, ranging from the Deputy Director General, Executive Director, and Director General in various offices, The Inspector General, Attorney General, Deputy Attorney General and the Senior Executive of the Attorney General who has responsibility in the field of administrator and all Legal Experts in the field of Justice Administration, Criminal Justice System or in the field of Criminology with at least 10 years in experience.

1.4 Research Methodology

A research on the principles of public prosecutor's discretion not prosecuting the non public interest criminal cases, Researcher has used mixed method research which focus mostly on quantitative research with a supplement of qualitative research and classified the study into 2 categories; such as

1.4.1 Quantitative Research

The study population will be based on public prosecutor who is responsible for the issuance of order relating to criminal case, population can be categorized as follows;

1.4.1.1 Provincial Chief Public Prosecutor operating in the regional area in Thailand with an amount of 202 persons.

1.4.1.2 Executive Director operating in the Central of Bangkok with an amount of 61 persons.

1.4.2 Quantitative Research

1.4.2.1 Documentary Research from documents both in Thailand abroad which are the texts in laws and regulations, academic texts, research report, research papers, academic journal and electronic journals, teaching materials and legal proceedings on decision and discretion not to prosecute on criminal cases that do not benefit the public.

1.4.2.2 In-depth interview on target population, including the prosecutor in charge of the management in Office of the Attorney General in a certain position, ranging from the position of Public Prosecutor responsible in the administration work in Office of the Attorney General in a certain position, ranging from experts who has been appointed as Provincial Chief Public Prosecutor, Executive Director, Deputy Director and Director-General in various Attorney offices, the Inspector General, Deputy Attorney General; including Senior Prosecutors who has been appointed in the position of executive. Qualified persons in the field of laws, Criminal Justice System, Criminology with at least 10 years of experience.

1.5 Definition of Terms

Public prosecutor means those who has been appointed to the position of Prosecutor according to the Public Prosecutor's Organization and the Public Prosecutor Act 2553 B.E. and has the authority to issue an order relating to criminal proceedings in a position of Provincial Chief Public Prosecutor or Executive Director.

Public prosecutor's discretion means the power or right to decide or act according to one's own judgment as appropriately and fairly. The discretion of prosecutor not to prosecute in legal case which may not be beneficial to the public means that the public prosecutor has the decision not to prosecute even the evidence is

enough but is in the procedures of deciding as appropriately and fairly that he/she will not prosecute since the prosecution will not be beneficial to the society, peace and stability of the country, victims or defendants.

Personal background means of personal factors public prosecutors such as gender, age, highest level of education, the maximum amount of time working in the prosecutor to consider criminal responsibility and experience in a position of public prosecutor.

Attitudes means expression or feelings of the public prosecutor in exercising their discretion power as not prosecuting the non public interest criminal cases.

Laws and Regulations mean laws and regulations related to the public prosecutor's discretion not prosecuting the non public interest criminal cases, including the Code of Criminal Procedure Act, Section 143, first paragraph, The Public Prosecutor's Organization and the Public Prosecutor Act 2553 B.E. Section 21 and 22, as ordered by the Regulation on the Order to not Prosecuting the Non Public Interest Criminal Cases or the Case which may Affects the Safety and the Stability or National security of the Country B.E. of B.E.2554 Article 5 Article 6, Article 8, Article 9 and Article 10.

1.6 Variables used in Research

In this study, researcher has used 2 variables; such as

1.6.1 Independent Variable such as

1.6.1.2 Personal background consist of

- Gender
- Age
- Highest Education background
- The maximum amount of time working in the prosecutor

to consider criminal responsibility

- Experience in a position of public prosecutor

1.6.1.2 Attitudes of Prosecutor in issuance an criminal case

1.6.1.3 Laws and regulations relating to the discretion not prosecuting the non public interest criminal cases

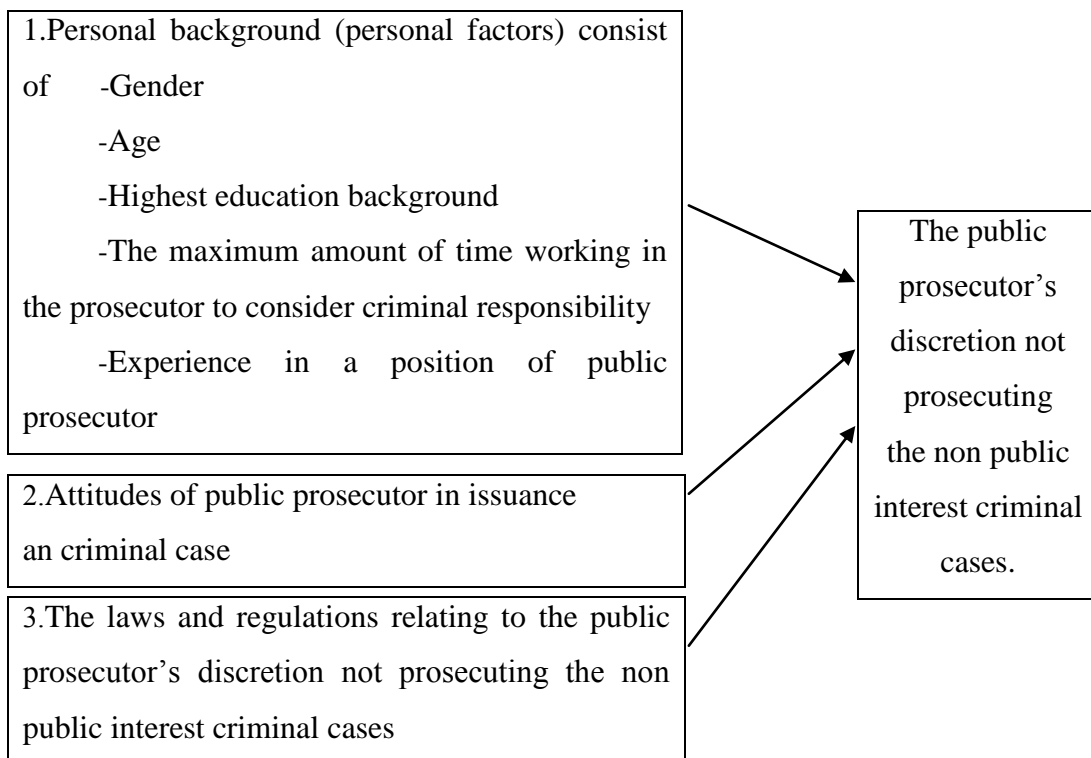
1.6.2 Dependent Variables such as

The public prosecutor's discretion in not prosecuting the non public interest cases.

1.7 Conceptual Framework

Independent variables

Dependent variable.



1.8 Hypothesis in Research

1.8.1 Personal background may influence the public prosecutor's discretion not prosecuting the non public interest criminal cases.

1.8.2 If the public prosecutor has a positive attitude toward the use of discretion not prosecuting the non public interest criminal cases. As a result, discretion to order such a prosecution.

1.8.3 Laws and regulations relating to the discretion not prosecuting the non public interest criminal cases will affect the discretion decision of the public prosecutor as not to prosecute.

1.9 Core question in Research

The research was conducted on the discretion not prosecuting the non public interest criminal cases in order to provide a clarity in research, therefore, the core question in this research is to raised on issue of “What factors influence the order of the public prosecutor to filed a criminal case”

1.10 Expected Benefits from Research

1.10.1 To acknowledge personal background and attitudes of the public prosecutor which may affecting the use of discretion not prosecuting the non public interest criminal cases.

1.10.2 To acknowledge the processes and procedures relating to the criminal justice and any regulations which intends not to prosecute any criminal case which may not be useful to the public in a way that affect the public prosecutor’s discretion not prosecuting the non public interest criminal.

1.10.3 To acknowledge the principles of public prosecutor’s discretion not prosecuting the non public interest criminal cases and leads to further development in the administration of justice system in part of public prosecutor.

CHAPTER II

LITERATURE REVIEW

A study on the principles of the public prosecutor's not prosecuting the non public interest criminal cases, researcher would like to review on literature in topics as follows;

2.1 Origin of the public prosecutor

2.1.1 Origin of the public prosecutor in Thailand

2.1.2 Origin of the public prosecutor abroad

2.2 Principles of criminal prosecution

2.2.1 The Legality Principle

2.2.2 The Opportunity Principle

2.3 Concepts and principles of the public prosecutor's not prosecuting the non public interest criminal cases

2.4 Related Theory

2.4.1 Labeling Theory

2.4.2 New Labeling Theory

2.4.3 Theories relating to person's attitude

2.4.4 The Concept and the Evolutionary of Punishment Theory

2.5 Ideology and principle of public prosecutor's discretion not prosecuting the non public interest criminal cases

2.5.1 Prosecutor in Britain and Wales

2.5.2 Prosecutor in Scotland.

2.5.3 Prosecutor in the United States of America

2.6 The Problem of interpretation of the word "public interest"

2.7 Laws and regulations relating to the discretion not prosecuting the non public interest criminal cases

2.8 Example of Attorney General's order on the cases which used discretion not prosecuting the non public interest criminal cases

2.9 Related Research

2.1 Origin of the Public Prosecutor

2.1.1 Origin of the Public Prosecutor in Thailand

Office of the Attorney General have collected the evolution of the prosecutorial regime in Thailand on the occasion of 100 years anniversary of the founding of the Crown Prosecution Service (2536:69-72), but it appears that at that time, the country does not have the criminal proceedings on behalf of the state like any other countries. However, Thailand's criminal proceedings have concluded that evolution is as follows.

2.1.1.1 Sukhothai era

During Sukhothai era. The ruling in this period is characterized by father-son ruling or paternalism "patriarchal" since there were fewer people in the kingdom. The King has a close relationship with the citizen. And he, himself had his own way of dispute settlement by allowing the citizen to "petition" or ask for justice directly from the King himself.

2.1.1.2 Ayutthaya era

Ayutthaya has been influenced both in politics, law and the customs from Mon and Khmer (Cambodian style). In addition, the country has become more prosperous with economic growth and the government is having fruitful relations with other countries. The number of population are much more than in Sukhothai era. Therefore, the ruling of paternalism like in Sukhothai era is not possible, so they shift the ruling from paternalism to a state. The dispute settlement in Ayutthaya period has been characterized by allowing a private plaintiff who has been the victim in the case to file the criminal case by themselves, at this stage "Public Prosecutor" has not yet appeared in the criminal justice system or even act on behalf of the state. Above all, there were no "Judiciary Court" as in present as well since all of the highest judicial

authority belongs to the King as he is the absolute ruler. His Majesty the King has all the legislative power, executive power and judicial power. The judgment at that time is adhered to the “Jarete Nakornbal Rule”(legislation investigate by torturing the accused), which is a presumption that the accused is guilty until proven by the defendant's own confession by means of torture. The use of the criminal investigation particularly in the Ayutthaya period also established “the rights to revenge” in a way as self-defense, such as, if a house owner would like to catch the thief who has illegally entered his house; for example, the owner of the house may stabbed the bandits to death without any penalties (section 137 the bandits Act); Parents of a girl can do some harm to the man who has sneaked in to the house to see their daughter. (The spouses Act; Section 81).

The settlement of a lawsuit or “Jarete Nakornbal Rule” has descended to the Rattanakosin period, which caused great disapproval from foreign countries since they believed this type of rule may be unfair to the people under their jurisdiction, they then, would not let their people to serve in Thai court or jurisdiction, causing the extra-territorial rights in the end.

2.1.1.3 Rattanakosin Period

During Rattanakosin period, the Western countries such as France, Britain, Portugal, Spain, Netherlands, etc., has competed for colonialism within Asia region; those said countries have tried to influence in terms of Thai's political, economic, trade and culture; particularly, they have tried to influenced in laws enforcing at that time especially in “Tra Sam Duang Law” (The first Thai enacted law) which they claim to be outdated.They have claimed that Thailand's Legal Procedure and criminal justice system could not be accepted. They claimed that the law and criminal justice in Thailand is rather barbaric. Those countries, then try to force Thailand to accept the extraterritorial rights, especially when the offender is a foreigner within their jurisdiction, they will be put on to trial only in their Consulate Court, France is another country which caused problem. for Thai government at that time, since it is the country which seeks to colonized and claimed their own rights in prosecuting their own people which may be Laos, Vietnam, and Cambodian.

Thailand has been forced by Britain and France very much, since they have tried to find many reasons to claim their rights to take over Thailand like to other countries. Thailand has tried her best to be patient, for example during the reign of King Rama 4, Britain has forced Thailand to accept Bowring Treaty in year 1855, causing great disadvantage to Thailand in many ways; such as the extraterritorial rights over the Kingdom of Thailand, this means that if British citizen committed any crime within Thai's territory, he may not be put on trial in Thai's court but can go directly to British's Consular court, later on, other countries have used this kind of tactics like Britain in order to claim their extraterritorial rights.

Later in the reign of King Rama V, has developed a process to reform the law and practice similar to Western countries which have a treaty with Thailand. Thailand, therefore, have called for the cancellation of those Treaty which cause great disadvantage to the country. Meanwhile, foreign countries which have signed the extraterritorial rights with Thailand, has called for Thailand to adjust Thai's civil law and criminal justice system in Thailand as according to the international standards, especially the western countries.

The disadvantage of the above-mentioned treaty cause Thailand great concerned to review and accept that the law and justice of Thailand at that time still not appropriate as international standards and have not been accepted by the western countries, thus, there were a development of legal system both in substantive law and legal methods to regulate legal system; such as "Tra Sam Duang Law" or the law of three seals, and there were a mixture of both civil and criminal cases at the same time without clear-cut guidelines, together with the use of "Jarete Nakornbal" rule in the trial. While, judiciary system of the country is still not unified since there are several courts scattered around at various government agencies. Also, the characteristics of the court still were not accepted by foreigners since there were a confusion both in names, quality of the judge and the methods used in the court, for example, there were no procedures of criminal investigation, plaintiff and defendant, lawyer or even the judge. At the time, the Thai court act in all manners both as plaintiff's lawyer and a judge by adhering to "Jarete Nakornbal Rule" as a guidelines.

King Rama V had therefore, established the Ministry of Justice on March 5, 110 by bringing together those scattered court in various Department and

Ministry as a unique unit and there was a new set up in the court's system both at the central and provincial level, there was also a recruitment of a judge, with a legal expertise to adjudicate legal action.

Prior to Procedural Act on punishment in year 115 (2439 B.E.), there was a criminal proceedings by using an inquisitorial system which at that time could be concluded that by using "Jarete Nakornbal Rule" was the worst part of law system in Thailand. This is a turning point for adjusting the criminal procedure in Thailand, it could have been said that, the Punishment Act was temporarily used before year 115, and there was an Act to cancelled the "Jarete Nakornbal Rule" which was later cause the cancellation of the inquisitorial system and a shift into the use of accusatorial system like any other foreign country.

This major improvement, apart from the establishment of the Ministry of Justice in order to set up the draft legislation, there was also the establishment of the "Corporate attorney" for the first time and there was an evolution of the "Corporate Judge" by officially set up the corporation within the reign of King Rama V, which is the period when Thailand was in great deal of developing laws and justice system in accordance with the guidelines of the western countries. In the framework to establish the Ministry of Justice as Prince brother Sawasdisophon, as appeared in the booklet provided to His Majesty King Rama V, dated August 3, Rs year 109, there was a message about the "Prosecutorial Department" that "Article 6. Prosecutorial Department is an official on behalf of the plaintiff attorney in a state criminal case which specify that the case which belongs to the state with a punishment under criminal law as a felony and the official legal advisor has the position as the Civil Service law officer with four lines receivership with "Samean, Ake, Toh and Samun"

The authority of the Ombudsman operating tofiled criminal case will act as a prosecutor or a state lawyer, this is called the "prosecutorial System" or the (System of Public Prosecutor), as the evidence so far discovered. It appears that the era has begun in the year 111 (AD 2435). As shown in the regulations of the Ministry of Justice having said that the poor who has filed a case dated March 9, RS. 111. Article 12, stating that the Advocate Officer may ask the court to order that the

plaintiff shall not be treated like the poor, however, if it appears that the plaintiff is the poor, with pity some, and has been under the management of the Act of Sanam Sathit Yutthitham R.s. 111, in Article 12 that the charges against the accused, the Plaintiff must be sworn before a trial begin, except that, the criminal crime which falls under the duty of the “Prosecutorial Corporate” to filed a claimant as a plaintiff, the Prosecutorial official may not need to be sworn. The Act to allow the establishment of Police court as a State District Patrol for Bangkok dated March 31, R.s. 111 in Article 8, stating that “If the State District Patrol in Metropolitan Ministry has arrested criminal in charge of Royal offense in a felony act which the court of police may not have the authority to consider absolute legality, may the court start to investigate the witness beforehand” If there was a plaintiff in the case, he/she must file a case according to the Ministry. However, if there is no plaintiff, it must have report the case to the Attorney General's Department by attaching witnesses statement along with the report. If the prosecutor decided to prosecute criminal charges against them, the court will forward the matter to the Ministry for consideration.

According to evidence from history, there was a confirmation that the Attorney General’s Department was established on 1 April 2436 B.E. or R.s. 112., as appears in Thammasat’s booklet, second edition, R.S. 112. The news has declared the appointment of Judge on April 30, Rs 112, in edition 31, on pages 38-39, it was written that “there was a royal appointment of Attorney General’s Office as an office under the Ministry of Justice under the supervision of Luang Rattanayapati as the Director of the Department”. Of such evidence, it indicates that the prosecutors have begun their duty in filing a criminal case during the year R.S. 111 and there was the set up of the Attorney General's Department on April 1, Rs 112 (2436 B.E.).

The Attorney General Department is responsible for criminal proceedings within the King's Court and International criminal law, as Luang Rattanayapati or Koon Luang Praya Kraisee (Pleng vaepara) as the Director of the Attorney General Department. The head of districts has appoint an officer in a position of “Yok Kroat” or “procurement” as a leader and “Paeng” as an assistant with a responsibility and authority to investigate and prosecute the criminal cases to the court under the Ministry of the Interior. When the Attorney General Department was already set up, the position of “Yok Kroat” was still available in all districts, the name was

called “Yok Krabat Monthon” and “Yok Krabat Muang.” Later, on April 1, 2459 B.E., under the reign of King Rama VI, there was a declaration to jointly accumulate all public prosecutor which were widely scattered in various Ministry to be under the same Ministry and there was a cancellation of the position of “Yok Krabat Muang” and “Yok Krabat Monthon” by calling under the name of District Attorney and Public Attorney, by appointing an prosecutor official to act as state lawyer both in the city and county under the name of “Attorney Department” under the rule of Ministry of Justice and that could be the establishment of “Public Prosecutor Corporate” in Thailand, together with the set up of accusatorial system within the country.

In part of the establishment of the Attorney General Department and the part that the prosecutor was acting as plaintiff to filed criminal charges on behalf of the state, the true reason led from the criminal proceedings from foreign jurisdiction which claimed to have extraterritorial rights over the Kingdom of Thailand, as mentioned by “Pra Chao Ya Ther Krommaluang Ratchaburi Direkrith” on "persons under legal entities (made up name) in Thailand" (published in the book: “Rules and order of Senabodi, Ministry of Agriculture”, dated April 1, 2464 B.E., on page 126) it was written that "Another reason which enlightened the knowledge on the issues of persons under legal entities (made up name) was during as early as R.s. 112, which after that year, Thai and French mostly quarrel very much, France has always claimed to have controversy with the Thai, when there was a case of controversy between these two, France will always intended to have a controversy with Thai officials, especially, when the French has arrested the Thai defendant, they always channeled their voice through the Ministry of Foreign Affairs, with an intention to caused an officially controversial, Thailand, then, have tried to emulate this tactics by appointing a Thai Attorney to act on behalf of defendant in the court, this Attorney will pretend to be as if a plaintiff, acting as an ordinary citizen as such as the defendant, the Consulate court will settle a person to act as a plaintiff in order to filed a complaint in their court by pretending that the government official is acting on Thai’s court and the Consulate court is acting as the judge.

Under the authority of the public prosecutor as appeared in the Penalty Act temporarily used in R.s. 115, Section 2 on the legal proceedings, article 7

have stated that “Among the things which are punishable under the act of rebel, violence killing, etc. If there is any plaintiff who would filed a criminal charge against those who violated the Royal offensive, that person may not need to file that matter ever again in any reason, it shall be the duty of the prosecuting authority.” Later, in 2458 B.E., King Rama VI has graciously enacted the Act dated March 11, 2458 B.E. by include the prosecutor under the Ministry which responsible for legal proceedings on behalf of the government both in the central and districts under the same Ministry since 1 April 2459 B.E. onwards and the name shall be called “The Attorney General Department” under the Ministry of Justice until the year 2498 B.E. there was an enactment of the Prosecutorial Act B.E. 2498, article 4 which stated that "The prosecutor is a state lawyer at First Instance.

On 1 August 2465 B.E., the Prosecutor Department have been transferred from the Ministry of Justice to the Ministry of Interior, and in the year 2534 B.E., the National Peace and Order Committee has declared an order No. 47, 48 and 49, dated 28 February 2534 B.E. separating the Prosecutor Department from the Ministry of Interior to a Department not affiliated with any Ministry under the supervision of the Prime Minister and change the name from “Prosecutor Department” to the “Office of the Attorney General”. Subsequently, on August 24, 2550 B.E., the Constitution of the Kingdom of Thailand B.E. 2550, section 11, part 2, article 255 requires that the “Office of the Attorney General” is an organization as accorded to the Constitutional Law and on December 7, 2553 B.E. there was a declaration effectively enforced the Act of Public Prosecutor’s Organization and Public Prosecutor B.E. 2553.

2.1.2 Origin of the public prosecutor abroad

The Prosecutorial system was first established in France on 23 March 1302 (BE. 1845.) since the time when the monarchy ruled the country. Held that the prosecutor is the representative of the monarch serves the interests of the Crown. Later on, the monarchy was eliminated, causing the prosecutor to became a representative of the community and representatives of the executive power in the judiciary system which is also the representative of the judicial power. (Sook Paerunawin, 2526. as cited in Adisorn Chaiyakupt,2542: 168-169)

Prosecutorial system have developed since a change in the criminal prosecution system or (Inquisitorial system) which did not have the separation of powers of investigation, prosecution and judicial power. Later on, the legal system has been developed and evolved with the concept of the rights and freedoms of the individual, the system of criminal proceedings with the accused system or (Accusatorial system) intends to clearly separate the investigation, prosecution and judicial power distinctively, the Attorney General has established a new organization responsible for investigation and prosecution. By calling the State Treasurer to act as "Prosecutor official", while the court would serve only to consider the judgment. Apart from this, opportunity will be lent to the accused to the charges and his defense fully. As a result, the accused would not be subject of blame and becomes "the President of the case or Prozess – Subjekt." (Kanit Na Nakorn,2536:46)

It can be seen that the evolution of the public prosecutor in Thailand and abroad was formed to protect the interests of the state as a core principle. This can be applied to this research because it is the discretion of the prosecutor in a criminal case which may not be beneficial to the public, but must be based on the interests of the state.

2.2 Principles of criminal prosecution

In a criminal prosecution by the State (Public Prosecution), which have the attorney as an organization to litigate important case. The public prosecutor is therefore, do not need to overcome both the defendant and plaintiff and thus not a partner in any case. The principle of legal proceedings done by the prosecutor will be divided into 2 principles;

2.2.1 The Legality Principle

When a criminal offense has occurred. Officer must investigate a, regardless of whether there were any complaint or not, and when there was an investigation and the prosecutor believed in due cause that there is sufficient evidence that the defendant did commit an offense, public prosecutor must always prosecute,

this is the principle of equality under the law, and to prevent the illegal use of its influence to stir and dissolved the case, which when the prosecutor has decided to prosecute, it cannot be withdrawn since it falls under the authority of the court, as in “unchangeable principle” which considered as a guarantee of the principles of criminal law, providing the fact that in theoretical, the principle of criminal prosecution is similar to the idea of revenge (Kanit,2540:38) A prosecution under this Act will bring good deeds since it is to be enforced according to the law but may lack of flexibility.

2.2.2 The Opportunity Principle

The prosecution at the discretion of the court varies from the principles of legal prosecution. It can be said that all of the law enforcement is the task and responsibility of executive, however, in the part of judiciary is considered to be an authority of using discretion to consider the case (adjudication), this is a system which empower the enforcement officer in executive level to play a critical role in criminal justice system. The justice system is used by the prosecution discretion. This give rise to the officer in executive level as a key element (indispensable organ) in the criminal justice process. (Adisorn, 2542: 75)

Litigation against the accused allowed the prosecutor to have broad discretion in considering the legal case; such as considering from the criminal history of the accused, social conditions, although it appears that there is sufficient evidence to believe that the accused have committed the offense. By using an appropriate discretion case by case while considering all social, Criminal justice policy along with criminology would all composed as important component not less than legal matters. (Adisorn: 76) The prosecution does not required that the prosecutor must file the against the court, but rather provide an opportunity to use discretion when it is consider appropriate. (Kullapol Pollawan, 2520:22-23)

In Thailand, the use of discretion in the criminal case can be seen in the Code of Criminal Procedure, section 143, the first paragraph which states that "when there are comments and expressions of the inquiry officers mentioned in the previous section, the prosecutor shall proceed as follows.

(1) In case that the (inquiry officers) have agreed not to prosecute. The order not to prosecute or continue further investigation or prosecute must be

established and report to the inquiry officer to hand in the defendant for further procedure depending on the case.

(2) If the (officer) has agreed to prosecute, The order to prosecute against the defendant should be filed to the court, if the officer do not agree to prosecute, the order must be established as not prosecute.

Apart from this, the Act of an establishment of the Juvenile and Family Court and Juvenile Court Procedure Act 2553B.E., section 86 and section 88 also empowers the prosecutor not to prosecute the accused who is a child or youth with If the prosecutor thinks that the rehabilitation plan having used completely by the child will benefit the children and youth themselves.

From that principle, it can be seen that it is not a requirement for the prosecutor to prosecute when there is sufficient evidence, but rather it authorized the power of the prosecutor without restrictions to use their discretion to prosecute or not prosecute.

This principle has a direct impact on the prosecutor to exercise discretion and flexibility by adapting to the changing needs of society as well and reduce the hardship of the law and provide the prosecutor an opportunity to consider the special circumstances and the use of new social policies. The result of the criminal prosecution in addition to considering the case as a result of the protection of the state's interest, it also must take into account on the issues of the public's benefit in order for the law to be widely accepted in the society. (Sattanethi Nethipatharachochote, 2552:34)

2.3 Concepts and principles of the public prosecutor's not prosecuting the non public interest criminal cases.

Kanit Na Nakorn(Former Attorney General) (*Journal of Attorney edition 1 (February 2521:23)*) as cited in Adisorn (67-68) having said that the decision to prosecute the accused whether the accused is guilty or not, or the accused should not be punished for no reason, and when the prosecutor has files the case against the accused. The prosecutor who has already file a prosecution, he/she continue with the

legal proceeding so as to bring about the defendant for a prosecution, however, if there was a decision not to prosecute in any other way, it must be done as follows;

1. Ruling that the act of the accused is not a criminal offense.
2. Ruling that the accused during the arbitration hearing, the accused was not guilty as charged.
3. Ruling that the accused during the arbitration hearing, the accused was not guilty as charged and with reasonable opinions according to the law that the accused should not be punished.
4. Ruling that the accused was guilty as charged and there is no reasonable opinions according to the law that the accused should not be punished, however, there is an opinion that the accused should not be prosecute.

In order to consider a case, the prosecutor will have to consider three factors, which is.

First, consider whether the fact in that case is an offense or not?

Second, the evidence in the case was sufficient enough to prove whether the accused is guilty or not?

Third, whether the action to prosecute is consistent with the public interest or not?

In all of these three consideration, prosecutor may need to consider by using their own capability and professional skills and experience to consider the first two factors and use their discretion in the last factor.

As mentioned above, the criminal proceedings against the person was a serious matter. A fair and effective litigation will be crucial to maintain law and order in the society. Even in small cases, criminal proceedings still affects all parties involved; the defendant himself, his family and relatives of the defendants, witnesses, victims and even the personnel in the criminal justice as a whole. Prosecutor has an important role in the managing the criminal justice system particularly in using their discretion in the criminal proceedings. It is therefore a crucial and serious responsibility to bear with. The use of such discretion should be wide-open as much as possible by not neglecting to respect the rights of individuals and realizing the need not to troublesome the accused and victims back and forth. Also, the prosecution should be treated fairly and without bias.

Kittipong Kittiyarak (2551:19) has studied the code of ethics and standards of practice in international prosecutors, it was found that the United Nations has placed concerned on the role of a prosecutor, therefore, they have set up the Attorney General Guidelines (Guidelines on the Role of Prosecutors 1990 (United Nations)), the part in which relevant to the research will be in the topic of discretion. Summarized are as follows;

1. In the country which allow the prosecutor to have the power to exercise their discretion, laws or regulations need to be disclosed. There must be practice guidelines invented to promote fairness and accuracy in the case, including the indictment and prosecution may be substituted with an alternative to prosecution.

2. Prosecutor shall appropriately consider whether to prosecute the case, choosing to terminate the case conditional or unconditional or with the use of alternative measures to criminal prosecution by sincerely respect the rights of the accused and the victim. This is in accordance with the laws of that country. To achieve these objectives, state should seek concrete measures in finding alternatives rather than criminal proceedings. This is not only to reduce the vast number of case to the court, but it is to reduce the impact on the accused or the suspect's criminal record as well as to reduce the negative effects that a person may receive from being imprisonment.

3. In a country where the prosecutor were allow to use their discretion to prosecute or not prosecute the youth, there should be a special consideration in parts of the nature and seriousness of the offense that youth may have committed. Also, the social protection, personality and history of the youth should be taking into account. In the case of the prosecution, prosecutors should consider other alternatives that may be used instead of the prosecution which was already defined in the laws and procedures governing the juvenile case. Prosecutors shall use their best efforts to handle in the young criminal charges.

Further proceedings of the prosecutor in practicing guidelines of the International Criminal Court relating to the practice against the accused which requires the prosecutor to adhered and realized the role of prosecutor as the keeper of the society's benefits along with the protection of the rights of the accused by making sure that prosecution is done with their best knowledge, perseverance and legitimacy.

(Kittipong : 34) Although the evidence in the case is sufficient to prove that the accused should be given a court conviction, however, prosecutor still needs to consider whether the prosecution will be beneficial to the public or not.

In determining whether the prosecution would be beneficial to the public or not. The benefits of victims or witnesses and other related factors should also be taken into consideration whether the prosecution is necessary or not.

Thailand encounters the problem of over-exceeding criminal case in the court and also this resulted in further problems of inmates overflow. The discretion of Prosecutor to prosecute or not do play a crucial in increasing or reducing such problems, it could have been said that if the prosecutor filed a criminal case against any case which may have as little or sufficient evidence to prosecute, criminal case will be over-exceeding in the court. However, if they have exercise their discretion not to prosecute, this problem may be reduced in mass. (*Journal of Justice Volume 2, 2545:39*)

Kanit Na Nakorn (2540:410-411) have said that consideration step of prosecutor in the case which needs to be prosecution will be in the following order;

1. Consider the conditions for prosecution or settlement conditions. The prosecutor would need to considered the context of the case before move along to the next step. If there is a conditional settlement which will require the prosecutor to suspend or terminate the proceedings, the prosecutor must do so.

2. When the prosecutor determined that there was no case for settlement. The prosecutor would then need to further consider whether the action of the accused was an alleged offense or not. If the prosecutor consider that the action of the accused was not an alleged offense is not an offense Prosecutor must not prosecute.

3. If the prosecutor sees that the action of the accused was an offense against the law. The prosecutor must further consider whether the accused is guilty or not. If the accused is prove to be not guilty, the prosecutor must order not to prosecute.

4. If the prosecutor sees that the action of the accused was an offense against the law and the accused is guilty, the prosecutor must further consider whether the evidence is sufficient to prove the guilt of the accused or not. If the evidence is not sufficient, then, the prosecutor must not prosecute the accused.

5. Although the alleged offense of an accused is an offense against the law. The accused did commit a crime and the evidence is surely sufficient.

Prosecutor would likely need to consider in a final order whether it is reasonable to prosecute the accused or not. If the prosecutor thinks that it is not reasonable enough to prosecute, the prosecutor must not prosecute.

Although, Thailand has used discretion principle in legal proceedings, but in practice the prosecutor often filed a case when there is sufficient evidence in the case, causing great deal of cases in the court. The prosecutor did prosecute unnecessary case which may not benefit the public in a small number. In the past in the year 1985, the case was as small 5 cases, and during the year 1985-1992, it did not appear to have any prosecution on such case. Later in the year 1993, there are 2 cases, In the year 1994, there are 4 cases, in the year 1995, there are 6 cases, in the year 1996, there are 14 cases, in the year 1997, there are 3 cases, and the year 1998, (*Journal of Justice 2,2002: 23*) the average of this case is only 5 cases per year. The statistics between the year 2007-2010, approximately, the average cases are only 15.75 % per year. This may be caused by personal factors or attitudes of the public prosecutor which have been using their discretion to order a criminal case that would not be helpful to the public. Even though, Office of the Attorney General already enacted laws and regulations relating to the discretion of the prosecutor in the criminal case which may not be benefit to the public, however, it seems that the prosecutor did not use their discretion in filing the case even more.

2.4 Related Theory

A Research on the discretion of the prosecutor in a criminal case which may not beneficial the public in this regard, the researcher would like to propose related theory as follows;

2.4.1 Labeling Theory

Labeling theory or sometimes was called Social Reaction theory or the Integrationist Theory of Deviance, which arrives from the principle of “Symbolic-

Interactionism or Integrationist Social Psychology”

Frank Tannenbaum is considered the father of labeling theory as he has proposed this theory early in the year 1930. He has mentioned the core principle which caused the person to have the occasional criminal behavior which will turn into a permanent criminal behavior. Later in the year 1951, Edwin Clarence Lee Taylor has presented the analysis of the influence of social control mechanisms which could generate and create patterns of behavior and crime and deviant behavior. However, the most famous person who have promoted Labeling theory until it grabbed an attention in the field of Criminology is Howard Becker from the book he has published called “the Outsiders”. Then, Ericsson and Chrissis has presented this theory to the field of criminology.

Ponchai Khantee (2553:276-277) this theory explains the causes of criminal behavior in the publishing of an academic who support for this theory. The crucial content is a lot since this theory was proposed by several theorists. The concluded concept are as follows;

1. Self-image

The theorists in symbolic interaction believes that persons are defined as the self or consciousness (Self-image) depending on the image that other people has set out, so people will have an idea or a belief that they have a personality in a way that other people see, such as, handsome good-looking, mercy-mind, honest, clever or valueless depends on what the individual in the society has assigned or provide a role to play, the person who was determine to be also tends to expressed or have their personalities as what other people have see, think, expect or determine. Therefore, Labeling theory tends to explain that criminal behavior is caused by a person’s belief that they are criminals. This is due to the individual’s determinism in the society that has claimed that such person is a criminal.

2. Primary Deviance

Labeling theorists did not pay attention that much to the causes of criminal behavior or primary deviance. But generally believed that criminal behavior or behavior that deviates from the first time arise from factors related to biological, psychological and social environment. However, this behavior is not persistent, does not happen very often and there is no fixed format. In addition, the implementation of

social punishment on the deviant, whether casual or formal. The criminal or deviant behavior may be fixed or changed from time to time, since it did not occur very often and there is not permanent development on this deviant.

3. Secondary Deviance

Labeling theorists believe that the reason for the person's behavior deviates from the established social control causing the person who has been punished from the society, whether being prosecuted or having been looked down or rejected from the society. The action upon this social control will create a new experience for those who has been arrested or punished. Unavoidably cause emotions as an outsiders. A bad guys who the society does not want. This will allow them to develop their own thoughts and even the criminal behavior and eventually leads to a criminal or deviant behavior that persist or last forever. (Tannenbaum, 1938 as cited in Ponchai : 277)

4. Alternative Behavior

Although, theorists may believe that when a person is branded or labeled as a criminal, he/she may still has the option of their own behavior in the future. However, in reality, labeling will decrease the option of that person and may eventually reduce the person's ability to control his or her behavior since that person was already expelled from the society or was defined as an evil or bad even the behavior did not expressed that way. As a result, people have been labeled as a group with the same stigma or condemnation.

Based on the principle presented by theorists, it can be summarized that ordinary people may have criminal behavior from the first time but only from time to time, it may not be consistent and serious. But when a person with such behavior went through the mechanism of social control especially in the criminal justice process by the state. Such individuals will enter the self-defined as a criminal or deviant behavior and may be ashamed and damaged so much that they can not return to live in the society ever again. This could make that person to feel that he is a criminal and can never changed himself. Thus, increasing the likelihood that such a person will have a permanent criminal behavior. The following chart describes the causes of criminal behavior according to Labeling theory.

Traditional Deviant Behavior \implies Labeling \implies Self-Determination as a Criminal \implies Permanent Deviant Behavior

Labeling theory proposed that the condemnation or the claimed that such persons have deviant behavior, the action made against such person in terms of punishment or treatment will even increased the deviant behavior. The shame that a person has been condemned or labeled as a criminal or having deviant behavior rather increased or stimulate such person to inhibit more deviant behavior in the future. To condemn a person with deviant behavior will resulted in high-risk of such behavior, namely, it will make that person to accept that they have developed a tolerable manner to deviant behavior. With the option to modify the behavior was consistent with the social blockade. From being labeled as evil and unwanted from the society, causing such people to choose their behavior contrary to the values and norms of the society unavoidably. (Becker,1963 as cited in Ponchai : 278)

In addition, labeling theorists have proposed that individuals with low socio-economic status and are the minority part in the society have a high chance of being labeled. Especially in the criminal justice system since they do not have the power to bargain nor negotiate from the system that implement social control. As a result, they have to accept the label and the most crucial factor that cause the labeling is the status or personality of the individual, rather than criminal behavior itself. (Tannenbaum as cited in Ponchai : 279)

It can be seen that a person may be labeled with a social control mechanism in the society by being prosecute from the criminal justice agencies in the state, it is a way that can influence a person's determination to be a criminal or deviant person. It can contribute to their consciousness that as a criminal, they cannot be changed and this may lead them back to the re-entering in crime cycle again. These principles are consistent with this research because of the prosecutor's discretion should considered the principle of labeling theory too. This is depending on individual factors and the attitude of the prosecutor. The labeling theorist is John Brett Waite, who has proposed the new theory of labeling which is about the negative consequences of the implementation of criminal justice system which sometimes increase the criminal behavior of the accused.

2.4.2 Braithwaith's Reintergrated Shaming Theory

Scholars proposed this theory is John Brett Waite in year 1989 in a book called (crime, shame, and reintegration) and Brett Waite explains the criminal behavior of individuals which may be caused by several external factors. However, if a society has begin to punish that person, that person will be ashamed (shaming), which later will resulted in self-realization as a criminal and that person will remain that behavior in the future. Brettwaite called the punishment of society as labeling or personal embarrassment (stigmatization). It is a close opportunity for that person to behave in accordance with the norms of the society. (Ponchai : 280)

Brettwaite (1989, as cited in Ponchai : 280) has proposed the methods to deal with offenders in the form of trying to make them respectful to the rules of a society once again by forgiving them or making them feel non-ashamed. (reintegrative shaming). Brettwaite said that any society chose this kind of process for dealing with the accused, that society will likely to have a low number of crime. On the other hand, if a society choose to punish the criminal in a way as to make them embarrassed and tried to excluded them from the society. It will eventually affects those criminals to continue to commit crimes later on, and this is the development of the new labeling theory. He has emphasized that the cause of labeling an offenders could cause them embarrassment since the legal proceeding did not concerned humanitarian issue by labeling individual, regardless of the deviant behavior occurred. This deviant behavior will becomes the symbol of the individual who has been labeled. The labeling process intends to decrease crime in the society, however, in reality, it rather exaggerate crime because it cause those labeled more deviant behavior. This principle is consistent with labeling theory which mentioned that punishment by social control could cause more criminal behavior.

Ponchai (287-289) explains that the public policy has derived from labeling theory may have a limitation in explaining the cause of crime. However, the theory did represent the negative impact of proceeding along with criminal justice system, which sometimes cause the offenders to increase their criminal behavior and enhance the social's reaction in resisting those who have been punished. Therefore, the criminal justice system needs to review the ways in which legal proceedings was

implemented in the year 1982. Empey did analysed and concluded that labeling theory did influence the judicial process in a way that reduces the role of the state to punish offenders. This give rise to a new policy in punishing the offenders by inventing a different ideas and policy from the previous one. A shift from punishing offenders severely in order to prevent repeated offending to the oriented punishment which stress the important of adjusting the offenders' behavior rather than excessive punishment. The policy are as follows;

1. Decriminalization

Labeling theorist proposed that stringent legal proceeding which is beyond the scope and severity of some non-serious offenses has created problems for the administration of justice, such as human rights violation, burden on the budget, lack of efficient to deal with serious offenses, fraud and corruption of officials, apart from this, the offenders who have been arrested may not be able to change their behavior but rather they tends to develop their criminal behavior, therefore, the criminal justice process should adjust their role. Moreover, the labeling theory believes that the reason of excessive crime in the society is due to the criminal process did interfere with the determining the behavior of certain non-violent crimes such as drug abuse, gambling, prostitution, drinking or determine offenses relating to a child or juvenile. By labeling them as criminals, it will eventually cause them to gain a habitual behavior and may commit a more serious offense. Therefore, these crimes should be determined as non-serious offenses which could just give warnings or fine.

Nowadays, many countries have adopted policies to reduce criminal penalties for certain offenses by reducing the level of these offenders as equivalent to the violation of traffic law. It could have said that, according to the law, these people did something wrong but for legal proceeding, it will be a kind of punishment just to give them a lesson that what they did is wrong, but the law will not label or condemn them. These offenders will not develop a sense of criminal according to the labeling theory.

For an offense which has begun to reduce criminal penalties for offenders who did commit non-serious offense or the offense which do not have a victim (victimless crime) were; drugs, prostitution, abortion, offense relating to obscene material, gambling etc; many scholars have commented that even though, there are

many groups in the society who disagree with the reduction of criminal penalties, but there are tendencies that the criminal process will reduce the punishment for criminal offenses in several categories.

2. Diversion

Diversion of punishment is another way of proceeding as accordance with labeling theory in order to avoid the persons who will be punished from being condemned from the society; such as working to repay to the society instead of being punish, detain, fine, indemnification or warnings. This current method is currently the most popular since there were overflow of inmates in jail, the correction center cannot adjust the behavior of offenders.

The diversion of offenders means an implementation which formally bring the offenders out of the justice system and take them into the improvement process to prevent them from being label or condemn as a criminal from the society. The ideas of diversion occurred in year 1960 by designing the proceeding against offenders to concerned on human rights and correction solution; such as rehabilitation, finding a career for them. If the offenders did follow set out regulations, no further actions will be done against offenders.

The objectives of diversion is to bring the offenders out of the criminal justice system as soon as possible in order to prevent any possible impact and reduce the chance that offenders may not be able to live in a normal society. Currently, there are several diversions ranging from the level in inquiry officer from the Department of Corrections; for example, give warnings an negotiations; Settlement of the alleged parole, fine, negotiation on charges and later in the future, there will be a development in the patterns of diversion process than in present time.

3. Punishment by avoiding imprisonment or detention

Diversion of offenders will be used with non-violent offenses. The labeling theory did proposed that imprisonment or detention of offenders will make offenders develop the sense of being a serious criminal that will cause them an inability to change themselves, the approach intends to make the offenders feel less condemned. This kind of approach may be used to detained the offenders outside prison; could be special place like house arrest or in the facility provided by the

community. This form of punishment has been developed and accepted that it is an approach that could help the offenders to realize their own behavior. It will not make the offenders to feel that they will not be accepted by the society and also this approach will reduce the cost of criminal justice process and also the vast amount of inmates in prison as well.

4. Restorative Justice

This approach intends to punish the offenders in a way that does not condemn or label them but rather to make the offenders realize their own criminal behavior. There was an improvement in this kind of approach into restorative justice approach. It is therefore an alternative approach for non-violent offenses or offenses which were caused by negligence or committed by children or juveniles with the aim based on society's interest. By seeking a balance between punishing the guilty with the interests of society and victims of crime. It also does not focus solely on punishment. On the other hand, it aims to strengthen the relationship between the victim and the offender in order to return them to normal society. Victims will receive reparation and compensation for their loss and damages, their offenders may change their behavior and return to the normal life and the society will be a better place to live in.

It can be seen that the new labeling theory clearly identified the negative impacts of the implementation of the criminal justice system which sometimes increased the criminal behavior of those who were prosecuted and could trigger the social reaction against those who had been punished already, causing the criminal justice system to think back and review their guidelines on numerous litigations. This principle is really important to this research since the discretion of the prosecutor in not prosecuting the case which may not be beneficial to the public is considered as a way to reduce the role of the state in punishing the offenders, causing a new policy for a new criminal justice approach in order to prevent the labeling of offenders to return to commit repeated crime and offense.

2.4.3 Theories relating to person's attitude

The findings of this research will be a study on the personal attitude of the prosecutor on the prosecution not to file the criminal charges on the case that are not

useful to the public. The word "Attitude in English also refers to Latin word "Aptud" which means the same as attitude. Presently, scholars will use the term as a synonym for attitude, with an intention to make the term more modern. The word "Attitude" according to the Dictionary of the Graduate's Academy "Attitude" means a person's perspective toward a specified target and way of saying and doing things" (an online search on for Dictionary of the Graduate's Academy on 1 February, B.E.2556 from website <http://rirs3.royin.go.th/new-search/word-search-all-x.asp>) The literature review on the attitudes of people can use the same theory as personal's attitude as follows;

Any action or behavior of ordinary people often caused by their attitude. Attitudes were then compared with the control of the behavior, or the control of personal's action. (Jamnean Chongchote,2516 as cited in Wiruangrong Ratanawilaisakul, 2526 :14)

Wiruangrong (2526:13-14) has mentioned that there are Psychologists who said that the person's attitude is as follows;

Thurston said that attitude is all about human feelings and emotions, a fear of something, an expression of the words, opinions and comments are a symbol of attitude, therefore, if you wish to measure the scale of attitude it can be done by measuring a person's opinions on things.

Muns said that attitude is a feeling and opinion on things, individual, situation, institution and other proposal in a way as to accept or reject is, leading to person's readiness to express their response by single behavior all the time.

Annatasi said that attitude is the availability and the tendencies of expression in a way as to support or go against situation, individual or circumstances.

Wiruangrong (14) has summarized that the main characteristics of the attitude is as follows;

1. Attitude is caused by learning or experience of the individual.
2. Attitude is a state of mind which can influence the thoughts and actions of individuals.
3. Attitude is a state of mind that a fixed medium but are subject to change due to the different environment among them.

Attitudes are an inclusion of emotions, believe, opinion and facts which are the various knowledge together with feeling which could be estimated in both positive and negative values which all are inter-related. When attitudes were formed, it is difficult to change since it tends to remain constant as human will resist to change their opinion unless they were force to. (Sopa Chupikulchai,2522:15-16)

About the attitude of the prosecutor in the criminal proceedings, Kanit Na Nakorn (2536:142) has said that the criminal prosecution by the State (public prosecution), which has the corporate attorney as an important organization. Prosecutor will not be perceived as the winner or loser compared with defendant and the accused. Prosecutor is therefore not the litigant in the legal content in any case.

The decision to prosecute against any person is an important step since the fair and effective litigation is the main key to the society's peace and order. Even a minor litigation, will affects the rights and freedoms of the people since it will also relate to the victim, the accused, their family, also the government official in the criminal justice system; including the government budget if there was a decision to prosecute. In addition to the evidence and the law, prosecutor shall considered the purpose of punishment after all. As the prosecutor filed a criminal case as a state officer, he is responsible for justice under the law which intended to give the public or the citizen the benefit of a prosecution against true criminal conviction. In this regard, the punishment against the perpetrators intended to make them have a sense of consciousness by deciding not to cause any more trouble for others. This is the current and main objectives of punishment which aims to adjust and modified the wrongdoers. Therefore, the benefits of the prosecution by the public prosecutor will differs from the general prosecution which the public is the plaintiff. (Adisorn:65)

In the United States, public opinion do affect the prosecution of the prosecutor because the prosecutor, like the other agencies need to listen and realize any public comments since they can access their current position by the support of the citizen both directly and indirectly. Apart from this, the prosecutor must ponder carefully on the impact which may arise from the press or media's interest or any news which spread out into the public. Thus, it can be seen that the discretion of the prosecutor to prosecute or not prosecute will be base on their attitude whether the case will be beneficial to the public or not.

2.4.4 The Concept and the Evolution of Punishment Theory

A way in which to control the member of the society to remain in discipline by not causing harm to themselves and others can be done in two ways; which is giving reward or punishment. Reward will be provided in order to make the receiver feel satisfied. The reward receiver may be someone who has been providing a good service or did something to benefit the public or may be facing a tough time in their life as such. However, in practice, human still need to punish the wrongdoers as the set-out rule. Those rules will be laid down by someone who has the authority to govern the country even in a small group such as in family, school, temple or any associations or the authority to rule in a bigger group such as a country. The rule of law in a small group may not be used generally, however, the rule of law in a country can be used generally with every member in a society. This type of rules are called criminal law. Punishment according to criminal law can be practice in several ways ranging from the most severely to the minor one. In the penal code of Thailand, there are 5 penalties for offenders; capital punishment, sentenced to imprisonment, detain, fine and confiscation of property. (Annop Chubamroong,2527:136)

Criminal penalties do relate with the purpose of punishment since the government officials have a duty preserve peace and order in the society. As the officials need to perform their duties, it is necessary to understand the social purpose on the reason the offenders need to be punish which is the main source of the purposes of criminal proceedings. Also, a study on the punishment theory according to criminology theory will leads to the understanding of purpose of punishment and criminal proceedings which may change over times and era. Moreover, the purpose of criminal proceedings also gives the power to the public prosecutor's discretion in screening the cases into the court. Therefore, the purposive to punish or criminal proceeding is an important element of using prosecutor's decision on whether they should prosecute the offenders or not. (Adisorn:96)

The concept of punishment is a code of practice for the offenders in ancient times. There is no criteria for the society to accept the code of practice. In that time, punishment will be a way to pay back or revenge between the two sides; plaintiff and defendant, if the other side was weak, the story will end by itself. However, if the

person who was harm or the victim did not want to stop, the revenge will be on going forever. Later on, when the government has a formal rule, with orderly society and effective prohibition, the state has decided to offer a hand to conciliate and mediate a fair trial, thus, the revenge by both sides can be ended. Consider that crime will not only damage the victim, it also destroy peace, public order and good morals of the citizen, and society as a whole. It is the duty of the state to deter, arrest and prosecute the offenders in order to make the society a safer place. A way to punish will be severe, cruel in order to deter and prevent the re-occurrence crime. This is the concept of punishment practice since 18th century. (Pratuang Thaniyapol,2538: 166-167)

Later, in the late 19th century, the classical school of criminology by Cesare Beccaria has presented his concept on “An Essay on Crimes and Punishment” in year 1764. The content of the essay criticized the criminal justice process of the European government in that time. Beccaria sees that it is unfair, the government official and judges did not perform to preserve justice or even try to protect the rights and freedom of the citizen. In contrast, the state has use the criminal justice process as a tool to maintain their power. Beccaria believe that there is a need to adjust an modified the criminal justice system in order to create an organization which could preserve the society’s justice beginning from enacting law, interpreting and enforcing the law, along with preventing crime. In Beccaria’s essay, he did not mention the cause of crime directly, only stated that an effective criminal justice will eventually prevent people from committing crime, the society will then be a happy one. Beccaria proposed that the purpose of punishment is not to torture or cease the crime which has already occurred but to rather prevent the crime from re-occurring and deter other people from committing crime. Beccaria insist that crime prevention is far more better than punishing criminal who has already committed crime. The society needs crime and damage prevention, therefore, in order to prevent people from committing crime, criminal penalties must be severe and serious rather than tempting the offender to commit crime. Therefore, the punishment must be balance and proportionate to crime. Thus, severity, swiftness and certainty will be able to prevent crime. (Ponchai:56-58)

Apart from that Annop (61) explained that Jeremy Bentham did proposed the philosophy of the law and stated that law was invented to create and support the

citizen's happiness. A fair law must be able to prevent the evil from happening in the society. The purpose of punishment has four objectives;

1. To prevent crimes
2. If crime cannot be prevented, the offenders must not commit any serious offense.
3. To prevent criminal from using excessive violence; and
4. To prevent crime in a way that could reduce government's budget.

The evolutionary of punishment concept found that in traditional society, the punishment will be done as a revenge for society or in order to retributive the offenders by means of torture and cruelty; as such just to retaliate the crime committed by offenders. Offender will be punished in a way that is brutal and cruel to the body; this is considered to be individual matters, not the state. Later on, there was an idea that state should act on the behalf of victim and shall take revenge against offender due to the believe that the crime committed will affects the whole society, not just victims themselves. Principle of revenge was adhere since the ancient times to the present in a way of "an eye for an eye, and a tooth for a tooth." (Kanit: 137)

The law on retaliation and revenge is known as "Lex talionis" which could be refer that if one of the party was harmed in a way that he has lost his eye, he may also has the right to do the same thing to the person who harmed him; so this is a fair trial and the source of the phrase "an eye for an eye, and a tooth for a tooth". The punishment as a way to revenge according to the traditional concept of criminology believes that it is the final purpose of punishment, nothing more to that. (Adisorn: 104)

It can be seen that the current penalties were evolved with the modern concept of criminology; that is to avoid an approach of using physical violence but rather use imprisonment approach instead more or less depending on the severity of the offense.

Adisorn (105) has explained that later on punishment has emphasized on deterrence the offender not to repeat the crime and send out signal for other people not to follow as such. The intention is to deprive or limit the offenders from the society (removal from society or expiation). This concept intends to deter the offenders who has already been punished from return to commit crime. To explain the phenomenon

Of crime in the society, the criminologist has proposed the principle into two main categories;

1. Special Deterrence is used to prevent the offender to re-commit the crime by remove(limit) him away from the society; such as in case of petty theft; if the offender was prosecute and sentenced to imprisonment. While he was serving his sentence in prison, he may not has a chance to commit crime again due to the punishment such as capital punishment, imprisonment and detainment were used to removed them from the society forever or temporary. This kind of punishment is not only take revenge for the victim, but it also can make the society safer since it can proves to the member of the society that the offenders were punished and taken away from the society temporary.

2. General Deterrence will not only deter the re-occurrence of crime committed by the offenders, but it will also intends to make other people to fear to commit crime. It intends to deter and threaten the public to be fearful of penalty they may have received if they commit crime.

Christensen as cited in Annop (141-142) has expressed his thought about punishment for preventing crime in an essay called “Some consideration on the Possibility of A Rational Criminal Policy” which was summarized as;

1. Prevention is the purposive of punishment.
2. Prevention is not the final destination, rather it intends to aim at a higher goal which is the welfare of the society.
3. Violation of the law only will be the cause of punishment to the offenders; whether intentionally or with negligence.
4. A penalty will be made for the purpose of crime prevention
5. A penalty could provide future expectation. Any kind of action made, will be for the sake of citizen, it could have accepted as a right thing to do as it was done to prevent crime and the welfare of the society eventually.

After that, there was a concept to rehabilitate the offenders which came from the Neo-Classical School which is a scientific-based concept led by the founder Cesare Lombroso, an Italian criminologist. This concept was also called Italian Criminology concept which believed that the punishment of the offender. In criminal proceeding should be appropriate to each criminal. Unlike the concept of Classical

School which emphasized that punishment will be fit to the crime committed by not taking into the account of the offenders' personality, not even children, adult, women will also be punish severely. (Annop: 140 as cited in Adisorn:106-107) Concept of rehabilitation of offenders occur since the criminologist found that a serious punishment will not be any good to the offenders or even the society in preventing each type of crime. The prisoners who have been treated in a cruel an inhuman manner instead of returning to be a good person, rather he adapt himself to be the opposite with fully develop brutal criminal mind and able to withstand any kind of abuse. The prisoners may be implanted with revenge and furious thoughts. When he has been released from a prison, it seems that he rather commit and continue serious crime, therefore, this type of punishment is not effective, since there are still a lot of prisoners out there who practice crime with no fear or guilt. It, thus, appeared that crime is still never-ending in any society. (Adisorn: 107)

Pratuang (170) as cited in Adisorn: (107) explained that the idea of the rehabilitation of offenders has developed steadily and there has been a treatment towards offenders using both prison and the community. The rehabilitation in prison has been through the use of various techniques that allow offenders to return as a good citizens, such as provide them with education, vocational training, moral and religious training, psychological therapy, medical treatment and provide assistance in various fields both as an individual and a group therapy. Also, in part of using community was in term of a probation or parole. The idea of punishment to the offender is to correct and reform their habitual behavior, it was practice in order to make them realized that what they did is wrong. The time being in prison, offenders will be train and correct and may have a chance to learn vocational training, when he has finished his sentence in jail, he may change himself as a good citizen. (Pratuang : 172) Punishment as a way to rehabilitate the offenders came from a purpose to deter crime. Because the concept of punishment as a crime deterrent cannot achieve a society free from crime, when the offenders are released from prison, they cannot change themselves as a good citizen, rather they commit more misconduct. From this phenomenon, there was a push for ways to assist offenders by devalue the faith of imprisonment by aware the adverse effects of incarceration. There was a new idea to study offender individually in order

to rehabilitate offender to be able to adjust and adapt himself to the situation and environment in a rather relax condition. And according to the serious offense. This is considered to be a lesser strict application of enforcing the law. (Adisorn: 108)

Annop Chubamroong as cited in Adisorn (108) has summarizes the theory of punishment in order to rehabilitate the offenders into 5 aspects as follows;

1. The rehabilitation of offender is the purpose of punishment.
2. The rehabilitation of offender is not the final goal but is a way for aiming higher goal which is a society free from crime.
3. Rehabilitation of offender will be fix upon the cause and reason.
4. The important reason for rehabilitation the offender is because he is not a habitual criminal, but he was forced by the environment around him
5. A punishment in order to rehabilitate will be done based on humanitarian and behavioral principle.

All of these 5 conclusions should be regarded as the key to punishment in order to rehabilitate the offenders.

It can be seen presently that if we considered the utilitarian theory, goals of punishment will be to deter and inhibit crime from re-occurring. Also, it will have the effect of correcting and rehabilitating the offenders. It allows offender to change their attitudes and values to obey and not violate the law. Serious punishment may not always be beneficial because it will placed a stigma to offenders to follow the cycle of crime once again. This is consistent with this research, if the prosecutor filed a criminal case which is not beneficial to the public, it may not be consistent with the goal to deter crime while correct and rehabilitate the offenders. Rather, it will limit chance of offenders to return to the society by labeling them. Therefore, the discretion of prosecutor in issuing a prosecution or not is very important, no less than the jurisdiction ruled out in the court.

2.5 Ideology and Principle of Public Prosecutor's Discretion not prosecuting the Non Public Interest Criminal Cases

This research has study the Principles of Public Prosecutor's Discretion Not Prosecuting the Non Public Interest Criminal Cases in foreign countries such as

England, Wales, Scotland and the United States of America which pay great deal of attention to the discretion power in that area.

2.5.1 Prosecutor in England and Wales

Kittipong (108) has explained that the concepts and principles of public prosecutors' discretion in not prosecuting a case which may not be beneficial to the public in England and Wales was written in the Code for Crown Prosecutors in England and Wales can be summarize as follows; Consideration upon public utility has the approach as;

2.5.1.1 The Public Interest Stage

1. On year 1950, Lord Shawcross, Minister of Justice, responsible for the prosecution in the United Kingdom has declared a statement on the matters of public's benefit which was support by the subsequent Minister of Justice. His statement was "Never appear once in this country, which I hope there won't be a rule which inscribed that any person who was suspect to be committing a crime shall be automatically prosecute". (House of Commons Debates ,Volume 483,29 January 1951)

2. In each case, given that there is sufficient evidence to lead to "the possibility of the fact that the court may used to sentence the accused" then the next step is to consider the public interest. Although, in some cases, the benefit of the public may be a factor in reducing the decision to prosecute the case, however, if there is a consideration to prosecute, prosecutor should propose the fact about public interest related to the case for the court's ruling. Apart from this, criteria taken into consideration for the benefit of the public can use other method instead of prosecuting with criminal proceedings. In the case which appear obviously by considering all of the circumstances of the case, it was found to be more suitable to use other means rather than criminal prosecution.

3. Prosecutors must weigh the factors which is for and against. the prosecution carefully and fairly. Public interest factors that affect the decision to prosecute criminal cases usually depend on the seriousness of the offense and other

circumstances of the accused. Some factors may be added for prosecution, while some factors may indicate that other means will be better than prosecution.

2.5.1.2 The issue of public interest in the event that could support prosecution are as follows;

The more serious the offense is, the more necessary it is to prosecute in order for the benefit of the public. The case which is likely to be required in case which needs to be prosecute are as follows;

(A) There are tendencies that the court will likely consider in serious offense.

(B) The court is likely to be sentenced to confiscation of property or other similar commands.

(C) There were a use of weapons or threats of violence while committed crime.

(D) The offense was committed against a person who is an officer.

(E) The accused is in an authorized position or having a position which is trustworthy by the public.

(F) When the evidence indicates that the accused was the main responsible or involved in the planning or operating crime.

(G) The evidence indicates that the offense was committed without premeditation.

(H) Evidence indicates that the offense was committed by a group of people.

(I) The victim is in a state of weakness or very fearful or suffering from physical damage or disturbance.

(J) The offense committed was also involved by children or by exploiting a close relationship with the children.

(K) An offense committed by any motive, a form of caste or discrimination by race, gender, religious belief or any political opinions or sexual distortion, or the suspect expressed a hostile gesture toward victims due to any form of discrimination form above.

(L) When there is a major difference between the actual age and the age mentally of the accused and the victim. Or when there is an element of corruption involved.

(M) When an accused or offender has previously been on a probation before getting involved with this offense.

(N) When the alleged offender is under the court's order in a prior lawsuit by which required the terms of the alleged conduct.

(O) There are reasons to believe that this offense has happened or may happen continuously, such as in the past, this kind of behavior occurs frequently; or

(P) The offense, although not serious in nature itself, somehow, has spread out in a wider area which crime was committed.

2.5.1.3 The issue of the public in general has resulted in a litigation against it.

Litigation will not necessary, if it was in the case of;

(A) It is likely that the court will impose a minor sentence or small punishment.

(B) The accused is receiving a sentence in other case, which any prosecution in this case will not result in a more serious penalty for the accused, unless the nature of the offense in this case needs to be prosecute.

(C) An offense which has been done was from a genuine mistake or misunderstood (that reason must be equivalent to the seriousness of the offense

(D) Damage or harm caused was very little which resulted from a coincidence especially from false prediction.

(E) There is a significant delay in the prosecution of the case since the date crime was committed and from the date the court decided to put the case in a court trial. Except that;

- The offense is a serious offense.
- The delay is caused by the accused himself.
- The offense had just been taken into consideration; or

- As a result of the complex offense, it may require a fairly long period of investigation.

(F) The prosecution may have adverse effects on physical or mental condition of the victim. However, the serious offense of the crime committed must also be taken into consideration.

(G) The accused is an elderly, having been or used to suffer from mental disorders or physical violence, unless the offense is rather serious or there is a high possibility that such offense might happen again. If it deems necessary, Office of the Attorney General will then enforce the guidelines on the treatment of offenders with mental disorders. Prosecutors themselves must weigh out the appropriateness of removing the offenders from suffering of a severe physical or mental impairment from prosecution procedures and the necessity to protect the public and citizen.

(H) The defendant has been under a remedy from the damage or threats which have been caused (however, defendants must not avoid the prosecution simply because they have already compensate); or

(I) Details of the case may be released to the public in a way that could cause danger to the source, international relations or national security.

(J) A decision on the issue of public benefit cannot be easily done simply by adding the number of factors for or against any of the above. The prosecutor must consider and decide whether the factor in each subject is an important part more or less in each circumstances and further the contribute to the overall evaluation.

2.5.1.4 The relationship between the rights of victim and the interests of the public

(A) Office of the Attorney General did not work for the behalf of the victim or the victim's family somewhat like a lawyer working for his client. The prosecutor must perform to work on behalf of the public, not just for individual, however, in considering the issue of the benefit of the public, prosecutors should take into account the consequences which the victim may face, whether to prosecute or not, including the opinions of the victims and their family as well.

(B) It is important to inform the victims about the decision in the case which is subject to be in the interest of the public and also the vast impact on the rights of the victims themselves, in this regard, prosecutor should proceed with certainty that they have adhered to the rules and criteria regarding to this.

It can be seen that, in the discretion of the prosecutor whether to prosecute or not is not to only consider about the sufficiency of evidence for a court to punish, it would also consider whether the prosecution will be in the good will for the public or not, this is called “quasi-judicial” of the Public Prosecutor. It cannot be regarded that even if the suspect did commit crime, the prosecution should take place automatically, prosecutor must also consider the consequence of the prosecution, whether it is successful or there is a punishment or not, also whether the case will make an impact on the citizen’s fear and country’s regulation or not. In addition, as well as other things that could affect the State administration policy (public policy). If the prosecutor decide that it did not suit with the criteria, he will use his discretion power by not allowing anyone to file the case into the court (Adisorn:214). This can be apply to this research since Thailand has also use the discretion principle in the criminal proceedings similar to that of England. The discretion exercised by the prosecutor in criminal proceedings should take into account the main principles similar to English prosecutor and shall be applied in the case which believed to be not helpful to the public.

2.5.2 Prosecutor in Scotland

Kittipong (63-66) has describes the concept and principle of the discretion of the prosecutor in the criminal case which did not prosecute due to the consideration in the case which may not benefit the public of Scotland. It was defined in the Code of Practice for prosecutor summarized as follows;

2.5.2.1 Consideration on the interests of the public

If it appears that the evidence is sufficient, reliable and trustworthy and can prove that the accused was guilty. Prosecutors must also consider the interests of the public whether to prosecute the case or not. To evaluate the usefulness of the public will weigh out between the rights and benefits of the victim,

the accused and the society as a whole. Factors which must be taken into account in assessing the usefulness of the public will vary according to the circumstances of each case. The following factors may be relevant, but it must bear in mind that not all factors can be applied to every case, each factor for consideration will depend on the circumstances of each case. To evaluate the usefulness of the public may need to consider all the factors involved in the case carefully.

2.5.2.2 The nature and degree of the offense

The nature of the offense is the primary consideration in assessing the benefit of the public. Generally, the more the serious the offense is, the more it is likely to prosecute the case in order to achieve public interest. On the contrary, if the degree of the offense is lesser, prosecutors may consider the use of other measures that will be useful to the public than prosecution. In some cases, the prosecution in lesser degree without the consideration of using other methods may be considered as not appropriate .

Some particular circumstances of the offense may affect the consideration of the prosecutor in weighing out the interests of the public, for example, if the accused is a person who has gain public trust or has the authority according to the law, did commit crime or use his position to commit crime or in case that the victim is a child or a person who is in a vulnerable state of being harm, all of this reason could be accounted as appropriate enough to prosecute for the sake of public interest.

2.5.2.3 The impact of the offense on the victim and other witnesses

There is always a need to consider the impact of the offense on the victim and other witnesses. If it appears that such crime has caused significant harm or damage, significant financial loss, grief or mental condition for the victim or other witnesses, it should be reasonable enough to rule out prosecution for the benefit of the public. On the other hand, the absence of such circumstances will make prosecutors decide to use other measures to support the interests of the public rather than the prosecution of criminal proceedings.

2.5.2.4 Age, background and condition state of the accused

In case which the accused is a juvenile or an elderly, along with other circumstances, may be a factor that could add up to the decision making of the prosecutor to use other means instead of criminal proceedings. Criminal prosecution will be necessary when consider the public interest in case that the accused has a history of committing serious offense and has been punished not long ago. Especially in the offense similar to this new case, however, if the accused has already served in previous sentenced completely along with other circumstances, it may not be necessary to prosecute criminal proceedings for the benefit of the public. Prosecutor may bring up other state of the accused for consideration; such as illness or other personal condition for deciding whether to use other alternatives rather than criminal proceedings.

2.5.2.5 Age, background and condition state of the victim and other witnesses

In case which the accused is a juvenile or an elderly, along with other personal disadvantages, such as sickness etc., this factor can then be use to add up in the decision making of the prosecutor to prosecute the accused.

In case that the witness has a problem in joining to testify in court due to age, health or other personal reasons, that witness is also a key witness in the case, the prosecutor may decide to use other means instead of criminal proceedings against the accused. Such circumstances may include cases where the prosecutor considers that the witness with such problems will have a hard time to testify in court particularly in a minor offense, it will not be worth the cost to testify; for example, it could resulted in great suffering or frustration for witnesses with old age or an infant or a sick person or with other disabilities. However, in the case of such circumstances. Prosecutors must consider whether to use other methods to investigate the witness or not; for example, the court may listen to witness in other forms without the need for the witness to testify in the court.

2.5.2.6 The opinions of victim

On the consideration of the offense which may caused an impact on the victim and other witnesses, prosecutors must take into account any

information which could indicate the comments of the victim between whether the prosecutor should follow with the criminal proceedings or use the alternative measures instead. However, the comments of the victim or other witnesses is only another factor adding up in prosecutor's discretion on the benefits of the public.

2.5.2.7 Motivation of offender

Criminal prosecution is even more necessary if consider in the issue of the public's benefit. In the circumstances that the crime was motivated by gender or from bias in any other way of the victim's race, ethnic, or religious beliefs. Issues which considered to be relevant is also the circumstances in which the alleged crime which was committed by the offenders was done intentionally and charged with contemplated or with an acute emotion and whether that circumstances is considered as one of the element or not.

2.5.2.8 Time-length since the offense occurred

Long period of time that has passed on since the date of the offense could be considered as another a factor which indicates that the case should not be prosecute since it will not be any support to the interests of the public. However, other factors which may relate particularly the nature of the offense should also be considered; for example if the offense in such case is high in degree, the criminal prosecution is therefore crucial for the benefit of the public. In considering the factors in this issue, prosecutors must be aware of the relevant legal considerations that may affect the prosecution power of the prosecutor; such as the requirements within the prescription, the requirement of internal law and convention of European Union in terms of human rights protection and fundamental freedom, etc.

2.5.2.9 Facts that could be beneficial for the accused

Prosecutors should have reliable information about the circumstances of the case that could assist and relieved the accused in some cases; such as the offenders did commit crime with a sharp anger etc. That such fact, prosecutor may considered that criminal proceedings may not be beneficial to the public, however, this will depend on the circumstances of each case. In addition, the fact that the accused has already been under the remedy and already compensate the victims in a way that could be accepted. Together with other circumstances, prosecutor

may consider that the criminal proceedings may not be beneficial to the public and other measures should be taken instead.

2.5.2.10 Impact of the criminal prosecution against the accused

In some cases, the court criminal proceedings may result in serious consequences to the accused beyond reasonable counts of the offense. So in the case That the offense was not serious, prosecutor may bring such issues into consideration, to the extent possible with appropriate methods.

2.5.2.11 Opportunity to re-commit the offense

If it appears more that the accused will likely re-commit the offense, prosecutor shall bring this issue into consideration in order to prosecute the case, in this regard, the objective of the consideration must be in the lawful extent. Both the prosecution of criminal proceedings and the use of alternative measures are intended to prevent and restrain any further offense.

2.5.2.12 The use of a civil remedy, which may be more appropriate In consideration of all the circumstances in the case

Civil remedy may be considered an appropriate way rather than the criminal proceedings. For handling disputes or issues which is the main problem in the case, the rights of the parties to seek a compensation in the civil matters, including with other circumstances could be considered as a factor for consideration by the prosecutor to take other measures other than criminal proceedings.

2.5.2.13 Authority of the court

The authority of the court to sentenced, could be used as factors in considering whether criminal proceedings should take place or not. Examples of these issues are the authority of the court to sentenced the accused to compensate, revoke of driver's license or to take a new driving test, for instance.

2.5.2.14 Concerns of the public

To evaluate the benefits of the public, prosecutors must take into the consideration of public concern, together with the interests of the local community. The operation can be done by appointing the representatives of the local

community to be discussed in conjunction with the prosecutor relating to the general problem of the case. Although, the decision making in the case will still lie in the responsibility of the prosecutor.

It can be seen that the discretion of the public prosecutor in Scotland has been based on the principle of public interest, including the assessment of the public interest usually will include the ability to balance between the rights and benefit of victims, the accused and the whole society which can be used in this research because if the Thai prosecutor would like to use discretion power to take any criminal proceedings, they should also be aware of such principles.

2.5.3 Prosecutor in the United States of America

Discretion of the prosecutor in not filing a criminal case which has sufficient evidence in the United States of America is rather widespread. Even though, there is no written law on it, prosecutor, traditionally feels that they have the discretion authority not to prosecute. In this regard, prosecutors in each district have used their discretion differently depending on what they see is appropriate. There is no formal or consistent way of discretion and in some cases, the reason is unknown about the discretion not to prosecute in that such case. (Kiatkajorn Watchanasawat, 2551:160)

Adisorn (289-291) has explained that the prosecutor in the United States can use their discretion in not filing a criminal case even if the case has sufficient evidence by considering the condition of the offense, nature of the accused and the consequences after crime was committed, it can be summarized as follows;

1. Condition of the case or the offense

1.1 If the prosecutor has a reasonable doubt that the accused may not be the actual offender.

1.2 If the prosecutor considers that the jury will decide not to prosecute the accused even if the evidence is sufficient enough to indicate that the accused did commit crime.

1.3 Consider the condition of the offense, if the prosecution will cost vast amount of payment.

1.4 If decide not to prosecute, it will not affect the principle of deterrence "others" to commit the same offense.

2. Condition of the offender.

2.1 If the offender has special characteristics, such as being a children, an elderly, used to be in a military service and had served well, never before has a criminal history, etc.

2.2 If the offender has served the sentenced in a way that could deter or restraint themselves or in a way that the other person would not commit the same offense.

3. Circumstances after crime was occurred

3.1 If the victim does not want to prosecute the accused.

3.2 If the law on the subject was not enforced for a long time and the community do agreed not to enforce such law.

3.3 If the case has been on going for a long time and the evidence has been somewhat dissolved.

3.4 If the offender has already compensate the loss or damage to the victim, it is considered to be an end to this.

3.5 If the offender has cooperated with the authorities in the investigation or prosecution of the case, such as being a spy or agree to be a witness to the prosecution etc.

Kiatkajorn (162-163) as cited in Adisorn (290) that the reason that the prosecutor in the United States of America can use a wide range of discretion in prosecuting the case is because;

1. United States of America is made up of over-criminalization in its society. It could be said that the authority in the society has used criminal law as a tool to control the society too much, any kind of action mostly considered unlawful, with this reason, the prosecutor needs to have the discretion power not to prosecute in some cases depending on the appropriateness of the decision.

2. There is no sufficient tools, venue and human resources for criminal proceedings. Prosecutors may need to have the discretion to choose only some people to the criminal justice procedures by the methods of prosecution. If the prosecutor has no discretion and must prosecute every case, it would rather cause a burden for various

organizations in the criminal justice process which could result in the inability to perform the process effectively.

3. Reason in providing justice to offender individually, some offender do need to be forgiven for the bad deeds they have been committed, considering to age, intelligence, intensity of the offense prior and after crime was committed.

Miller (1974: 173) as cited in Sattanethi (162-163) To avoid public dissatisfaction is another criteria for the prosecutor's discretion in not prosecuting a legal case in the United States of America. The public's opinion about the need to enforce or not enforce in compliance with the law do have an influence on decision making in all stages of the management procedures; having said that, there were a feeling towards law enforcers that the criminal justice system needs to consider the public's sentiment in order to be able to reflect upon the intent of the public in various situations and when the public expressed their will to strictly enforce the law, the officers must strictly comply With that opinion at least until the crisis has resolved. On the contrary, there is also the sense of public which expressed that the law shall not be apply to any individual in particular.

An example of a trial took place in the United States of America which the prosecutor decide not to prosecute due to the reputation of the offender or sometimes the offender did violate the law and the prosecutor decide not to prosecute, the majority of people will expressed their dissatisfaction on this matters; for example, a case which two young men were caught with illegal possession of beer. One of them was a famous boxer in town, after that the offender indicates the person who sold a beer to them, however, later on, there was an order not to prosecute both offenders since the offender is rather famous and the legal proceedings may cause further problem to the Boxing Associates and the other offender who also involved in this matters, since this case, the officials has received a negative feedback from the public. (Sathanethi: 163)

Another example was the defendant who was sued on charges of selling liquor without a permission, this kind of charges is only a minor offense. During an investigation, two assistant sheriffs have given a statement that both of them has used to buy liquor from the defendant. It is surprising that the consideration in this case is very fast and the jury in the case has changed his verdict that the defendant is not

guilty. After the verdict, the prosecutor mentioned that he is “a little surprised about the consequences of the case, the great difficulty came from the will in prosecuting the case, in part of the public, they think that because there are many supply of alcohol sold illegal for a long time since there are no agency do responsible for illegal distribution of liquor”. With this reason, prosecutor tends to pay little or less attention to this kind of offense, until there was some negative feedback reflected from the public’s point of view in this issue, then, there was an enactment of law regarding to the illegal distribution of liquor. The prosecutor pointed out that the feeling of the public was against enforcing the law on this matters which will likely go on for a while. (Sathanethi: 163)

It can be seen that the prosecutor in the United States of America do have the power to widely prosecute criminal case by considering to the status of the case, condition of the offense and the offender and consequences after crime was committed. Apart from this, the avoidance of public dissatisfaction or the public’s opinion is another criteria which prosecutor may use the discretion power to decide not to prosecute. From the example case above, it can be applied with this research since any kind of prosecution or against prosecution will unavoidably affects other people, therefore, the prosecutor must take into account the principle in this issue.

2.6 The Problem of Interpretation of the word “Public Interest”

Adisorn (439) explain that the instruction of the prosecutor, apart from considering all aspects of law and facts from all parties involved in the investigation carefully and quickly. The Office of the Attorney General also has a policy concerning to criminal proceedings that prosecutor must also consider the public’s interest, thus, the problem do arise from the matter of prosecutor’s discretion (such as what do prosecutor decide is appropriate) and how, this kind of discretion is then considered appropriate.

Luang Attakowitwatee as cited in Adisorn (440) has explained that the public policy, in terms of law, any person who did anything that will cause a damage to other people, it could have been said that such person did not act in consistent with

the law, or acting as the public enemy (against the public good). Another way of saying is that “The policy which was based on the benefit of the public; such as any good opinion which stated that “anything which could benefit the public is a good thing to do”. This principle came from the proverb which states that “A welfare or safety of the public is the supreme law.” (Salus populi est suprema lex) This principle is derived from the basic principles of a community or society. As the philosopher considered that in the community or traditional society, since the member have all agreed that in order to maintain the welfare and safeties of the society as a whole, everyone must accept to be under the rule of the society or the community. Simply to say that, like what we always have heard that “we must sacrifice small part to keep the big part”. The reason to this is because the welfare and safeties of the people will return to them later on. Therefore, in this regard, it cannot be claimed that the public policy cannot be referred to the principle of law (Adisorn:440).

But what will be considered the policy for the public’s benefit and what is not is a difficult and complex task since the issue of public’s benefit and non-public’s benefit do concerned with personal’s emotions and other factors as well. The state of individual is also very profound, thus, the explanation on the policy for public’s benefit whether what it is cannot be defined and rather difficult to explain because it is not constant and subject to change due to its nature, ability and the opportunity of the people, explicit definition cannot be define. (Adisorn: 441)

An example that we often sees in the matters of public’s benefit is the decision not to prosecute one of the accused in order to use as a witness, since there is no other witness to confirm the offense of other accused who have committed serious crime that should be punished by law. However, if it was done for the sake of justice, it may be considered as legal since it was done for the benefit of the public. However, what will be perceived to be public’s benefit and what is not is a very difficult and profound matter. The problem of defining what public benefit and what is not do involved with personal’s emotion and other factors; such as the state of individual is also a very profound matters. Thus, the explanation on the policy for public’s interest whether what it is cannot be defined and rather difficult to explain because it is not constant and subject to change due to its nature, ability and the opportunity of the people, explicit definition cannot be define clearly.

However, Ayuth Samarndej (2534:152-154) as cited in Adisorn (441) has explained that even if a policy was done for the benefit of the public (public policy interest), it could still impossible to determine the meaning or definition or if is ought to explain, it cannot be done easily. However, there are some certain types of activity in terms of law which considered to be against to the public policy. The following case is considered to be the public's interest (public policy);

1. Public's peace and order, which was divided into 3 categories;

1.1 The peace and order of the country; for example, any criminal offense of any activity which may cause damage to the general public or anything which may degrade the justice of court or any objective to instigate a quarrel or and purposive to use their own influence to jeopardize the administrative or legislative power in an unlawful way etc. This will be considered to be detrimental and impact the peace and security of the country.

1.2 Peace and security outside the country; for example, any activity which may damage the international relations with other countries or any action which may cause disadvantage to the other country etc., are considered to be detrimental and impact the peace and security of the country.

1.3 Freedom of the citizen; such as the freedom to chose their religion, their resident or marriage, in making a legal will, and a career etc. Any entity which may damage such freedom in an excessive manners without a reasonable cause which impact the good command of the state and public's interest should be considered as hostile to the public policy.

2. Public good morals can easily be seen that it is the benefit of the public, therefore, any activity which may cause damage or hostile to the good moral of citizen shall be considered as violation or hostile to the public policy. To analyzed which kind of action is detrimental or hostile to the good moral of citizen, came from the standards of morality which generally accepted by ordinary people, based from the public's opinion, however, this standards may change over times and varies from country to country.

3. The policy of the law in any matter; the word "policy of the law" is sometimes used as a synonym of "public's interest", however, the definition is rather

narrower. The policy of the law in any matter includes the purpose of the law which designed to achieve and includes the way in which law was laid down in order to be achieve. We may see that the achievement is possible if it claims to be done for the sake of public's benefit since the law was also enacted for the sake of the citizen.

Therefore, in case that the policy of public's interest shall be use, in practice, it is the responsibility of superior officers to decide, in other words, it should assign the superior officer to take charge in using discretion appropriately since they are trustworthy and engage in good discipline (in a disciplined and responsible manner); including facts and possibility that could be claimed as the evidence of using discretion.

Luang Attakowitwatee as cited in Adisorn (443) has explained that the Attorney General has expressed in comments in year 1936, that "To be frank, if it appears that there was a criminal offense, with suspects and sufficient evidence along with the case, the prosecutor must prosecute every case, however, if some of the case may damage the governing policy; for example, it may cause disturbance to the governing procedures. In this matters, Office of the Attorney General should be responsible for deciding whether to prosecute or not, however, this must be a very special case, if the provincial governor or the provincial prosecutor do agree consistently, the decision not to prosecute should be attached together with the investigation statement; including the comment of Office of the Attorney General for consideration, if Office of the Attorney General do agree, such case will be terminate and ruled out as not prosecute."

Problem in the case of using discretion in the trial court in previous cases were the different opinions in claiming about the public's interest. The difference in opinion in considering whether to prosecute any case which may not be beneficial to the public is rather normal. But those difference in prosecute or not prosecute in such case should not affect the rights and freedom of the citizen in a way that could overlap or cause a distinct different in a similar case. The prosecution should not cause an unfair judgments which may later affects the standard of prosecutor in ruling out the case. (Adisorn:444) The matter of public interest or public benefit should be able to adapt in this research particularly in part of using discretion whether to prosecute or not prosecute in cases which may be beneficial to the public or not.

2.7 Laws and regulations related to the public prosecutor's discretion not prosecuting the non public interest criminal cases

In a research, the principles of public prosecutor's discretion not prosecuting the non public interest criminal cases requires laws and regulations relating to the use of such discretion as mention in this research;

2.7.1 The Code of Criminal Procedure

On article 143, first paragraph states that "when received comments and investigation comments from an inquiry officers mentioned in the previous section. The prosecutor shall proceed as follows;

(1) If the (inquiry officers) have agreed not to sue, the ordered not to prosecute or to further an investigation should be continue and must inform the inquiry officer to hand in the suspects for further proceed; depending on the case.

(2) In the case that (inquiry official) has agreed to prosecute, the order to prosecute should be issue and send to court. If the decision was decided not to prosecute, the order should be so. (Surasak Likasitwatanakul, 2549:226)

2.7.2 The public prosecutor's organization and the public prosecutor Act B.E. 2553 (declared in the Government Gazette. (Decree No. 127 Volume 75 Part A, dated December 7, 2553: 45)

Section 21 states that "public prosecutors are free to consider the case and act in accordance with the Constitution and the laws faithfully and impartially.

If the prosecutor in the criminal case sees that the litigation in the case may not be beneficial to the public or may affect the safety and stability of the country or national interest. The report should be send to the Office of the Attorney General which the Office of the Attorney General will have an authority to not prosecute in accordance with the regulations of the Office of the Attorney General with the approval of the Attorney Board.

The provisions of the second paragraph will be enforce in case that the prosecutor decided not to prosecute and withdraw a petition and the appeal with permission.

Section 22 states that "the discretion of the prosecutor in the case and code of conduct under section 21 has indicates the reason appropriately shall be protected "

2.7.3 The Regulation on the Order to not Prosecuting the Non Public Interest Criminal Cases or the Case which may Affects the Safety and the Stability or National security of the Country B.E. of B.E.2554, which was published in Government Gazette (Decree Volume 128 Part30A dated 29 April 2554:19-21), in part related to the criminal proceedings not prosecuting the non public interest criminal cases are summarized as follows;

1. In order to consider criminal prosecution. If any public prosecutor thinks that the legal proceedings will not be beneficial or will have an impact on the safety, security or national interest, comments on this regard should be propose to the head of prosecutor. If the head of public prosecutor agree in a similar way or if the head of public prosecutor have other comments, it must be presented to the Attorney General in hierarchical in order to consider issuing an order.

In case the head of public prosecutor did not agree with the comments of public prosecutor or the case shall terminate with prescription or there were other reasonable cause to file the case immediately, the head of public prosecutor shall file the charges against the accused and the court and propose the comments to the Attorney General in hierarchical in order to consider issuing an order.

2. In case the public prosecutor thinks that the prosecution would not be beneficial to the public. He shall consider the case with reasonable cause attached with the comments and take into account the following factors;

2.1 Reasons or motives for committing crime.

2.2 Background, behavior, intelligent, education, physical health, mental health, profession, family relationship and criminal history of the accused.

2.3 Seriousness of the offense, harm caused by the offense, damage impacted the offense which resulted from the negligence of the accused himself.

2.4 A self-realization of the accused, mitigation of the adverse effects of being victimized, comments of the victim in prosecuting the accused, the expectation of the accused from being prosecuted.

2.5 Public's peace and order or good morality of the citizen.

2.6 Interests of the state from prosecuting the accused.

3. Discretion to consider various factors shall lie under the responsibility of the prosecutor the importance of each factor by combining facts and circumstances surrounding each of the following cases.(not every factor should be taken into consideration)

4. If the Attorney General has decided not to file the accused, report on the reasons for the decision not to prosecute should be sent to the inquiry officer of the case.

5. It could be seen that the laws and regulations relating to the discretion not prosecuting the non public interest criminal cases from an example above can be applied to this research since the discretion not prosecuting the non public interest criminal cases must comply with the rules and guidelines that have already been set out. Therefore, such laws and regulations would affect the discretion of the public prosecutor inevitably.

2.8 Example of Attorney General's order on the cases which used discretion not prosecuting the non public interest criminal cases

2.8.1 The case of the public's property invasion resulted from the misunderstanding of the ordinary citizen that they own the land for a long time

The fact is that the area in which the accused (ordinary citizen) did take possession of, has already been registered as a public land for raising animals. While the accused and other people have claimed their rights over the land particularly in taking over the land for reform, later on, the Sanitary Administration unit did raise an objection against the claim of the accused since that part of land belongs to the public and should not belong solely to an individual or a group of people. Such

objections consistent with the Agricultural Land Reform Act, B.E.2532, Section 26, stated that the states could arrange an amount of space within the land for the citizen to share and use, however, if such space of land was within the area of land reform, under the supervision of The Commission of land reform, such land can be in use to reform. In addition to this, Mr. Sor, who served as Deputy Minister of Agricultural and Cooperatives has met a resident in Payao Province, the criteria was informed, and there was a policy to delay the arrest of the people who inhabited the land prior the reforms has taken place as mentioned above. All of the 16 accused did fit the requirement to obtain the land from land reform. However, the reason they were arrested is because the land that they wish to possess is the land that Amphoe Jun Police Station has also requested the permission from Department of Forestry in order to use the land for building a shooting range and airport. All 16 accused residents and friends have file a complaint against Provincial Administration. Somehow, they were arrested even the Deputy Minister of Agricultural and Cooperatives did announced that the arrest will be delay. Because there are a lot of the accused who believe that they have own the land for such a long time and that will be reform for the public anyway. However, it seems that the 16 accused must be prosecute due to that matter, in this regard, the Attorney General has decided not to prosecute them.

2.8.2 The case of a poor, homeless and elderly woman

The case in that the accused has been charge with building a facility with excessive area in the sea within Thai territory without permission. It appears that the governor of Trang Province has issue a letter dated March 2, 1995, stated that the accused was an elderly woman aged 67 years, poor and homeless, she has committed this offense unintentional. The provincial administrative has requested the accused to remove her house which now is in the process of finding a new residence. This procedures went along with the Navigation Travel in Thailand Act B.E.2546. The prosecution in this case shall not benefit the public, thus, the prosecutor did not file any legal proceedings against the accused on the charge of building a facility with excessive area in the sea within Thai territory without permission.

2.8.3 The case where the accused is a poor, homeless with no place to reside before

The two accused were poor, homeless with no place to reside before, later they built their homes in the disputed land. At the moment, both of the accused did remove their house from the disputed land. Both defendants will have no opportunity to commit the same mistake again. The Chiang Mai Municipal has no intention to prosecute both of the accused since they were poor and suffer from removing their housing. The prosecution against them shall not be any benefit to the public.

2.8.4 The case which the accused is of young age who committed an offense with small amount of money

The 15-year-old offender has work in Tesco Lotus Department store. The accused's brother really like Chinese buns, so the accused took some left over Chinese bun to his mother in order to pass it on to his brother, without any intention to sell it to other people. Those Chinese buns worth 10 bath each, which is only worth small amount of money, the store has received the buns back from the accused, and the accused has never commit any offense before. From the actual sheet of the child's report, considering the accused's age, history background, behavior, intelligent, education, mental health, habit, career, economic status; including the environment, the prosecution against the accused may disturb the child's future in seeking an income for the family, by not causing any problem for the society as a whole, the legal proceedings will not be any benefit to the public.

2.8.5 The case which the accused was under the pressure, suffer from poverty and want to use the money for delivering a baby, she has lack self-consciousness

In a case that Mrs.Sor, the accused, aged 21 years old, pregnant and nearly in a stage of delivering a baby has used a hammer to bang at the glass door of Kasikorn Bank, Bang Mod Branch in order to sneak in with an intention to steal some money, however, the alarm went on, she was then caught before she has a chance to steal. When consider the age and behavior of the defendant, it appears that the

defendants intended to commit crime because she was pressured to have the money to use for delivering a baby. Her unconscious act is predictable that stealing the bank's money is not to be done easily since the money is safely kept in a safe. The action of the defendants which she has plan to do cannot be achieved because the objectives is in a safe, and the defendants was not in a normal conscious state. If the defendant was to be trial in the court in order to improve the behavior of the defendant, needless to say that it will not benefit the defendant in any other way. Primarily, because the defendant did not have her usual behavior as a criminal and during her committed wrongdoing, she was in a state of non-normalcy, this case is therefore, not beneficial to the public rather it will be a future harm to the society since the defendant is pregnant and nearly in a stage of delivering a baby, if she was to served her sentence in a prison, her baby will also be born in a prison and the child grow up, he will be label and might eventually have been stigmatized later in the future. This may cause a problem to the society in the end. Therefore, prosecution in this case would not be beneficial to the public at all.

2.8.6 The case of the prosecution which has already been prosecuted and cause a great trouble to the family and eventually cause a stigma to the child

During the incident, victim was 14 years and 4 months, on the issue which the accused did have sexual intercourse with the victim even the victim did agree to have sex is an offense under the Penal Code, section 277, first paragraph, the accused is guilty of the offense. However, there are issues that need further consideration; such as whether the prosecution will be beneficial to the public or not. After that incident, the accused and the victim has live together as a husband and wife, with a daughter aged 1 year and 7 months, they did not get marry, but both of them has been going out before the incident occurred. The reason that both of them did not get marry is because the victim is not mature and her mother would not let her. At the moment, the victim is only 18 years old, if she wants to get marry she will need her parent's approval as written under the Civil and Commercial Code, Section 1454 with regard to the accused and the victim have been living together as husband and wife, have children and are currently living together as a family. The Penal Code, section 277, last paragraph states that "if the court allowed the boys and girls to get married, the accused will not

need to be punish” So if the accused was filed with such charges to the court and the court did allowed the accused and the victim to get married. The accused will not be guilty. The prosecution in this case will rather cause a problem to the families of the victims and may create a problem to the children since she will feel inferiority. Therefore, prosecution in this case will not be beneficial to the public. The order was issue as not to prosecute the accused on charge of sexually abuse of a girl who is less than 15 years of age, who is not the wife of the accused as according to the Penal Code, section 277.

2.8.7 If the prosecution will be made for the accused against the claimed offense and the court did sentence imprisonment to the accused, an impact will be against the family of the accused and the prosecution may not be interest to the public

Despite the fact that the accused took a girl name Mor to voluntarily live a life outside her house as a husband and wife. However, during the incidence occurred a girl was only 14 year old m and under the supervision of her mother and she is in her year of study, grade 9, who is considered to be too young to start a family of her own. Such action is not reasonable and is believed to be violating the supervision of the victim’s parent. It is therefore considered to be depriving a child age less than 15 years of age from her parents for pedophiles. Also, the deprivation of a girl age less than 15 years for the reason of living as a husband and wife, who is not a wife of the accused, whether with consent or not. However, judging from the intention of the accused to have live with the victim as husband and wife. A girl name Mor and the accused have an affection with each other even before the incident happen, it also appears that the accused never have or used to have a wife before, he did spent his life and take good care of the girl and later on they did went through the Thai traditional marriage, A girl name Mor has give birth to a baby girl, and the mother of Mor later on did not want to prosecute the accused. If there was a requirement to prosecute and sentence the accused according to those claims, impact will surely happen to both family of the accused and the victim, therefore, prosecution in this case may not be beneficial to the public.

2.8.8 The victim who died was the daughter of the accused. The accused shall have the grief and mental impact about the loss already, the accused have also been seriously injured, the prosecution in this case may not be interest to the public

On the night when the accident occurred. The accused was driving a motorcycle through the streets her baby age 6 months who she has carried with one of her left hand, she did use her right hand to control the handle of the motorcycle, when a dog went ahead of the motorcycle, it loose control and the motorcycle fell down very hard to the pavement. The accused was seriously injured, while her daughter has a severe brain injury and died later on. This circumstances, the accused is guilty of reckless driving causing the death of another person by the allegations, however, the person who died is a daughter of the accused, the accused herself should have been devastated with grief and mental impact. She herself has been greatly injured with head injury and with the weaknesses in her right cheek and left arm, a doctor who has examined her concluded that such symptoms may be all through her life, therefore, the prosecution in this case may not be beneficial to the public.

2.8.9 The charges against the accused will have an impact on the morality of the accused in operating government missions

On charges with illegal possession of firearms and ammunition without a permission and illegal carry of firearms in public without the consent of the permission. The case appeared that firearms which the accused has carried and possessed in to the scene is a registered firearm which the owner has presented to the head of the village in order to maintain the security of the village. The head of the village then had given the firearms to the accused since he is an assistant and did not own any firearms in order to use during the duty shift within the village, that village is located within the three southern most part of Thailand which always have an unrest and do need a special safety and protection. The prosecution of the accused will have an impact on the sense of morality and the courage of the accused as an assistant of the head of village, not just the accused himself but other staff as part of the mechanism to support the state. Therefore, the prosecution in this case may not be interest to the public.

2.8.10 The offense which the accused has violate the law in order to improve the landscape along the highway with an intention to honor His Majesty the king, the prosecution in this matter will not be interest to the public

The accused had installed an electrical poles depicted with swan-like along highway road without permission is guilty of the offense of constructing a facility in the highway area without permission. However, the accused has installed electricity poles in the highway did improve the scene and landscape beautifully. Since it is the year of celebrating the occasion of the 60th Anniversary of His Majesty the King's reign, it is considered to have been done as a tribute and respect, later on the Highway Department did allowed the accused to do so and did not pursue any legal action against the accused, the prosecution in this case will not be beneficial to the public.

2.8.11. The prosecution has been done against a Buddhist monk who has prepare a report and leaflet on Buddhism in order to disseminate for audiences, the prosecution may not be any interest to the public

The radio station was established and broadcast illegally. However, the operator behind this all is a Buddhist monk. Which he has done this because he wants to disseminate a Buddhist teaching which will be beneficial to the citizen and society as a whole. There are a lot of listeners, therefore, this Buddhist teaching program did bring a great benefit to the society. The fact appears that the accused did modified the channel of broadcast with high output power and the antenna according to the resolution of the monk. Therefore, the prosecution against the accused who is a Buddhist monk will not be beneficial to the citizen and society as a whole rather it will create an adverse affect and send out a signal that the state do not recognize the important of Buddhism dissemination, the prosecution in this case will not be beneficial to the public.

In addition, the public prosecutor's comments in the past did issue an order of dropping criminal charges filed against the woman did not possessed an excessive of red cent more than the rate prescribed by the law. The court decided not to prosecute a store which sell the opium. A case of a small goods sold in the border area, the order issue not prosecute by claiming for the sake of justice since there was an

order of the Minister of Finance to allow people to sell small amount of goods outside the Kingdom without the need to pay tax.

In this case, it appears that the people did sell small amount of goods outside the Kingdom as approved by the law, no prosecution was made by claiming that the accused can testify as a state witness or else no one will act as a witness for the public prosecutors, the other accomplices may be escape from the prosecution. Another case is the protest of a group of people against a court order demanding that the government to abolish the rock salt farm. The public prosecutor argued that prosecution in this case may not be useful to the public and will have an impact on peace and order of the public.

From the study of various cases which the prosecutor has discretion to order not to prosecute since it will not be benefit to the public can be summarized both reasons and approaches, as follows;

1. Offenses committed is a minor offense which caused by stress and tension.
2. Prosecution will have an impact on crime prevention policies, such as the case which use the accused to be the witness in the case.
3. The prosecution will likely affect the public as a whole; for example, it may affect the safety, public peace and order and security of the nation as well as a feeling of the citizen within the society.
4. Prosecution will have an impact on the victim and the accused, causing the problem to the victim's families and could have cause the destruction of the family institution. Also, the child's victim and the accused may feel inferiority. Not to mention the impact on the relatives as well.
5. Victims have receive financial compensation in an amount which can be accepted and the victim did not want to pursue the prosecution. Other case is that the accused a shame of his offense and recognized that what he did was wrong or has been emotionally impact or still in the age of study.
6. The Accused is a juvenile and still in the age of study, has never committed crime before. Has suffered in terms of mentally enough. Committed crime because others lured him to, however, the value of property he stole is of little amount.

Has been detained sufficiently during an investigation. The owner of the property did not want to pursue litigation.

7. The Accused is an elderly. The reason for committed crime is because he is poor and homeless. Victim did not want to pursue litigation.

8. An offense which can be compromise. The victim has already pursue the case himself.

9. An offense On negligence which cause the accused a disability or injury and psychological damage. thus, he cannot do any harm to anyone any more. The Victim did not pursue further litigation.

However, in some cases the prosecutor did prosecute; such as the case of a garbage collector from Bangkok Metropolitan who has been charged and prosecuted by police officers because he has collected old VCDs from the garbage bin and re-sell it in a market with a price of 20 baht per each VCDs. The reason behind this is because he intends to earn more income to help his family and his wife who was pregnant and with 3 kids. The prosecutor has file a lawsuit against him and since of a garbage collector has confessed, the court has ordered to fine him with an amount of 133,400 baht according to the Film and Television Act B.E. 2551 section 38 as mentioned in Chapter I above.

It can be seen that the case which has been presented could be analyzed in this research study due to personal factors, working experience, attitudes; including the process of law and regulations relating to the decision not to prosecute a case that are not useful to the public would result in the prosecutor's discretion to prosecute any criminal case. Because in some cases the individual prosecutor has exercised their discretion varies from the others. Therefore, the consideration may be different.

2.9 Related Research

Adisorn Chaikupt (2542) conducted a study on “The public prosecutor's discretion to order not to prosecute”, he found that the objective to punish in the past intended to aim at the revenge in order to pay back the offenders of the crime they have committed, causing a problem of overpopulated inmates. However, at present,

there was an evolution of the modern concept of Criminology to rehabilitate the offender not to repeat the offense once again. It is an opportunity provided for the offenders to be able to return to the society, reduce the overflow number of cases into the court and use other measures to divert offenders away from the criminal justice system; including using other kind of approach instead of prosecuting in order to protect the society and prevent crimes. In Thailand, laws and regulations in the various proceedings were written in broad statement, allowing prosecutors to use discretion in the criminal prosecution of the cases. But in practice, the prosecutor has used little of their discretion power to order the trial, since there was unclear rules or guidelines for consideration.

Therefore, in this regard, researcher believed that the results of such report can be applied to the study of the prosecutor's discretion in not prosecuting in the criminal case which may not be beneficial to the public in terms of diverting those offenders away from the criminal justice system; including measures not to prosecute in order to protect the society and prevent crime at the same time. However, the prosecutor has used little of their discretion power to order the trial, since the rules and regulations was broadly declines with a lack of clear rules or guidelines for consideration. At present, there was "The public prosecutor's organization and the public prosecutor Act B.E.2553", section 21 and the Regulation of Office of the Attorney General concerning to the order not to prosecute the case which may not be beneficial to the public, or would affect the safety or national security or the vital interests of the nation B.E. 2554. Which set out the criteria of using discretion not to prosecute a case which may not be beneficial to the public, however, the prosecutor has still used little of their discretion power to order the trial anyway.

Kittipong Kittiyarak (2551) has studied the "Code of Ethics and Standards of Practice for the Attorney General in various country", he found that the methods of Thai prosecutor in consider a trial requires a clear development of guidelines and standards in some aspects; such as in parts of the evidence. Although, in practice, there should be a path to considerate, however, it appears that it is still subject to the individual prosecutor in using their discretion without clear standards. Or in part of the public interest will be considered the decision not to prosecute only the case which may not be beneficial to the public which is rather limited and depends on the

discretion of prosecutor whether the case should be bring up or not. There is still an unclear guidelines on which case would be considered beneficial or not beneficial to the public. This is totally different to the standards of practice of the prosecutor in other country which already define the meaning of public's interest as an appropriate guidelines; including there was a requirement for the prosecutor to bring up the case of public interest both in terms of considering a legal prosecution and not proceed with the legal prosecution (not limited to the case of non-prosecution only).

Satthanethi Nethipattarachuwong (2552) conducted a study on "Standards of the prosecutor's discretion on ordering legal prosecution" and found that Office of the Attorney was very important for the criminal justice system and it is an independent organization which will operate under the control and supervision of the Office of the Attorney General. Presently, Office of the Attorney General is an organization under the Constitutional Law of the Kingdom of Thailand B.E. 2550 with an authority to perform the duties of the prosecutor in several important respects, which is to exercise discretion in the ordering of legal case, the order of the prosecutor on the criminal proceedings which is the consideration of the statement investigated by an inquiry officer; including the results of the proceedings in the court which are the facts, law and the order which may have an affects on the consequences of the case. The authority in such cases is an authority prescribed by the law which allow the use of discretion, it can be seen obviously that Thailand the principle of discretion in prosecution since the past, the prosecutor has the authority to order that criminal proceeding as prescribed by the law from the Code of Criminal Procedure or in accordance with the regulations of Office of the Attorney General which was enacted ever since B.E. 2528 until the present. Therefore, the discretion of the of legal proceedings is a discretion which allow the prosecutor with an authority to use independently since the past. This authority is prescribed by law and there were a monitoring system to oversees such authority, however, the authority to use discretion in the legal proceedings of the prosecutor likely cause great problem in present time and it is a problem which affects the criminal justice system since there were no clear standards or framework for using discretion in either way. Such discretion in some cases cause a great problem for prosecutors themselves since they were liable to

responsible for their opinion, the error of prosecutor in ordering a case led to the court's decision to punish the prosecution on charge of a failure of operating the prosecution as prescribed by the Penal Code, section 157 and section 200, on the charge of misconduct to the position or fraudulent act in order to assist any other person not to receive any legal proceedings ordered by the court with a reason of using an inappropriate judgment of discretion or use discretion power in terms of arbitrary, which in reality, this problem should never occur in the criminal justice system.

In Thailand, the Code of Criminal Procedure, section 143 and section 145 has mentioned the discretion and the check and balance of the discretion power of the prosecutor within the regulations of Office of the Attorney General concerning to the legal proceedings of prosecutor B.E. 2547, article 78 and 79 which requires the use of discretion in prosecuting the case; such as the prosecution on any case shall be beneficial to the public and do not disturb the peace and public order, morality of the citizen, however, these two factors are still not sufficient to solve such problem since there were no certain criteria and framework of using discretion. Therefore, there should be an application of various standards from international level or other country to adapt with the discretion of legal proceedings in Thailand, although, the discretion may be different from each other but not in the vast amount. It will differ only in the contents of using discretion. In each country, they may have the legal proceedings both written and not written; such as, the consideration of public's interest, peace and order of the citizen, budget, the consideration of the offense condition or from the offender himself, which are focus on a more specific details than in Thailand, therefore, the approach of using discretion should have an important steps as follows; there should be a criteria which define standardized guidelines, the quality of those who will be suitable to use the structuring discretion, set out criteria and guidelines for ordering the case clearly and consistently with the principle of criminology and international standards; there were a mechanism to support the use of discretion and there should be measures to check and balance the use of prosecutor's discretion of the prosecutor in the criminal justice system appropriately.

Therefore, researcher believed that the results of this report can be applied to the study of the prosecutor's discretion in not prosecuting the criminal case which may not be beneficial to the public in terms of setting up a criteria which has defined

standardized guidelines, setting a framework for using discretion clearly, including requiring the quality of those who will be suitable to use the structuring discretion, set out criteria and guidelines for ordering the case clearly and consistently with the principle of criminology and international standards; set up a mechanism to support the use of discretion and measures to check and balance the use of prosecutor's discretion of the prosecutor in not prosecuting the case which may not be beneficial to the public.

Chaninya (Rachanee) Chaisuwan (2526) has conducted a study on "the Use of prosecutor's discretion in legal proceedings" it was found that the principle of prosecuting criminal case can be categorized into 2 principle which is; the legal proceeding as in accordance with the legality or Compulsory Prosecution and Prosecution as accordance with Discretion or Opportunity Prosecution.

The first principle of prosecuting a criminal case means that when the prosecutor has a probable cause to believe that the accused has committed an offense under the law, the prosecutor shall always file the case to the court, the case which was filed, cannot be withdraw. For the second principle means that when the prosecutor has a probable cause to believe that the accused has committed an offense under the law, the prosecutor may use the discretion power to prosecute or not prosecute the offenders by considering an appropriateness of each case whether such prosecution may be beneficial more or less to the public or not and whether the offender would be in a stage to correct his behavior as a good citizen more or less, if he can do so, strict principles of the law shall be lessen.

The current purpose of punishment has been change from revenge to the general deterrence, the principles of criminal proceedings of using discretion has grabbed more attention. Up until a country which normally adhere to the legal proceedings according to the law; such as Germany has also enacted an exception in the law in a way which lesson a strict law by allowing the prosecutor to use discretion in prosecuting legal proceedings in various cases.

These exceptions has been increase a lot, there were sayings that the principle of prosecuting in legal cases in Germany has been less strict and are less important than the exception of allowing the use of discretion instead.

For Thailand, consider to section 143 of the Code of Criminal Procedure, it can be seen that the written law was very broad, allowing the prosecutors to use their discretion in legal proceedings. However, in reality, it doesn't seem that way since the prosecute issue an order by adhering to the law strictly. According to evidence in the trial, there were only 4 cases which the prosecutor has order not to prosecute by using their discretion.

Reason for this is because it is understood that if the guidelines of using discretion are extensively, it shall create an opportunity for the prosecutor to use discretion power in unlawful way and this should likely be contrary to the Code of Criminal Procedure, section 143. This kind of judgment is rather negative, causing the prosecutor to exercise their discretion power like a machine since they do not have the opportunity to use their discretion to facilitates justice to the society in full power.

Viruangrong Ratanavilaisakul (2529) has conducted a study on "The attitude of the officer in Criminal Justice process towards a solution of inmates overflow: case study on Bangkok area" it was found that the attitudes on the solution of inmates overflows in the future was that the agencies in criminal justice process must work together to eliminate any problems or flaws within the criminal justice system starting from police officer must be able to arrest the offender as soon as possible, the investigation of inquiry officer must be efficient, fast and fair to the offender. The prosecutor would have to consider the case effectively and there should be various measures for reducing the number of unnecessary cases that will go to the court. There should be a way to expedite the proceedings in the Court of Appeal and the Supreme Court; including the rehabilitation method for allowing the offender to adapt himself to the society as a way to prevent recidivism.

Therefore, the research suggests that the results of this report can be applied to the study of the prosecutor's discretion in prosecuting a case which may not be beneficial to the public in terms of the attitude of the officer in Criminal Justice process towards the prosecutor's discretion in not prosecuting a criminal case since it is another way which can reduce the number of inmates overflow.

Office of the Attorney General, district 8, has summarized conclusions and recommendations in the administration document on "The discretion in prosecuting the case which may not be beneficial to the public" which indicates that the prosecutor

will have to weigh and balance between the interests of the victims, the accused and the society as a whole. These factors shall be taken into account in the case of the public's interest depending on the circumstances of each case. The consideration must be based on the purpose of the criminal proceedings, criminology theory and the social and cultural dimensions; also the criteria of factors for consideration as attached here as follows; by taking into consideration of all factors in order to analyzed neatly in every aspects with precautions. In this regard, the prosecutor must consider whether the legal proceedings is necessary and worth the prosecution or not by considering the criteria as follows;

1. Nature and seriousness of the offense.
2. Impact of the offense on the victim and other witnesses.
3. Age, personal background and status of the accused.
4. Age, background, privacy of victims and other witnesses.
5. Opinions of the victims.
6. Motives of the offenders.
7. Time-length since the offense occurred.
8. Fact that would beneficial the accused.
9. Consequences of legal proceedings which may affects the accused.
10. The use of rehabilitation methods in civil cases which may be more appropriate.
11. The anxiety of the public.
12. The details of the case which may be released to the public in a way that may cause harm to the sources of information, international relations or national security.

Therefore, researcher would like to suggests that the results of this report can be applied to the study of the prosecution's discretion of the prosecutor in not prosecuting a criminal case which may not be beneficial to the public since the prosecutor will have to weigh and balance between the interests of the victims, the accused and the society as a whole. These factors shall be taken into account in the case of the public's interest depending on the circumstances of each case. The

consideration must be based on the purpose of the criminal proceedings, criminology theory and the social and cultural dimensions.

CHAPTER III

MATERIALS AND METHODS

The research study on “The Principles of Public Prosecutor’s Discretion Not Prosecuting the Non Public Interest Criminal Cases” was done by using the mixed methods research which focus on quantitative research and supplemented by qualitative research with details as follows;

3.1 Populations

In the research of “The Principles of Public Prosecutor’s Discretion Not Prosecuting the Non Public Interest Criminal Cases”, researcher has categorized the target populations to 2 types as follows;

3.1.1 Quantitative Research

The study population will be based on a public prosecutor who is responsible for the issuance of order relating to criminal case; such as

3.1.1.1 Public prosecutor in a position of Provincial Chief Public Prosecutor. (from region-wide)

3.1.1.2 Public prosecutor in a position of Executive Director. (in Bangkok area)

3.1.2 Qualitative Research

The study population are;

3.1.2.1 The public prosecutor in charge of the management within Office of the Attorney General in a position either from the position of Deputy Director General, Special Section Attorney General, and Director General in various offices, The Inspector General, Attorney General, Deputy Attorney General and the

Senior Executive of the Attorney General who has responsibility in the field of administrator

3.1.2.2 Legal experts in the field of justice administration, Criminal Justice System or in the field of Criminology with at least 10 years in experience.

3.2 The Sample Size and Sampling Methods.

In this research, the researcher determined sample size and sampling method into 2 categories as follows;

3.2.1 Quantitative Research

The sampling size and randomization will be based on public prosecutors responsible for the issuance of order relating to criminal case; as follows;

3.1.1.1 Public prosecutor in a position of Provincial Chief Public Prosecutor (from region-wide) with an amount of 202 persons.

3.1.1.2 Public prosecutor in a position of Executive Director (in Bangkok area).with an amount of 61 persons.

3.2.2 Qualitative Research

The sampling size and randomization will be based on;

3.1.2.1 The public prosecutor in charge of the management within the Office of the Attorney General, ranging from the Deputy Director General, Executive Director, and Director General in various offices, The Inspector General, Attorney General, Deputy Attorney General and the Senior Executive of the Attorney General who has responsibility in the field of administrator by using the methods of purposive sampling with an amount of 20 persons.

3.1.2.2 Legal experts in the field of justice administration, Criminal Justice System or in the field of Criminology with at least 10 years in experience by using the methods of purposive sampling with an amount of 10 persons.

3.3 Research Instruments.

This research study used the information from various documents until the conclusions were reached and develop into a set of questionnaire and in-depth interviews as follows;

3.3.1 Quantitative Research

The questionnaires were given to the public prosecutors who were the target group which are the prosecutors in the position of Provincial Chief Public Prosecutor and Executive Director , the questionnaires were separated into 3 parts consist of Part 1: Personal Information (Personal Background), Part 2: Attitudes of Public Prosecutor in issuance an criminal case, Part 3: Laws and regulations relating to the principles of public prosecutor's discretion not prosecuting the non public interest criminal cases. And Part 4: Additional suggestions and opinions which are the open ended questions, details are attached in Appendix B.

3.3.2 Qualitative Research

The questions in terms of in-depth interview to target group which are the public prosecutor in charge of the management within the Office of the Attorney General, ranging from the Deputy Director General, Executive Director, and Director General in various offices, The Inspector General, Attorney General, Deputy Attorney General and the Senior Executive of the Attorney General who has responsibility in the field of administrator and all Legal experts in the field of justice administration, Criminal Justice System or in the field of Criminology with at least 10 years in experience. The type of interview was divided into 6 questions, details of questions appeared in Appendix C and D.

3.4 The Quality of the Research Instruments

Before deciding which tools would be used in the research, researcher proposed the questionnaires and in-depth interview forms to the advisors in order to revise and improve the research. In addition, researcher also proposed the tools used in

research both the questionnaires and interview to the Committee of Research Ethics in Human from the faculty of Social Sciences and Humanity, Mahidol University and the Committee later approved and accepted the project number MU-SSIRB: 2012/268.2708, details attached in Appendix E.

3.5 Data Collection

In this data collection, researcher sent questionnaires to the target group which are the public prosecutors in the position of Provincial Chief Public Prosecutor country wide and Executive Director within Bangkok area to answer and sent them back to researcher. In terms of in-depth interviews with public prosecutors in charge of the management within Office of the Attorney General and experts in various fields, researcher conducted and collected all data by means of in-depth interview personally with a use of sound recording machine and note taking depending on each circumstances. The data collected in the questionnaires and interviews were all approved by the Faculty of Social Sciences and Humanities, Mahidol University to facilitate the process of data collection from the target group.

In terms of 263 questionnaires sent from researcher via postal to the target group which are the public prosecutors in the position of Provincial Chief Public Prosecutor country wide and Executive Director within Bangkok area, 235 questionnaires were later returned, accounted as 89.35% of all questionnaires.

3.6 Data Analysis

3.6.1 Quantitative Research

Researcher analyzed the data in the patterns of table with an explanation into 4 parts as follows;

3.6.1.1 The analysis was done in basic descriptive statistics such as percentage in terms of current data by demographic characteristics; such as gender, age, highest education background, the maximum amount of time working in

the public prosecutor to consider criminal responsibility, experience in a position of public prosecutor, duty as a prosecutor on the basis of any criminal charges and experience in the use of public prosecutor's discretion not to prosecute the non public interest criminal cases.

3.6.1.2: The analysis of attitudes of public prosecutor's discretion not to prosecute the non public interest criminal cases by using percentage.

3.6.1.3: The analysis of laws and regulations relating to the public prosecutor's discretion not prosecuting the non public interest criminal cases by using percentage.

3.6.1.4: The analysis of hypothesis by using percentage.

3.6.2 Qualitative Research

Researcher analyzed the information from the answers of populations collected from an in-depth interview and various documents to supplement with the quantitative research.

CHAPTER IV

RESULTS

The research study on “The Principles of Public Prosecutor’s Discretion Not Prosecuting the Non Public Interest Criminal Cases” researcher did analyzed the data into 2 parts which are; quantitative research; such as, prosecutor in a position of Provincial Chief Public Prosecutor (from region-wide) and prosecutor in a position of Executive Director (in Bangkok area) who were responsible for the issuance of order relating to criminal case. The completed questionnaires were sent back to the researcher with a total amount of 235 and qualitative information such as; the opinions from an in-depth interview from the prosecutor in charge of the management within the Office of the Attorney General in a position either from the position of Deputy Director General, Special Section Attorney General, and Director General in various offices, The Inspector General, Attorney General, Deputy Attorney General and the Senior Executive of the Attorney General who has responsibility in the field of administrator amounted as 20 persons and legal experts in the field of justice administration, Criminal Justice System or in the field of Criminology, Penology with at least 10 years in experience with an amount of 10 persons, researcher will analyzed and present information as follows; To analyze and present the analyzed data, researcher has analyzed and presented in the form of tables with a description which was divided into 5 parts.

4.1 Part 1: The overall of results from data collection concerning to personal information, by demographic characteristics; such as gender, age, highest education background, the maximum amount of time working in the prosecutor to consider criminal responsibility position as Provincial Chief Public Prosecutor or Executive Director and experience in a position of public prosecutor.

4.2 Part 2 : The analysis of attitudes of public prosecutor’s discretion.

4.3 Part 3 : The analysis of laws and regulations relating to the public prosecutor's discretion to prosecute or not to prosecute the non public interest criminal cases.

4.4 Part 4 : Summary of suggestions and opinions of public prosecutor in a position of Provincial Prosecutor Public Prosecutor and Executive Director who were responsible for the issuance of order relating to criminal case.

4.5 Part 5 : Results of in-depth interview from target populations.

4.6 Part 6 : The analysis of hypothesis.

4.1 Part 1: The overall of results from data collection concerning to personal information, by demographic characteristics

Demographic characteristics such as gender, age, highest education background, the maximum amount of time working in the prosecutor to consider criminal responsibility position as Provincial Chief Public Prosecutor or Executive Director and experience in a position of public prosecutor.

In this part, the researcher has summarized an overview of the sample group in order to present the demographic characteristics of the sample prior to the analysis of detailed information acquired in the next part below.

Table 4-1: The demographic characteristics of target group.

Demographic characteristics	Number (persons) (n= 235)	Percentage (100.00)
1. Gender		
Male	173	73.60
Female	62	26.40
2. Age (Years)		
40-50	117	49.70
51-60	115	81.20

Table 4-1: The demographic characteristics of target group. (continue)

Demographic characteristics	Number (Persons) (n= 235)	Percentage (100.00)
Over 60	3	1.30
3.Highest education background		
Certificate(Higher than bachelor)	122	51.90
Master Degree	112	47.70
Doctoral Degree	1	0.40
4.The maximum amount of time working in the prosecutor to consider criminal responsibility position as Provincial Chief Public Prosecutor or Executive Director (Years)		
Less than 1	75	31.90
1-5	131	55.70
Over 5	29	12.30
5.Experience in a position of public prosecutor(Years)		
15-25	165	70.20
26-35	50	21.30
Over 35	20	8.50

From Table 4-1: Demographic characteristics of the sample group consist of 235 people could be summarized as follows; most of the majority were male with an amount 173 persons (73.60 %) and female with an amount of 62 persons(26.40 %) with an average age of 40-50 years with 117 persons(49.70 %), followed by aged 51-60 years with a number of 115 persons(81.20 %) and with an age of over 60 years old with the number of 3 persons(1.30 %) respectively, with the highest educational background of certificate (higher than bachelor degree) with a number of 122 persons (51.90 %, followed by a master degree with a number of 112 persons(47.70 %) and doctoral degree with 1 person(0.40 %) respectively.

In addition, the maximum amount of time working in the prosecutor to consider criminal responsibility position as Provincial Chief Public Prosecutor or Executive Director responsible in issuing criminal order with 1-5 years(55.70 %),

followed by a period of one year with 75 persons(31.90 %) and with the period of over 5 years with 29 persons(12.30 %) respectively. Apart from this, the majority group has experienced of working as prosecutor with 15-25 years(70.20 %), followed by 26-35 years of experience with 50 persons(21.30 %) and with over 35 years of experience with 20 persons(8.50 %) respectively.

Table 4-2: Authority of public prosecutor relating to criminal cases.

Authority of Prosecutor relating to Criminal cases (Answer could be more than one)	Number (opinions)	Percentage
Consider Investigation report	231	33.40
Issue prosecution	153	22.00
Issue non prosecution	150	21.60
Plead the case	160	23.00
	Total	100.00

From Table 4-2: Authority of public prosecutor relating to criminal cases of the sample group with a number of 235 persons, found that the majority of the sample group thinks that the primary duty of the prosecutor is to consider the investigation report with a number of 231 persons(33.40 %) followed by pleading the case with a number of 160 persons(23.00 %), prosecute the case with a number of 153 persons(22.00 %) and not to prosecute with a number of 150 persons(21.60 %) respectively.

Table 4-3: Principle of public prosecutor's prosecution in criminal cases.

In working as prosecutor, what kind of principle did you use in the criminal cases	Number (Persons) (n= 235)	Percentage (100.00)
Prosecute according to law	120	51.10
Prosecute with discretion	115	48.90
Total	235	100.00

From Table 4-3: Principle of public prosecutor's prosecution with the sample group of 235 persons found that the majority of the group prosecute according

to the law with a number of 120 persons(51.10 %) followed by the prosecution with discretion with a number of 115 persons(48.90 %) respectively.

Table 4-4: Experiences in using discretion not prosecuting the non public interest criminal cases.

Experiences in using discretion not prosecuting the non public interest criminal cases	Number (Person) (n= 235)	Percentage (100.00)
No experience	161	68.50
Experience with less than 5 cases	63	26.80
Experience with 5 cases	7	3.00
Experience with 10 cases	4	1.70
Total	235	100.00

From Table 4-4: Experience in using discretion not prosecuting the non public interest criminal cases of the sample group with a number of 235 persons, found that the majority of sample group do not have experience with a number of 161 persons(68.50 %), followed by less than 5 cases with a number of 63 persons (26.80 %), experience with more than 5 cases with a number of 7 persons(3.00 %) and have experience with more than 10 cases with a number of 4 persons(1.70 %) respectively.

4.2 Part 2 : The Analysis of Attitudes of Public Prosecutor’s Discretion.

Table 4-5: Attitudes of public prosecutor to prosecute criminal cases.

When do you think prosecutor will likely issue criminal cases? (answer could be more than 1)	Number (opinions)	Percentage (100.00)
Sufficient evidence to prosecute	232	57.30
Offender confessed	113	27.90
Prosecutor wants the court to consider the offender’s offense.	19	4.80

Table 4-5 : Attitudes of public prosecutor to prosecute criminal cases.
(continue)

When do you think prosecutor will likely issue criminal cases? (answer could be more than 1)	Number (opinions)	Percentage (100.00)
Prosecute beforehand due to limited time in- investigating report.	33	8.10
Others; such as, wants the victims to be rehabilitated	8	1.90
Total	405	100.00

From Table 4-5: Attitudes of the public prosecutor to prosecute criminal cases. (answer could be more than one) showed that most of the criminal charges took place when there is enough evidence with a number of 232 comments(57.30 %), followed by prosecute when the offenders confess with a number of 113 persons (27.90 %), prosecute beforehand due to limited time in investigating report with a number of 33 comments(8.10 %), public prosecutor wants the court to consider the offender's offense with a number of 19 comments(4.80 %) and others, such as wants the victim to be rehabilitate with 8 comments(1.90 %) respectively. In terms of categorizing upon variable in regard to personal backgrounds; including gender, age, highest education level, duration of working as prosecutor responsible in consider the issuance of criminal cases and experience in working as a prosecutor according to Appendix A, Table A-1 details as follows;

In terms of gender, Most male have an attitude to file criminal charges when the case has enough evidence to prosecute with 42.00 %, followed by when the offender confessed with 15.31 %, prosecute beforehand due to limited time in investigating report with 4.93 %, public prosecutor wants the court to consider the offender's offense with 1.24 % respectively, for female is also similar to male, most of them have an attitude to prosecute when there is sufficient evidence with 15.31 %, followed by when offenders confessed with 12.60 %, %, prosecute beforehand due to limited time in investigating report with 3.20 %, public prosecutor wants the court to consider the offender's offense with 1.97 % and others; such as, wants the victims to be rehabilitated with 0.74 % respectively.

In terms of age in the different range, it also exhibit the same results with the sample group age between 40-50 years old with attitudes to file criminal charges when the case has enough evidence to prosecute with 29.10 %, followed by when the accused has confessed with 17.26 % and prosecute beforehand due to limited time in investigating report with 4.11 %, public prosecutor wants the court to consider the offender's offense with 2.96 % and others; such as, wants the victims to be rehabilitated with 0.74 % respectively.

For sample group age between 51 to 60 years, attitudes to file criminal charges when the case has enough evidence to prosecute with 26.64 %, follow by when the accused has confessed with 10.12 %, and prosecute beforehand due to limited time in investigating report with 3.65 %, public prosecutor wants the court to consider the offender's offense with 2.96 % and others; such as, wants the victims to be rehabilitated with 1.24 % respectively. For samples with more than 60 years of age, attitudes to file criminal charges when the case has enough evidence to prosecute with 0.50 %, follow by equal percentage of 0.24 % with when the accused confessed and prosecute beforehand due to limited time in investigating report and others; such as, wants the victims to be rehabilitated. In terms of the matters of public prosecutor wants the court to consider the offender's offense, the group of over 60 years of age did not provide answer to this question.

From highest education background, it was found that although most samples have different levels of education, their attitudes to prosecute in criminal cases are similar to the sample group with an education background of certificate (higher than bachelor degree) attitudes to file criminal charges when the case has enough evidence to prosecute with 14.32 %, follow by when the accused has confessed with 14.32 %, and prosecute beforehand due to limited time in investigating report with 4.69 %, public prosecutor wants the court to consider the offender's offense with 2.78 % and others; such as, wants the victims to be rehabilitated with 1.24% respectively. For sample group with master degree level have attitudes to file criminal charges when the case has enough evidence to prosecute with 27.65 %, follow by when the accused has confessed with 13.33 %, and prosecute beforehand due to limited time in investigating report with 3.45 %, prosecutor wants the court to consider the offender's offense with 1.97 % and others; such as, wants the victims to

be rehabilitated with 0.74 % respectively. For sample group with doctoral degree, attitudes to file criminal charges when the case has enough evidence to prosecute and when the accuse confessed were the most answer they chose with 02.4% equally, for other attitudes, there were no answers chosen.

For the maximum amount of time working in the prosecutor who was responsible for the issuance of criminal order, it was found that even though, there were a distinct time-length in operating as prosecutor, they tends to have similar attitudes to file criminal charges. The results were as follows; the sample group who operate in a position of prosecutor with less than 1 year have an attitudes to file criminal charges when the case has enough evidence to prosecute with 13.02%, follow by when the accused has confessed with 10.10 %, prosecute beforehand due to limited time in investigating report with 3.20%, public prosecutor wants the court to consider the offender's offense with 1.50 % and others; such as, wants the victims to be rehabilitated with 0.50 % respectively. The sample group who operate in a position of prosecutor between 1-5 year have an attitudes to file criminal charges when the case has enough evidence to prosecute with 39.54 %, follow by when the accused has confessed with 15.56 %, prosecute beforehand due to limited time in investigating report with 3.45%, public prosecutor wants the court to consider the offender's offense with 2.00 % and others; such as, wants the victims to be rehabilitated with 1.00 % respectively. The sample group who operate in a position of prosecutor with over 5 years have an attitudes to file criminal charges when the case has enough evidence to prosecute with 4.93 % follow by when the accused has confessed with 2.96 %, prosecute beforehand due to limited time in investigating report with 1.00 %, public prosecutor wants the court to consider the offender's offense with 0.74 % and others; such as, wants the victims to be rehabilitated with 0.50 % respectively.

In terms of experience in a position of public prosecutor, it was found that even though, there were a distinct experience in working as prosecutor, they tends to have similar attitudes to file criminal charges. For public prosecutor between 15-25 years of experience, have an attitudes to file criminal charges when the case has enough evidence to prosecute with 40.74 %, follow by when the accused has confessed with 14.57 %, prosecute beforehand due to limited time in investigating report with

3.95 %, public prosecutor wants the court to consider the offender’s offense with 2.72 %, and others; such as, wants the victims to be rehabilitated with 1.00 % respectively. For prosecutor between 26-35 years of experience, have an attitudes to file criminal charges when the case has enough evidence to prosecute with 12.15 %, follow by when the accused has confessed with 9.62 %, prosecute beforehand due to limited time in investigating report with 3.20 %, public prosecutor wants the court to consider the offender’s offense with 1.50 %, and others; such as, wants the victims to be rehabilitated with 0.74 % respectively and for prosecutor with over 35 years of experience, have an attitudes to file criminal charges when the case has enough evidence to prosecute with 4.42 %, follow by when the accused has confessed with 3.65 %, prosecute beforehand due to limited time in investigating report with 1.00%, public prosecutor wants the court to consider the offender’s offense with 0.50 %, and others; such as, wants the victims to be rehabilitated with 0.24% respectively.

Table 4-6: Attitudes relating to cause and factors which affects the public prosecutor’s discretion to always prosecute criminal cases.

Cause and factors which affects the prosecutor’s discretion to always prosecute criminal cases (answers could be more than 1)	Number (opinions)	Percentage (100.00)
Wants the offender to acknowledge and fear of-committing an offense	77	15.20
In order to enforce a sacred law	190	38.00
Wants peace and order in the society	181	35.80
Prevent rumors from the society which arise from-the order not to prosecute	43	8.00
Others; such as, news coverage by the media or-determined the high penalty	15	3.00
Total	506	100.00

From Table 4-6: Attitudes relating to cause and factors which affects the public prosecutor’s discretion to always prosecute criminal cases (answers could be more than 1), it was found that most sample group have attitudes relating to cause and factors which affects the public prosecutor’s discretion to always prosecute criminal

cases in order to enforce a sacred law with 190 persons(38.00 %), follow by in order to create peace and order in the society with 181 persons(35.80 %), in order to make the offender acknowledge the fear of committing an offense with 77 persons (15.20 %), to prevent rumors from the society which arise from the order not to prosecute with 43 persons(8.00 %) and others; such as, news coverage by the media or determined the high penalty with 15 persons(3.00 %) respectively, categorizing from variables in terms of personal background as appeared in Appendix A, Table A-2, details are as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, it did not affects the attitudes relating to cause and factors which affects the public prosecutor's discretion to always prosecute criminal cases, the sample group which are male use their discretion to always prosecute criminal cases due to enforce a sacred law accounted as 33.20 %, want to create peace and order in the society accounted as 33.00 %, wants the offender to acknowledge and fear of committing an offense with 12.28 %, to prevent rumors from the society which arise from the order not to prosecute accounted as 7.10 % and others; such as, news coverage by the media or determined the high penalty accounted as 1.98 % respectively. As for the sample group which are female also have the similar results with male, they use their discretion to always prosecute criminal cases due to enforce a sacred law accounted as 4.30 %, want to create peace and order in the society accounted as 3.48 %, wants the offender to acknowledge and fear of committing an offense with 2.35 %, to prevent rumors from the society which arise from the order not to prosecute accounted as 1.31 % and others; such as, news coverage by the media or determined the high penalty accounted as 01.00 % respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 year, the cause and factors which affects the public prosecutor's discretion to always prosecute criminal cases due to enforce a sacred law with 20.60 %, want to create peace and order in the society accounted as 19.96 %, wants the offender to acknowledge and fear of committing an offense with 12.20 %, to prevent rumors from the society which arise from the order not to prosecute accounted as 05.14 %, and others; such as, news coverage by the media or determined the high

penalty accounted as 01.78 % respectively. For the sample group age between 51-60 years, the cause and factors which affects the prosecutor's discretion to always prosecute criminal cases due to enforce a sacred law with 16.30 %, want to create peace and order in the society accounted as 15.30 %, wants the offender to acknowledge and fear of committing an offense with 02.77 %, to prevent rumors from the society which arise from the order not to prosecute accounted as 03.16 %, and others; such as, news coverage by the media or determined the high penalty accounted as 01.20 % respectively. For the sample group age over 60 years, the cause and factors which affects the public prosecutor's discretion to always prosecute criminal cases due to enforce a sacred law with 0.60 %, want to create peace and order in the society and wants the offender to acknowledge and fear of committing an offense accounted as 0.40 % equally, to prevent rumors from the society which arise from the order not to prosecute accounted as 0.19 %, and for other attitudes, no answer was provided.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), the cause and factors which affects the prosecutor's discretion to always prosecute criminal cases due to enforce a sacred law was accounted as 18.40 %, want to create peace and order in the society accounted as 17.32 %, wants the offender to acknowledge and fear of committing an offense accounted as 08.11 %, to prevent rumors from the society which arise from the order not to prosecute accounted as 05.54 % and others; such as, news coverage by the media or determined the high penalty accounted as 01.20 % respectively. For the sample group with the level of master degree, the cause and factors which affects the prosecutor's discretion to always prosecute criminal cases due to enforce a sacred law was accounted as 19.14 %, want to create peace and order in the society accounted as 18.00 %, wants the offender to acknowledge and fear of committing an offense accounted as 07.10 %, to prevent rumors from the society which arise from the order not to prosecute accounted as 03.00 % and others; such as, news coverage by the media or determined the high penalty accounted as 01.78 % respectively. For the sample group with the level of doctoral degree, the cause and factors which affects the public prosecutor's discretion to always prosecute criminal

cases due to the need to create peace and order in the society accounted as 0.19 %, and for other attitudes, no answer was provided.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results presents similar outcomes relating to the cause and factors which affects the public prosecutor's discretion to always prosecute criminal cases in the sample group with the time length of less than 1 year due to enforce a sacred law was accounted as 14.20 %, want to create peace and order in the society accounted as 13.40 %, wants the offender to acknowledge and fear of committing an offense accounted as 04.30 %, to prevent rumors from the society which arise from the order not to prosecute accounted as 03.36 % and others; such as, news coverage by the media or determined the high penalty accounted as 01.00 % respectively. For the sample group with the time length between 1-5 years, the cause and factors which affects the prosecutor's discretion to always prosecute criminal cases due to enforce a sacred law was accounted as 18.38 %, want to create peace and order in the society accounted as 18.25 %, wants the offender to acknowledge and fear of committing an offense accounted as 8.30 %, to prevent rumors from the society which arise from the order not to prosecute accounted as 4.15% and others; such as, news coverage by the media or determined the high penalty accounted as 1.60 % respectively. For the sample group with the time length of over 5 years, the cause and factors which affects the prosecutor's discretion to always prosecute criminal cases due to enforce a sacred law was accounted as 4.94 %, want to create peace and order in the society accounted as 4.15 %, wants the offender to acknowledge and fear of committing an offense accounted as 2.57%, to prevent rumors from the society which arise from the order not to prosecute accounted as 1.00 % and others; such as, news coverage by the media or determined the high penalty accounted as 0.40 % respectively.

In terms of experience in a position of public prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes relating to the cause and factors which affects the public prosecutor's discretion to always prosecute criminal cases in the sample group.

For sample group with 15-25 years of experience, the cause and factors which affects the public prosecutor’s discretion to always prosecute criminal cases due to enforce a sacred law was accounted as 25.70 %, want to create peace and order in the society accounted as 25.30 %, wants the offender to acknowledge and fear of committing an offense accounted as 8.30%, to prevent rumors from the society which arise from the order not to prosecute accounted 5.36 % and others; such as, news coverage by the media or determined the high penalty accounted as 1.60 % respectively. For sample group with 26-35 years of experience, the cause and factors which affects the prosecutor’s discretion to always prosecute criminal cases due to enforce a sacred law was accounted as 8.30%, want to create peace and order in the society accounted as 7.51%, wants the offender to acknowledge and fear of committing an offense accounted as 4.30 %, to prevent rumors from the society which arise from the order not to prosecute accounted 1.60 % and others; such as, news coverage by the media or determined the high penalty accounted as 1.00 % respectively. For sample group with over 35 years of experience, the cause and factors which affects the prosecutor’s discretion to always prosecute criminal cases due to enforce a sacred law was accounted as 3.48%, want to create peace and order in the society accounted as 3.00 %, wants the offender to acknowledge and fear of committing an offense accounted as 2.55 %, to prevent rumors from the society which arise from the order not to prosecute accounted 1.60 % and others; such as, news coverage by the media or determined the high penalty accounted as 0.40 % respectively.

Table 4-7: Attitude on the awareness of consequences which may occur to offenders in ordering the criminal issuance.

In the issuance of criminal cases, were there any awareness on the consequences which may affects the offender; such as the offender may have been label or stigmatized	Number (persons) (n= 235)	Percentage (100.00)
No awareness on the issue	49	20.90
There were an awareness on the issue	176	74.90
Others; such as consideration should-be made case by case	10	4.20
Total	235	100.00

From Table 4-7: Attitude on the awareness of consequences which may occur to offenders in ordering the criminal issuance from sample group with a number of 235 persons, it was found that most of the sample group do consider that the consequences which may affect the offender; such as the offender may have been damaged by labeling and stigmatizing them with 176 persons(74.90 %), follow by no consideration was made on the consequences which may affect the offender with a number of 49 persons(20.90 %) and others; such as the consideration should be made case by case with 10 persons(4.20 %) respectively. When categorizing into variables in terms of personal background as presented in Appendix A, Table A-3, details are as follow;

In terms of gender, it was found that the sample group may have varies in terms of gender, however, it do not affect the attitudes on the awareness of consequences which may affect the offenders in ordering of the criminal issuance. The sample group which is male will consider the consequences which may affect the offenders in terms of being damage, label and stigmatized can be accounted as 56.60 %, follow by no consideration on the issue with 14.04 % and others; such as, the consideration should be made case by case with 2.98 % respectively. For female sample, the results also present similar to male which is the prosecutor will consider the consequences which may affect the offenders accounted as 18.30 %, follow by no consideration on the issue with 6.81 % and others; such as, the consideration should be made case by case with 1.28 % respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 years will consider the consequences which may affect the offenders in terms of being damage, label and stigmatized can be accounted as 37.56 %, follow by no consideration on the issue with 10.53 % and others; such as, the consideration should be made case by case with 1.70 % respectively. For sample group age between 51-60 years, will consider the consequences which may affect the offenders in terms of being damage, label and stigmatized can be accounted as 36.70 %, follow by no consideration on the issue with 9.68 % and others; such as, the consideration should be made case by case with 2.55 % respectively. For the sample group age over 60 years, will consider the consequences which may affect the

offenders can be accounted as 0.85 % follow by no consideration on the issue with 0.43 %, and for other attitudes, no answer was provided.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), will consider the consequences which may affect the offenders in terms of being damage, label and stigmatized can be accounted as 38.14 %, follow by no consideration on the issue with 10.64 % and others; such as, the consideration should be made case by case with 2.98 % respectively. For the sample group with the level of master degree, will consider the consequences which may affect the offenders 36.00 %, follow by no consideration on the issue with 10.53 % and others; such as, the consideration should be made case by case with 1.28 % respectively. For sample group with doctoral degree, will consider the consequences which may affect the offenders with 0.43 %, for other attitudes, no answer was provided.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will presents similar outcomes. For sample group with the time length of less than 1 year, will consider the consequences which may affect the offenders in terms of being damage, label and stigmatized can be accounted as 22.13 % , follow by no consideration on the issue with 8.15 % and others; such as, the consideration should be made case by case with 1.28 % respectively. For sample group with the time length between 1-5 years will consider the consequences which may affect the offenders accounted as 43.93 % %, follow by no consideration on the issue with 9.68 % and others; such as, the consideration should be made case by case with 2.13 % respectively and for sample group with the time length over 5 years, will consider the consequences which may affect the offenders accounted as 8.51 %, follow by no consideration on the issue with 2.93 % and others; such as, the consideration should be made case by case with 0.85 % respectively.

In terms of experience in a position of public prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes. The sample group with experience between 15-25

years, will consider the consequences which may affect the offenders in terms of being damage, label and stigmatized can be accounted as 52.87 % %, follow by no consideration on the issue with 10.53 % and others; such as, the consideration should be made case by case with 2.98 % respectively. The sample group with experience between 26-35 years, will consider the consequences which may affect the offenders accounted as 14.57 %, follow by no consideration on the issue with 9.68 % and others; such as, the consideration should be made case by case with 0.85 % respectively and for sample group with experience over 35 years, will consider the consequences which may affect the offenders accounted as 6.81 %, follow by no consideration on the issue with 6.81% and others; such as, the consideration should be made case by case with 0.43 % respectively.

Table 4-8: Attitude in regard to the public interest to order prosecution.

In the issuance of criminal order, were there an awareness on the matters of public interest	Number (persons) (n= 235)	Percentage (100.00)
No awareness	15	6.40
There were an awareness on the issue	213	90.60
Others; such as consideration will be-made case by case.	7	3.00
Total	235	100.00

From Table 4-8: Attitude in regard to the public interest to order prosecution of sample group with a number of 235 persons, it was found that the majority of sample group always aware of public interest during the issuance of criminal cases with a number of 213 persons accounted as 90.60 %, follow by no awareness on the issue of public interest with a number of 15 persons accounted as 6.40 % and others; such as, consider case by case with a number of 7 persons (3.00 %) respectively, details of independent variables in terms of personal background as attached with Appendix A, Table A-4 are as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, it did not affects the attitudes relating to public interest to order prosecution. For male, there were an awareness of public interest during the

issuance of criminal prosecution accounted as 67.66 %, follow by no awareness accounted as 4.25 % and other; such as, consider case by case accounted as 1.70 % respectively. For female, it also represent the same results as male, with the awareness of public interest with 22.98 %, follow by no awareness with 2.13 % and other; such as, consider case by case accounted as 1.28% respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 years, there were an awareness of public interest during the issuance of criminal prosecution accounted as 43.84 %, follow by no awareness accounted as 4.25 % and other; such as, consider case by case accounted as 1.70 % respectively. For the sample group age between 51-60 years, there were an awareness of public interest during the issuance of criminal prosecution accounted as 45.96 %, follow by no awareness accounted as 1.70% and other; such as, consider case by case accounted as 1.28 % respectively. For the sample group age over 60 years, there were an awareness of public interest during the issuance of criminal prosecution accounted as 0.85 % follow by no consideration on the issue with 0.43 %, and for other attitudes, no answer was provided.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), there were an awareness of public interest during the issuance of criminal prosecution accounted as 44.46 %, follow by no awareness accounted as 4.25 % and other; such as, consider case by case accounted as 2.13 % respectively. For the sample group with the level of master degree, there were an awareness of public interest during the issuance of criminal prosecution accounted as 45.75 %, follow by no awareness accounted as 2.13 % and other; such as, consider case by case accounted as 0.85 % respectively For the sample group with the level of doctoral degree, there were an awareness of public interest during the issuance of criminal prosecution accounted as 0.43%, and for other attitudes, no answer was provided.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will presents similar outcomes. For sample group with the time

length of less than 1 year, there were an awareness of public interest during the issuance of criminal prosecution accounted as 28.94 %, follow by no awareness accounted as 1.70 % and other; such as, consider case by case accounted as 1.28 % respectively. For sample group with the time length between 1-5 years, there were an awareness of public interest during the issuance of criminal prosecution accounted as 51.49 %, follow by no awareness accounted as 3.40 % and other; such as, consider case by case accounted as 0.85 % respectively and for sample group with the time length over 5 years, there were an awareness of public interest during the issuance of criminal prosecution accounted as 10.21 %, follow by no awareness accounted as 1.28 % and other; such as, consider case by case accounted as 0.85 % respectively.

In terms of experience in a position of public prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes. The sample group with experience between 15-25 years, there were an awareness of public interest during the issuance of criminal prosecution accounted as 65.44 %, follow by no awareness accounted as 3.40% and other; such as, consider case by case accounted as 1.28 % respectively. For sample group with experience between 26-35 years, there were an awareness of public interest during the issuance of criminal prosecution accounted as 18.55 %, follow by no awareness accounted as 0.85 % and other; such as, consider case by case accounted as 0.85 % respectively and for sample group with over 35 years of experience, there were an awareness of public interest during the issuance of criminal prosecution accounted as 6.65 %, follow by no awareness accounted as 1.28 % and other; such as, consider case by case accounted as 0.85 % respectively.

Table 4-9: Attitude of the public prosecutor in filing criminal charges which could affects the defendants.

Do criminal procedures by the public prosecutor’s prosecution result in a negative outcome for the accused or not?	Number (persons) (n= 235)	Percentage (100.00)
Will not affect	54	23.00
Will affect	176	74.90
Others; such as, the circumstances of the - case should be taken into consideration.	5	2.10
Total	235	100.00

From Table 4-9: Attitude of the public prosecutor in filing criminal charges which could affects the defendants taken from the sample group with a number of 235 persons, the majority of the sample group thinks that the criminal procedures by prosecutor’s prosecution could result a negative outcomes to the defendants with a number of 176 persons(74.90 %) follow by, the sample group thinks that the public prosecutor’s prosecution may not result in a negative outcomes to the defendants with a number of 54 persons(23.00 %) and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration with a number of 5 persons(2.10 %) respectively, categorizing into independents variables in terms of personal background according to Appendix A, Table A-5 appeared as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, it did not affects the attitudes relating to public interest to order prosecution. For male, thinks that the criminal procedures by public prosecutor’s prosecution could result a negative outcomes to the defendants accounted as 56.59 %, follow by the sample group thinks that the public prosecutor’s prosecution may not result in a negative outcomes to the defendants accounted as 15.32 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 1.70 % respectively. For female, the results also similar to male, they thinks that the criminal procedures by public prosecutor’s prosecution could result a negative outcomes to the defendants accounted as 18.30 %, follow by the sample group thinks that the prosecutor’s prosecution may not result in a

negative outcomes to the defendants accounted as 7.66 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 0.43 % respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 years have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the defendants accounted as 36.20 %, follow by the sample group thinks that the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 12.35 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 1.30 % respectively. For sample group age between 51-60 years have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the defendants accounted as 37.88%, follow by the sample group thinks that the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 1.22 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 0.81 % respectively and for sample group with age over 60 years, have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the defendants accounted as 0.81 %, follow by the sample group thinks that the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 0.43 % and for other attitudes, no answer was provided.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the defendants accounted as 38.29 %, follow by the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 12.75 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 0.81 % respectively. For sample group with master degree, have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the

defendants accounted as 36.20 %, follow by the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 10.22 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 1.30 % respectively and for doctoral degree, have the attitude that the criminal procedures by prosecutor's prosecution could result a negative outcomes to the defendants accounted as 0.43 % and for other attitudes, no answers were provided.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will presents similar outcomes. For sample group with the time length of less than 1 year, have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the defendants accounted as 19.60 %, follow by the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 11.94 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 0.43 % respectively. For sample group with the time length between 1-5 years, have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the defendants accounted as 48.51 %, follow by the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 6.40 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 0.81 % respectively and for sample group with the time length over 5 years, have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the defendants accounted as 6.81 %, follow by the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 4.69 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 0.81 % respectively.

In terms of experience in a position of public prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes. The sample group with experience between 15-25

years, have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the defendants accounted as 53.60 %, follow by the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 15.32 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 1.30 % respectively. For sample group with experience between 26-35 years, have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the defendants accounted as 16.58 %, follow by the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 4.25 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 0.43 % respectively and sample group with experience over 35 years, have the attitude that the criminal procedures by public prosecutor's prosecution could result a negative outcomes to the defendants accounted as 4.69 %, follow by the public prosecutor's prosecution may not result in a negative outcomes to the defendants accounted as 3.40 % and others; such as, the result will affect or not depends on the circumstances of the case should be taken into consideration accounted as 0.43 % respectively.

However, in order to accurately analyze the attitude of prosecutor who were sample group concerning to the public prosecutor's prosecution in not prosecuting the non public interest cases in terms of analyzing hypothesis and developing further discussions, the researcher has presented facts and cases which the Attorney General Office issue non prosecution against cases which may not benefit public in the patterns of questionnaires as appeared in Table 4-10 to 4-14 by analyzing the overall total, the results show how the majority of the sample group have attitudes towards the questionnaires, however, there were no explanation on the frequency of the demographic characteristics, details are as follows;

Table 4-10: Attitude of the public prosecutor in filing criminal charges in minor offenses which the offenders could return themselves as a good citizen.

The issuance of criminal order in a minor case, there was a fact that the offender could rehabilitate themselves as a good citizen	Number (persons) (n= 235)	Total Percentage (100.00)
Order prosecution	72	30.60
Order prosecution by describing facts within- the issuance statement	116	49.40
Order non prosecution	5	2.10
Order non prosecution since the case will not- facilitate public interest	27	11.50
Others; such as, further investigation on - circumstances in the case which could enhance- the offender to rehabilitate themselves	15	6.40
Total	235	100.00

From Table 4-10: : Attitude of the prosecutor in filing criminal charges in minor offenses which the offenders could return themselves as a good citizen from a sample group with a number of 235 persons, it was found that the issuance of criminal order in a minor case, there was a fact that the offender could rehabilitate themselves as a good citizen, the majority of the sample group will order prosecution by describing facts within the issuance statement with a number of 116 persons(49.40 %), follow by order prosecution with a number of 72 persons(30.60 %), order non prosecution since the case will not facilitate public interest with a number of 27 persons(11.50 %) and others; such as, further investigation on circumstances in the case which could enhance the offender to rehabilitate themselves with a number of 15 persons(6.40 %) and order non prosecution with a number of 5 persons(2.10 %) respectively.

Table 4-11: Attitudes relating to the consideration in the issuance of criminal offense in case which the offender never commit any crime before. The offender is a garbage collector, he sold old VCD's from a garbage bin in order to gain more income for his poor family.

The offender never commit any crime before, is a garbage collector, he sold old VCD's from a garbage bin in order to gain more income for his poor family.	Number (persons) (n= 235)	Percentage (100.00)
Order prosecution	72	30.60
Order prosecution by describing facts within- the issuance statement	113	48.10
Order non prosecution	14	6.00
Order non prosecution since the case will not- facilitate public interest	27	11.50
Others; such as, investigate in order to gain- more information	9	3.80
Total	235	100.00

From Table 4-11: Attitudes relating to the consideration in the issuance of criminal offense in case which the offender never commit any crime before. The offender is a garbage collector, he sold old VCD's from a garbage bin in order to gain more income for his poor family, it was found that the sample group have the attitude to order prosecution by describing facts within the issuance statement with a number of 113 persons(48.10 %), follow by order prosecution with a number of 72 persons(30.60 %), order non prosecution since the case will not facilitate public interest with a number of 27 persons(11.50 %), order non prosecution with a number of 14 persons (6.00 %) others; such as, further investigation on circumstances in the case which could enhance the offender to rehabilitate themselves 9 persons(3.80 %) respectively.

Table 4-12: Attitude on the consideration of the issuance of criminal order on the case which the offender was dating with his girlfriend and ran away to live together, his girlfriend is pregnant.

The offender was dating with his girlfriend who is over 15 years but not over 18 years and under the supervision of her parents, however, the offender and his girlfriend ran away to live together, his girlfriend is pregnant.	Number (persons) (n= 235)	Percentage (100.00)
Order prosecution	48	20.50
Order prosecution by describing facts within- the issuance statement	125	53.20
Order non prosecution	16	6.80
Order non prosecution since the case will not- facilitate public interest	33	14.00
Others; such as, investigate in order to gain- more information	13	5.50
Total	235	100.00

From Table 4-12: Attitude on the consideration of the issuance of criminal order on the case which the offender was dating with his girlfriend and ran away to live together, his girlfriend is pregnant of sample group with a number of 235 persons, it was found that the consideration of the issuance of criminal order on the case which the offender was dating with his girlfriend who is over 15 year but not over 18 year and under the supervision of her parents, however, the offender and his girlfriend ran away to live together, his girlfriend is pregnant. The majority of the sample group have the attitude to order prosecution by describing facts within the issuance statement with a number of 125 persons(53.20 %), follow by order prosecution with a number of 48 persons(20.50 %) and the number of 33 persons order non prosecution since the case will not facilitate public interest accounted as 14.10 % and order non prosecution with a number of 16 persons(6.80 %) and others; such as, further investigation on circumstances in the case which could enhance the offender to rehabilitate themselves with a number of 13 persons(5.50 %) respectively.

Table 4-13: Attitude on the consideration for the issuance of criminal cases which the offender is a youth and has never commit any crime before, stole other's people belonging worth of little money.

The facts appear that the offender has never commit any crime before, the offender is not over 18 years old, act with an adolescent manner and stole other people's belonging worth of little money.	Number (persons) (n= 235)	Percentage (100.00)
Order prosecution	66	28.10
Order prosecution by describing facts within- the issuance statement	125	53.20
Order non prosecution	1	0.40
Order non prosecution since the case will not facilitate public interest	31	13.20
Others; such as, investigate in order to gain more information	12	5.10
Total	235	100.00

From Table 4-13: Attitude on the consideration for the issuance of criminal cases which the offender is a youth and has never commit any crime before, stole other's people belonging worth of little money of the sample group with a number of 235 persons, it was found that the majority of the sample group during their consideration in the issuance of criminal order, there was a facts that the offender has never commit any crime before, the offender is not over 18 years old, act with an adolescent manner and stole other people's belonging worth of little money. The prosecutor has an attitude to prosecute by describing facts within the issuance statement with a number of 125 persons(53.20 %), follow by order prosecution with a number of 66 persons(28.10 %), order non prosecution since the case will not facilitate public interest 31 persons(13.20 %), others; such as, investigate in order to gain more information 12 persons(5.10 %) and order non prosecution with a number of 1 person (0.40 %) respectively.

Table 4-14: Attitude in the consideration of the issuance of criminal order which the offender is poor and invaded the land which belongs to the National Conserve Forest.

The offender is poor, own no land of his own, invaded the land with a small space which belongs to the National Conservative Forest in order to make a living and the housing.	Number (persons) (n= 235)	Percentage (100.00)
Order prosecution	53	22.60
Order prosecution by describing facts within- the issuance statement	121	51.50
Order non prosecution	1	0.40
Order non prosecution since the case will not- facilitate public interest	53	22.50
Others; such as, investigate in order to gain- more information	7	3.00
Total	235	100.00

From Table 4-14: Attitude in the consideration of the issuance of criminal order which the offender is poor and invaded the land which belongs to the National Conserve Forest of the sample group with a number of 235 persons, it was found that the majority of the sample group have an attitude during their consideration in the issuance of criminal order which the offender is poor, own no land of his own, invaded the land with a small space which belongs to the National Conservative Forest in order to make a living and the housing, the prosecutor will order prosecution by describing facts within the issuance statement with a number of 121 persons(51.50 %), follow by order prosecution and order non prosecution since the case will not facilitate public interest with a number of 53 persons(22.50 %) equally, for other attitudes; such as, investigate further in order to gain more information with a number of 7 persons (3.00 % and order non prosecution with 1 person(0.40 %) respectively.

Therefore, from table 4-10 to 4-14, the majority of the prosecutor who are the sample group have the attitude to order prosecution by describing facts within the issuance statement, follow by order prosecution, order non prosecution since the case will not facilitate public interest and others; such as, investigate in order to gain more

information respectively, the researcher will use the results to test hypothesis and further the discussion later on.

Table 4-15: Attitude towards the discretion not prosecuting the non public interest cases and the solutions to the problems of the crime.

Can discretion in not prosecuting non public interest cases solve the problems of crime.	Number (persons) (n= 235)	Percentage (100.00)
Will not affect	80	34.00
Will affect	146	62.10
Others; such as, whether it will or will not-affects the discretion, other measures - should be added for further consideration.	9	3.90
Total	235	100.00

From Table 4-15: Attitude towards the discretion not prosecuting the non public interest cases and the solutions to the problems of the crime of the sample group with a number of 235 persons was found that the majority of the sample group have the attitude that the discretion not prosecuting non public interest could contribute to solve the problems of crime with a number of 146 persons(62.10 %), follow by it will not contribute to solve the problems of crime with a number of 80 persons(34.00 %) and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration with a number of 9 persons (3.90 %) respectively. When categorized according to the personal factor as present in the appendix A, Table A-6, details are as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, it did not affects the attitudes relating to the use of discretion not prosecuting the non public interest cases and the solutions to the problems of the crime differently. Male has the attitude of using discretion not prosecuting non public interest cases will enable the solutions to the problems of the crime with a number of 49.36 %, follow by the attitude that it will not affect accounted as 21.70 % and the other attitudes; such as, whether it will affect or not affect, other measures should be added up for further consideration accounted as 2.55 %

respectively. For female, it also present the same outcome as male, with the attitude that the discretion not prosecuting the non public interest cases will affect the solution in solving the problems of crime accounted as 12.77 %, follow by the attitude that it will not affect accounted as 12.34 % and other attitude; such as, whether it will affect or not affect, other measures should be added for further consideration accounted as 1.28 % respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 years have the attitude that the use of discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 27.24 %, follow by the attitude that it will not affect accounted as 20.41 and the other attitude; such as, whether it will affect or not affect, other measures should be added for further consideration accounted as 2.13 % respectively. For sample group age between 51-60 years, have the attitude that the use of discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 34.04 %, follow by the attitude that it will not affect accounted as 13.20 % and for other attitude; such as, whether it will affect or not affect, other measures should be added for further consideration accounted as 1.70 % respectively and for sample group age over 60 years, have the attitude that the use of discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 0.85 %, follow by the attitude that it will not affect accounted as 0.43 % and for other attitude, no answer was provided.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), have the attitude that the use of discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 37.45 %, follow by the attitude that it will not affect accounted as 11.91 % and for other attitude; such as, whether it will affect or not affect, other measures should be added for further consideration accounted as 2.55 % respectively. For sample group with master degree, have the attitude that the use of discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 24.25 %, follow by the attitude that it will not affect accounted as 22.13 %, and for other attitude; such as,

whether it will affect or not affect, other measures should be added for further consideration accounted as 1.28 % and for sample group with doctoral degree, have the attitude that the use of discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted 0.43 %, and for other attitudes, no answer was provided.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will presents similar outcomes. For sample group with the time length of less than 1 year, have the attitude towards the discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 17.45 %, follow by the attitude that it will not affect accounted as 13.62 % and for other attitude; such as, whether it will affect or not affect, other measures should be added for further consideration accounted as 0.85 % respectively, for sample group with the time length between 1-5 years, have the attitude that the use of discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 36.59 %, follow by the attitude that it will not affect accounted as 17.02 %, and for other attitude; such as, whether it will affect or not affect, other measures should be added for further consideration accounted as 2.13 % and for sample group with the time length over 5 years, have the attitude towards the discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 8.09 %, follow by the attitude that it will not affect accounted as 3.40 % and for other attitude; such as, whether it will affect or not affect, other measures should be added for further consideration accounted as 0.85 % respectively.

In terms of experiences of working as prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes. The sample group with experience between 15-25 years, have the attitude towards the discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 46.17 %, follow by the attitude that it will not affect accounted as 24.37 % and for other attitude; such as,

whether it will affect or not affect, other measures should be added for further consideration accounted as 2.55 % respectively. For sample group with experience between 26-35 years, have the attitude towards the discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 12.41 %, follow by the attitude that it will not affect accounted as 6.21 % and for other attitude; such as, whether it will affect or not affect, other measures should be added for further consideration accounted as 0.85 % respectively. For sample group with experience over 35 years, have the attitude towards the discretion not prosecuting the non public interest cases will affect the solutions to the problems of the crime accounted as 4.46 %, follow by the attitude that it will not affect accounted as 2.55 % and for other attitude; such as, whether it will affect or not affect, other measures should be added for further consideration accounted as 0.43 % respectively.

Table 4-16: Attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen.

The discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen.	Number (persons) (n= 235)	Percentage (100.00)
Will not affect	20	8.50
Will affect	202	86.00
Others; such as, whether it will or will not affects- the discretion, other measures should be added for- further consideration.	13	5.50
Total	235	100.00

From Table 4-16: Attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen of sample group with a number of 235 persons, it was found that the majority of the sample group have discretion towards not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen with a number of 202 persons(86.00 %), follow by the sample believe that such discretion cannot assist the offender to return themselves as

good citizen with a number of 20 persons(8.50 %) and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration with a number of 13 persons(5.50 %) respectively, when categorized upon independent variables in terms of personal background as mention in Appendix A, Table A-7, details are as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, for attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen, male do have an attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 62.98 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 5.96 % and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 4.68 % respectively. For female, the results appear similar to male, they have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 22.98 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 2.55 % and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 0.85 respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 years have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 41.70 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 5.11 % and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 2.98 % respectively. For sample group age between 51-60 years have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen

accounted as 43.40 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 3.40 % and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 2.13 % respectively and for sample group age over 60 years, have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 0.85 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 0.43 % and for other attitudes, no answer was provided.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 43.40 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 5.11 %, and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 3.40 % respectively. For sample group with master degree, have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 42.13 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 3.40 %, and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 2.13 % respectively and for doctoral degree, have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 0.43 % and for other attitudes, no answer was provided.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will presents similar outcomes. For sample group with the time

length of less than 1 year, have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 27.03 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 2.55 %, and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 2.13 % respectively, for sample group with the time length between 1-5 years, have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 49.36 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 3.40 % and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 2.98 % respectively and for sample group with the time length over 5 years, have the attitude towards the discretion not prosecuting non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen 9.15 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 2.55 % and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 0.85 % respectively.

In terms of experiences of working as prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes. The sample group with experience between 15-25 years, have the attitude towards the discretion not prosecuting non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 64.26 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 4.68 % and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 1.28 % respectively. For sample group with experience between 26-35 years, have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 17.02 %, follow by the

sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 1.70 % and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 2.55 % respectively. For sample group with experience over 35 years, have the attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen accounted as 4.68 %, follow by the sample believe that such discretion cannot assist the offender to return themselves as good citizen accounted as 2.13 % and others; such as, whether it will or will not affects the discretion, other measures should be added for further consideration accounted as 1.70 % respectively.

Table 4-17: Attitude towards the discretion not prosecuting the non public interest cases on recidivism.

Whether the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender.	Number (persons) (n= 235)	Percentage (100.00)
Do not agree	73	31.00
Agree	144	61.30
Others; such as, other measures should be-added for further consideration.	18	7.70
Total	235	100.00

From Table 4-17: Attitude towards the discretion not prosecuting the non public interest cases on recidivism from a sample group with a number of 235 persons, it was found that the majority of the sample group do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender with a number of 144 persons(61.30 %), follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender with a number of 73 persons(31.00 %) respectively. When categorized upon independent variables in terms of personal background as mention in Appendix A, Table A-8, details are as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, for attitude towards the discretion not prosecuting the

non public interest cases could prevent recidivism of crime from the same offender accounted as 45.53 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 21.28 % and others; such as, other measures should be added for further consideration accounted as 6.80 % respectively. For female, the results appear similar to male, they have the attitude towards the discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender accounted as 15.75 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 9.79 % and others; such as, other measures should be added for further consideration accounted as 0.85 % respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 years do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender 30.64 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 16.17 % and others; such as, other measures should be added for further consideration accounted as 2.98 % respectively. For sample group age between 51-60 years, do agree that the use of discretion not prosecuting non public interest cases could prevent recidivism of crime from the same offender accounted as 29.79 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 14.89 %, and others; such as, other measures should be added for further consideration accounted as 4.25 % respectively. For sample group age over 60 years, do agree that the use of discretion not prosecuting non public interest cases could prevent recidivism of crime from the same offender accounted as 0.85 % respectively, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender accounted as 0.43 %, for other attitude, no answer was provided.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender accounted as 32.11 %, follow by they do

not agree that such discretion could not prevent recidivism of crime from the same offender 17.02 % and others; such as, other measures should be added for further consideration accounted as 3.40 % respectively. For sample group with master degree do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender accounted as 29.96 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 12.41 % and others; such as, whether such discretion could prevent recidivism of crime, other measures should be added for further consideration accounted as 4.25 % respectively, and for sample group with doctoral degree, do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender accounted as 0.85 % for other attitude, no answer was provided.

For the maximum amount of time working as public prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will presents similar outcomes. For sample group with the time length of less than 1 year, do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender accounted as 20.00 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 9.36 % and others; such as, whether such discretion could prevent recidivism of crime, other measures should be added for further consideration accounted as 2.55 % respectively. For sample group with the time length between 1-5 years, do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender accounted as 31.50 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 20.00 % and others; such as, whether such discretion could prevent recidivism of crime, other measures should be added for further consideration accounted as 4.25% respectively. For sample group with the time length of over 5 years do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender accounted as 9.79 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 1.70 % and others; such

as, whether such discretion could prevent recidivism of crime, other measures should be added for further consideration accounted as 0.85 % respectively.

In terms of experiences of working as public prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes. The sample group with experience between 15-25 years, do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender accounted as 41.28 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 23.83 % and others; such as, whether such discretion could prevent recidivism of crime, other measures should be added for further consideration accounted as 5.11 % respectively. For sample group with experience between 26-35 years, do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender accounted as 14.89 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 4.68 % and others; such as, whether such discretion could prevent recidivism of crime, other measures should be added for further consideration accounted as 1.70 % respectively. For sample group with experience over 35 years, do agree that the use of discretion not prosecuting the non public interest cases could prevent recidivism of crime from the same offender accounted as 5.11 %, follow by they do not agree that such discretion could not prevent recidivism of crime from the same offender 2.55 % and others; such as, whether such discretion could prevent recidivism of crime, other measures should be added for further consideration accounted as 0.85 % respectively.

Table 4-18: Attitude towards the discretion not prosecuting the non public interest cases and the support in the same type of crime committed.

The discretion not prosecuting the non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution.	Number (person) (n= 235)	Percentage (100.00)
Do not agree	121	51.50
Agree	92	39.10
Others; such as, other measures should be enhance to- create further understanding in this matters	22	9.40
Total	235	100.00

From Table 4-18: Attitude towards the discretion not prosecuting the non public interest cases and the support in the same type of crime committed with a number of 235 persons, it was found that the majority of the sample group do not agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution with a number of 121 persons(51.50 %), follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime with a number of 92 persons(39.10 %) and others; such as, other measures should be enhance to create further understanding in this matters with a number of 22 persons(9.40 %) respectively. When categorized upon independent variables in terms of personal background as mention in Appendix A, Table A-9, details are as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, for attitude towards the discretion not prosecuting the non public interest cases and the support in the same type of crime committed. For male, do not agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 36.66 %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime accounted as 28.49 %, and others; such as, other measures should be enhance to create further understanding in this matters 8.51 % respectively. For

female, the results also present similar outcome to male, the sample group do not agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 14.89 %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime accounted as 10.60 % and others; such as, other measures should be enhance to create further understanding in this matters accounted as 0.85 % respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 year, do not agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 25.10 %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime accounted as 20.43 % and others; such as, other measures should be enhance to create further understanding in this matters accounted as 4.25 % respectively. For sample group age between 51-60 years, do not agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 25.53 %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime accounted as 18.30 %, and others; such as, other measures should be enhance to create further understanding in this matters accounted as 5.11 % respectively. For sample group age over 60 years, do not agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 0.85 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 0.43 %, for other attitude, no answer was provided.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), do not agree that the discretion not prosecuting the non public interest cases will facilitates the

same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 27.21 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 18.28 % and others; such as, other measures should be enhance to create further understanding in this matters accounted as 5.11 % respectively. For sample group with master degree, do not agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 27.27 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 18.30 % and others; such as, other measures should be enhance to create further understanding in this matters accounted as 3.40 % respectively and for sample group with doctoral degree, do not agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 0.43 % and for other attitude, no answer was provided.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will presents similar outcomes. For sample group with the time length of less than 1 year, do not agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 18.73 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 10.21 % and others; such as, other measures should be enhance to create further understanding in this matters accounted as 2.98 % respectively. For sample group with the time length between 1-5 years, do not agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 25.53 %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime accounted as 25.10 % and others; such as, other measures should

be enhance to create further understanding in this matters accounted as 5.11 % respectively. For sample group with the time length over 5 years, do not agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 7.66 %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime accounted as 3.40 % and others; such as, other measures should be enhance to create further understanding in this matters accounted as 1.28 % respectively.

In terms of experiences of working as prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes. The sample group with experience between 15-25 years, do not agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 33.20 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 29.79 % and others; such as, other measures should be enhance to create further understanding in this matters accounted as 7.23 % respectively. For sample group with experience between 26-35 years, do not agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 14.04 %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime accounted as 5.96 % and others; such as, other measures should be enhance to create further understanding in this matters accounted as 1.28 % respectively. For sample group with experience over 35 years, do not agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime due to the fact that everyone will acknowledge that prosecutor will not issue a prosecution accounted as 4.25 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 3.40 % and others; such as, other measures should be enhance to create further understanding in this matters accounted as 0.85 % respectively.

Table 4-19: Attitude towards the discretion not prosecuting the non public interest cases and the accusation which could affects the prosecutor.

The use of attitude towards the discretion not prosecuting the non public interest cases and the accusation which could affects the prosecutor who was responsible for the issuance of criminal cases	Number (persons) (n= 235)	Percentage (100.00)
Do not agree	91	38.70
Agree	124	52.80
Others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding.	20	8.50
Total	235	100.00

From Table 4-19: Attitude towards the discretion not prosecuting the non public interest cases and the accusation which could affects the prosecutor with a number of 235 persons, it was found that the majority of the sample group agree that the use of discretion not prosecuting the non public interest cases could affects the prosecutor who was responsible for the issuance of criminal cases with a number of 124 persons(52.80 %), follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime with a number of 91 persons(38.70 %) and others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding with a number of 20 persons(8.50 %) respectively. When categorized upon independent variables in terms of personal background as mention in Appendix A, Table A-10, details are as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, it do not affect the discretion not prosecuting the non public interest cases and the accusation which could affects the prosecutor. For male, agree that the use of discretion not prosecuting the non public interest cases could affects the prosecutor who was responsible for the issuance of criminal cases accounted as 35.32 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime

accounted as 31.06 % and others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 7.23 % respectively. For female, it also presents similar results as male, they have the attitude in agreeing that the use of discretion not prosecuting the non public interest cases could affects the prosecutor who was responsible for the issuance of criminal cases accounted as 17.45 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 7.66 % and others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 1.28 % respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 years, agree that the use of discretion not prosecuting the non public interest cases could affects the prosecutor who was responsible for the issuance of criminal cases accounted as 25.10 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 21.28 % and others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 3.40 % respectively. For sample group age between 51-60 years, agree that the use of discretion not prosecuting the non public interest cases could affects the prosecutor who was responsible for the issuance of criminal cases accounted as 23.83 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 17.02 % and others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 8.09 % respectively. For sample group age over 60 years, agree that the use of discretion not prosecuting the non public interest cases could affects the public prosecutor who was responsible for the issuance of criminal cases accounted as 0.85 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 0.43 % and for other attitude, no answer was provided.

For the highest education background, it was found that even though the level of education may vary, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), agree that the use of discretion not prosecuting non public interest cases could affect the prosecutor who was responsible for the issuance of criminal cases accounted as 26.38 %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitate the same type of crime accounted as 20.41 % and others; such as, whether it will or will not affect, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 5.11 % respectively. For sample group with master degree level, agree that the use of discretion not prosecuting non public interest cases could affect the prosecutor who was responsible for the issuance of criminal cases accounted as 25.96 %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitate the same type of crime accounted as 18.31 % and others; such as, whether it will or will not affect, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 3.40 % respectively. For sample group with doctoral degree, agree that the use of discretion not prosecuting non public interest cases could affect the prosecutor who was responsible for the issuance of criminal cases accounted as 0.43 % and for other attitude, no answer was provided.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will present similar outcomes. For sample group with the time length of less than 1 year, agree that the use of discretion not prosecuting the non public interest cases could affect the prosecutor who was responsible for the issuance of criminal cases accounted as 17.02 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitate the same type of crime accounted as 12.34 % and others; such as, whether it will or will not affect, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 2.55 % respectively. For sample group with the time length between 1-5 years, agree that the use of discretion not prosecuting the non public interest cases could affect the prosecutor who was responsible for the

issuance of criminal cases accounted as 27.66 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 23.83 % and others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 4.25 % respectively. For sample group with the time length over 5 years, agree that the use of discretion not prosecuting the non public interest cases could affects the prosecutor who was responsible for the issuance of criminal cases accounted as 8.10 %, %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime accounted as 2.55 % and others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 1.70 % respectively.

In terms of experiences of working as prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes. The sample group with experience between 15-25 years, agree that the use of discretion not prosecuting the non public interest cases could affects the prosecutor who was responsible for the issuance of criminal cases accounted as 33.40 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 31.04 % and others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 5.11 % respectively. For sample group with experience between 26-35 years, agree that the use of discretion not prosecuting the non public interest cases could affects the prosecutor who was responsible for the issuance of criminal cases accounted as 14.31 %, follow by the sample do agree that the discretion not prosecuting non public interest cases will facilitates the same type of crime accounted as 4.68 % and others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 2.13 % and for sample group with experience over 35 years, agree that the use of discretion not prosecuting non public interest cases could affects the prosecutor who was responsible for the issuance of criminal cases

accounted as 5.43 %, follow by the sample do agree that the discretion not prosecuting the non public interest cases will facilitates the same type of crime accounted as 2.98 % and others; such as, whether it will or will not affects, depends on such cause and discretion in regard to capability in gaining social acceptance and understanding accounted as 1.28 % respectively.

Table 4-20: Attitude towards the discretion not prosecuting the non public interest cases and the facilitation of unlawful benefits.

The use of attitude towards the discretion not prosecuting non public interest cases and the facilitation of unlawful benefits to the involved person.	Number (persons) (n= 235)	Percentage (100.00)
Do not agree	73	31.00
Agree	144	61.30
Others; such as, depends on actual facts in each cases which offered a channel for the involved persons to- seek unlawful benefits	18	7.70
Total	235	100.00

From Table 4-20: Attitude towards the discretion not prosecuting the non public interest cases and the facilitation of unlawful benefits from 235 persons which are the sample group, it was found that the majority of the sample group agree that the use of discretion not prosecuting the non public interest cases will facilitates unlawful benefits to the involved person with a number of 144 persons(61.30 %), follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits with a number of 73 persons(31.00 %) and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits with a number of 18 persons(7.70 %) respectively. When categorized upon independent variables in terms of personal background as mention in Appendix A, Table A-11, details are as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, it do not affect the discretion not prosecuting the non public interest cases and the facilitation of unlawful benefits. For male, agree that the use of discretion not prosecuting the non public interest cases will facilitates unlawful

benefits to the involved person accounted as 40.43 %, follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits accounted as 27.23 % and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 5.96 % respectively. For female, the results present similar outcome, agree that the use of discretion not prosecuting the non public interest cases will facilitates unlawful benefits to the involved person accounted as 20.85 %, follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits accounted as 3.83 % and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 1.70 % respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 years, agree that the use of discretion not prosecuting the non public interest cases could facilitate an unlawful benefits accounted as 30.21 %, follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits accounted as 14.89 %, and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 3.83 % respectively. For sample group age between 51-60 years, agree that the use of discretion not prosecuting the non public interest cases could facilitate an unlawful benefits accounted as 30.21 %, follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits accounted as 14.89 % respectively and for sample group age over 60 years, agree that the use of discretion not prosecuting non public interest cases could facilitate an unlawful benefits accounted as 0.85 %, follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits accounted as 0.43 % and for other attitude, no answer was provided.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), agree that the use of discretion not prosecuting the non public interest cases could facilitate an

unlawful benefits accounted as 33.62 %, follow by disagreement that the discretion not prosecuting non public interest cases will facilitate unlawful benefits accounted as 15.32 % and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 2.98 % respectively. For sample group with master degree level, agree that the use of discretion not prosecuting the non public interest cases could facilitate an unlawful benefits accounted as 27.23 %, follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits accounted as 15.74 % and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 4.68 % respectively and for sample group with doctoral degree, agree that the use of discretion not prosecuting the non public interest cases could facilitate an unlawful benefits accounted as 0.43 % and for other attitude, no answer was provided.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will presents similar outcomes. For sample group with the time length of less than 1 year, agree that the use of discretion not prosecuting the non public interest cases could facilitate an unlawful benefits accounted as 20.84 %, follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits accounted as 9.79 % and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 1.28 % respectively. For sample group with the time length between 1-5 years, agree that the use of discretion not prosecuting the non public interest cases could facilitate an unlawful benefits accounted as 34.46 %, follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits accounted as 16.17 % and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 5.11 % respectively. For sample group with the time length over 5 years, agree that the use of discretion not prosecuting the non public interest cases could facilitate an unlawful benefits accounted as 5.96 %, follow by disagreement that the discretion not prosecuting the non public interest cases will

facilitate unlawful benefits accounted as 5.11 % and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 1.28 % respectively.

In terms of experiences of working as prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes. The sample group with experience between 15-25 years, agree that the use of discretion not prosecuting the non public interest cases could facilitate an unlawful benefits accounted as 44.68 %, follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits accounted as 20.43 % and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 5.11 % respectively. For sample group with experience between 26-35 years, agree that the use of discretion not prosecuting the non public interest cases could facilitate an unlawful benefits accounted as 11.48 %, follow by disagreement that the discretion not prosecuting non public interest cases will facilitate unlawful benefits accounted as 7.65 % and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 2.13 % respectively. For sample group with experience over 35 years, agree that the use of discretion not prosecuting the non public interest cases could facilitate an unlawful benefits accounted as 5.11 %, follow by disagreement that the discretion not prosecuting the non public interest cases will facilitate unlawful benefits accounted as 2.98 % and others; such as, depends on actual facts in each cases which offered a channel for the involved persons to seek unlawful benefits accounted as 0.43 % respectively.

Table 4-21: Attitude towards the discretion not prosecuting the non public interest cases and law enforcement.

The use of discretion not prosecuting non public interest cases could lower the sacredness of the law.	Number (persons) (n= 235)	Percentage (100.00)
Do not agree	159	67.60
Agree	65	27.70
Others; such as, depending on actual facts and cause relating to the discretion in each cases.	11	4.70
Total	235	100.00

From Table 4-21: Attitude towards the discretion not prosecuting the non public interest cases and law enforcement with a sample of 235 persons, it was found that the majority of the sample group do not agree that the use of discretion not prosecuting non public interest cases will enable a decrease in the sacredness of enforcing the law with a number of 159 persons(67.60 %), follow by the sample group do agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law with a number of 65 persons (27.70 %), and others; such as, depending on actual facts and cause relating to the discretion in each cases with a number of 11 persons(4.70 %) respectively. When categorized upon independent variables in terms of personal background as mention in Appendix A, Table A-12, details are as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, it do not affect the discretion not prosecuting the non public interest cases and law enforcement. For male, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 53.36 %, follow by the sample group do agree that the use of discretion not prosecuting non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 16.17 %, and others; such as, depending on actual facts and cause relating to the discretion in each cases accounted as 4.25 % respectively. For female, the results also similar to male, they do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 14.31 %, follow

by the sample group do agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 11.48 % and others; such as, depending on actual facts and cause relating to the discretion in each cases accounted as 0.43 % respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 years, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 35.15 %, follow by the sample group do agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 13.87 %, and others; such as, depending on actual facts and cause relating to the discretion in each cases accounted as 2.13 % respectively. For sample group age between 51-60 years, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 32.61 %, follow by the sample group do agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 12.41 % and others; such as, depending on actual facts and cause relating to the discretion in each cases accounted as 2.55 % respectively. For sample group age over 60 years, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 0.85 %, follow by the sample group do agree that the use of discretion not prosecuting non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 0.43 % and for other attitude, no answer was provided.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 28.94 %, follow by the sample group do agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 20.00 % and others; such as, depending on actual facts and cause relating

to the discretion in each cases accounted as 2.98 % respectively. For sample group with master degree level, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 38.30 %, follow by the sample group do agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 7.65 % and others; such as, depending on actual facts and cause relating to the discretion in each cases accounted as 1.70 % respectively. For sample group with doctoral degree level, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 0.43 % respectively.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will presents similar outcomes. For sample group with the time length of less than 1 year, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 24.42 %, follow by the sample group do agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 6.21 % and others; such as, depending on actual facts and cause relating to the discretion in each cases accounted as 1.28 % respectively. For sample group with the time length between 1-5 years, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 37.20 %, follow by the sample group do agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 16.17 % and others; such as, depending on actual facts and cause relating to the discretion in each cases accounted as 2.55 % respectively and for sample group with the time length over 5 years, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 6.21 %, follow by the sample group do agree that the use of discretion not prosecuting non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 5.11% and others; such

as, depending on actual facts and cause relating to the discretion in each cases accounted as 0.85 % respectively.

In terms of experiences of working as prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results presents similar outcomes. The sample group with experience between 15-25 years, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 50.21 %, follow by the sample group do agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 17.02 % and others; such as, depending on actual facts and cause relating to the discretion in each cases accounted as 2.98 % respectively. For sample group with experience between 26-35 years, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 11.48 %, follow by the sample group do agree that the use of discretion not prosecuting non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 8.51 % and others; such as, depending on actual facts and cause relating to the discretion in each cases accounted as 1.28 % respectively. For sample group with experience over 35 years, do not agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 5.96 %, follow by the sample group do agree that the use of discretion not prosecuting the non public interest cases will enable a decrease in the sacredness of enforcing the law accounted as 2.13 % and others; such as, depending on actual facts and cause relating to the discretion in each cases accounted as 0.43 % respectively.

Table 4-22: Attitude towards the confidence in the benefit which the society may gain regarding to the discretion not prosecuting the non public interest cases.

The confidence in the benefit which the society may gain regarding to the use in discretion in not prosecuting the non public interest cases.	Number (persons) (n= 235)	Percentage (100.00)
Do not have confidence	32	13.60
Do have confidence	194	82.60
Others; such as, depending on actual facts in each cases and the cooperation of every sectors.	9	3.80
Total	235	100.00

From Table 4-22: Attitude towards the confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases from a sample group with a number of 235 persons found that the majority of the sample group do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases with a number of 194 persons(82.60 %), follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases from a sample group with a number of 32 persons(13.60 %) Others; such as, depending on actual facts in each cases and the cooperation of every sectors with a number of 9 persons(3.80 %) respectively. When categorized upon independent variables in terms of personal background as mention in Appendix A, Table A-13, details are as follows;

In terms of gender, it was found that even though sample group may varies in terms of gender, however, it do not affect the confidence in the benefit which the society may gain regarding to the use in discretion in not prosecuting the non public interest cases. For male, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 59.61 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 3.40 % respectively. For female, the results present similar outcome with male, do have confidence in the benefit which the society may gain

regarding to the discretion in not prosecuting the non public interest cases accounted as 22.98 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 2.98 % and others; such as, depending on actual facts in each cases and the cooperation of every sectors accounted as 0.43 % respectively.

In terms of age, the varies age do present similar results with the sample group age between 40-50 years, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 42.13 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 5.96 % and others; such as, depending on actual facts in each cases and the cooperation of every sectors accounted as 1.70 % respectively. For sample group age between 51-60 years, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 39.58 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 7.65 % and others; such as, depending on actual facts in each cases and the cooperation of every sectors accounted as 1.70 % respectively. For sample group age over 60 years, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 0.85 % and others; such as, depending on actual facts in each cases and the cooperation of every sectors accounted as 0.43 % respectively.

For the highest education background, it was found that even though the level of education may varies, however, the results were similar to each other, for the sample group with the level of certificate (higher than bachelor degree), do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 41.28 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 8.09 % and others; such as, depending on actual facts in each cases and the cooperation of every

sectors accounted as 2.55 % respectively. For sample group with master degree level, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 40.94 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 5.43 % and others; such as, depending on actual facts in each cases and the cooperation of every sectors accounted as 1.28 % respectively. For sample group with doctoral degree level, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting non public interest cases accounted as 0.43 % respectively.

For the maximum amount of time working as prosecutor responsible for issuing the criminal order, it was found that even though the sample group may have different time length of operating as prosecutor responsible for the issuing of criminal cases, the results will presents similar outcomes. For sample group with the time length of less than 1 year, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 31.32 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 0.85 % respectively. For sample group with the time length between 1-5 years, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 49.10 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 2.55 % respectively. For sample group with the time length over 5 years, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 5.96 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 2.13 % and others; such as, depending on actual facts in each cases accounted as 0.43 % respectively.

In terms of experiences of working as prosecutor, it was found that even though the sample group may have varies in terms of year of experience, the results

presents similar outcomes. The sample group with experience between 15-25 years, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 57.87 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 9.36 % and others; such as, depending on actual facts in each cases accounted as 2.98 % respectively. For sample group with experience between 26-35 years, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 17.87 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 2.98 % and others; such as, depending on actual facts in each cases accounted as 0.43 % respectively. For sample group with experience over 35 years, do have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 6.80 %, follow by the sample group do not have confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases accounted as 1.28 % and others; such as, depending on actual facts in each cases accounted as 0.43 % respectively.

4.3 Part 3 : Laws and regulations relating to the public prosecutor's discretion in not prosecuting the non public interest cases.

Laws and regulations relating to the public prosecutor's discretion in prosecuting or not prosecuting the non public interest cases such as

-Code of Criminal Procedure.

-The Public Prosecutor's Organization and the Public Prosecutor Act 2553

B.E

-The Regulation on the Order to not Prosecuting the Non Public Interest Criminal Cases or the Case which may Affects the Safety and the Stability or National Security of the Country B.E. 2554.

Table 4-23: Consequences of laws and regulations relating to the public prosecutor’s discretion not prosecuting the non public interest cases.

Information	Agree		Disagree	
	Number	Percentage	Number	Percentage
1.The issue of prosecution in criminal cases, will be lesser in terms of legal procedures and regulations compared to the order of non-prosecution.	193	82.10	42	17.90
2.The issue of prosecution in criminal cases will have less procedures than the issue of non-prosecution	181	77.00	54	23.00
3.The issue of Prosecutor’s discretion not prosecuting the non public interest cases will have the most legal and regulation procedures.	200	85.10	35	14.90
4.The legal and regulation procedures relating to prosecutor’s discretion in not prosecuting the non public interest cases which have various stages will affects the issuance of prosecuting a criminal case.	194	82.60	41	17.40
5. The characteristics of criminal cases which may not be beneficial to the public have been defined clearly within the related laws and regulations.	85	36.20	150	63.80

Table 4-23: Consequences of laws and regulations relating to the public prosecutor's discretion not prosecuting the non public interest cases. (continue)

Information	Agree		Disagree	
	Number	Percentage	Number	Percentage
6. While there was a complaint or a claim concerning to the discretion which have order not to prosecute the criminal case which may not be beneficial to the public, the prosecutor himself could apply the related laws and regulations in a way that they have already acted fairly and in accordance with justice.	101	43.00	134	57.00
7. The patterns of discretion in non-prosecution in criminal cases which may not be beneficial to the public of the prosecutor's abroad could be use and apply with the issuance of the criminal cases which have been stated in the related laws and regulations; such as the discretion of the prosecutors in Britain and Wales, Scotland.	200	85.10	35	14.90

From Table 4-23: Consequences of laws and regulations relating to the public prosecutor's discretion not prosecuting the non public interest cases of the sample group with a number of 235 persons found that the majority of the sample group with a number of 193 persons(82.10 %) agree that the issue of prosecution in

criminal cases, will be lesser in terms of legal procedures and regulations compared to the order of non-prosecution, however, there are disagreement with a number of 42 persons(17.90 %), and the sample group with a number of 181 persons(77.00 %) agree that the issue of prosecution in criminal cases will have less procedures of monitoring than the issue of non-prosecution with a number of 54 persons(23.00 %).

The majority of the sample group with a number of 200 persons(85.10 %) agree that the issue of prosecutor's discretion in not prosecuting the non public interest cases will have the most legal and regulation procedures, with disagreement with a number of 35 persons(14.90 %) and the sample group with a number of 194 persons (82.60 %) believe that the issue of public prosecutor's discretion in not prosecuting the non public interest cases will have the most legal and regulation procedures will affects the discretion in issuing criminal cases, with a disagreement with a number of 41 persons (17.40 %).

A majority of the sample group with a number of 150 persons(63.80 %) who believe that the clarity on the characteristic of the related laws and regulations which may not benefit the public, on the opposite, there are disagreement with a number of 85 persons(36.20 %) who thinks that there is a clarity on the characteristic of the related law and regulations which may not benefit the public.

While there was a complaint or a claim concerning to the discretion which have order not to prosecute the criminal case which may not be beneficial to the public, the prosecutor himself could apply the related laws and regulations in a way that they have already acted fairly and in accordance with justice. However, there are a majority of the sample group who disagree with a number of 134 persons(57.00 %), with a number of 101 persons(43.00 %) who agree that the prosecutor himself could apply the related laws and regulations in a way that they have already acted fairly and in accordance with justice.

In terms of the application of the patterns of discretion not prosecuting the non public interest cases of the public prosecutor's abroad; such as the discretion of the prosecutors in Britain and Wales, Scotland could be use and apply with the issuance of the criminal cases which have been stated in the related laws and regulations, there are a majority of the sample group with a number of 200

persons(85.10 %), however, there are disagreement with a number of 35 persons (14.90 %).

4.4 Part 4: Summary of suggestions and opinions of public prosecutor in a position of Provincial Prosecutor Public Prosecutor and Executive Director who were responsible for the issuance of order relating to criminal case.

To get a clear picture of this research, researcher has determined open-ended questions to allow target groups to answer; five issues are summarized below.

4.4.1 Issue 1: Opinions concerning to the statement that most public prosecutor always prosecute criminal cases

The majority of the sample group with a number of 184 persons accounted as 78.30 % have expressed their opinion in the same directions, the statement which mention that most prosecutor always prosecute criminal cases is because prosecutors were acted by adhering to the facts and evidence appeared in the investigations report and legal principle. It could have been said that if the evidence is not sufficient, the prosecution will not be file. On the other hand, if the evidence was sufficient, the prosecution will automatically take place. In reality, the investigation report which is fully complete and sufficient in evidence are much more than the report which is not sufficient in evidence, therefore, it is indeed contribute to the statement that “most public prosecutor always prosecute criminal cases”.

However, there are a minority of the sample group with a number of 51 persons accounted as 21.70 % do agree with the above statement since the prosecution in the court do have less procedures in terms of screening and checking and if there is a need for the court to consider all the evidence whether the defendants should be prosecute or not? Moreover, in order to prevent any bad reputations to the prosecutor if there is an issuance of non prosecution. Above all, in the case which there is a time frame for the investigation and consideration of investigation report which have a limited time in terms of prosecution, prosecutor will always prosecute. In addition, if

the evidence is partly unclear in terms of indicating who is the offender, the public prosecutor will then prosecute in order to allow the suspects to present the evidence himself.

4.4.2 Issue 2: How can the public prosecutor's discretion not prosecuting the non public interest cases benefit the public.

The majority of the sample group with a number of 231 persons accounted as 98.30 % agree in the same direction that the public prosecutor's discretion not prosecuting the non public interest cases will benefit the public in terms of saving the cost and budget within the criminal justice system, decrease the number of overflows cases in the court and allowing an opportunity to offenders in order to rehabilitate themselves as a good citizen, without be stigmatized, label or damage from prosecution in criminal cases which they can further have an honest career in the future.

However, there are a minority of the sample group with a number of 4 persons accounted as 1.70 % thinks differently. They believe that the public prosecutor's discretion not prosecuting the non public interest cases will not benefit the public at all and in turns could reduce the sacredness of the law.

4.4.3 Issue 3: What are the conditions of the problem if public prosecutor use their discretion not prosecuting the non public interest cases?

A total of 235 persons accounted as 100 % do have their opinions in the same direction that the public prosecutor's discretion not prosecuting the non public interest cases because it is not beneficial to the public. Society or the victim may be skeptical why the public prosecutor did not prosecute the accused even though the evidence is sufficient which later caused a scandal in the line of duty. Moreover, it has no forcible power to make the accused guilty of their previous action, victims may not have been rehabilitate from the accused and other people may imitate the criminal offense in the same manner as the accused since the perpetrators would not be prosecute anyhow. The court may have a view in the prosecution standards, therefore, the Office of the Attorney General should create an understanding about the role of

public prosecutor in order to make the society understand what is going on and may create an acceptance and faith in the long run.

4.4.4 Issue4 : The reason why the statistics of the cases relating to the public prosecutor's discretion not prosecuting the non public interest cases is so little in number.

A total of 235 persons accounted as 100 % expressed their opinion in the same direction that because the criteria and procedures which were already set out concerning to the proposal of the case of not prosecuting the non public interest cases may involve several procedures and time consuming could be the cause why public prosecutor always prosecute not only because it is fast and convenient but it also save an energy of the offender from less travelling.

In addition, the investigation report which have a limited time if decided to prosecute. Moreover, most public prosecutor may not consider the fact not prosecuting since it may not benefit the public. The term of "criminal cases not benefiting public interest" do not have a clear so definition to comply with the practice. Therefore, in order to prevent such problems, the prosecutors have decided to file criminal charges.

4.4.5 Issue 5: Should there be any amendments in the related laws and regulations concerning to the public prosecutor's discretion not prosecuting the non public interest cases which are currently in use and enforce?

The majority of the sample group with a number of 210 persons accounted as 89.30 % expressed their opinion in the same direction that there be an amendments in the related laws and regulations concerning to the procedures in proposing opinions of not prosecuting non public interest cases in order to shorten the steps and decentralize the authority to the director of the office, also, there should be a definition of "the non public interest criminal cases" all through the measures which could enable the accused to realized and aware of their bad habits and the methods of rehabilitating the victims.

However, there were a minority with a number of 25 persons accounted as 10.70 % who expressed their opinion that the related laws and regulations should not

be amended since the authority in using their discretion not prosecuting the non public interest cases will depend on the Office of the Attorney General which is already open to the use of discretion already.

4.5 Part 5 : The results of an in-depth interview from target populations.

4.5.1 The results of an in-depth interview from the public prosecutor in charge of the management within the Office of the Attorney General in a position either from the position of Deputy Director General, Executive Director, and Director General in various offices, The Inspector General, Attorney General, Deputy Attorney General and the Senior Executive of the Attorney General who has responsibility in the field of administration.

Results of in-depth interviews from the public prosecutor responsible for the management of the Office of the Attorney General with a number of 20 persons as follows;

4.5.1.1 Issue 1: Opinions concerning to the statement that most public prosecutor always prosecute criminal cases.

The majority of the public prosecutor responsible for the management of the Office of the Attorney General with a number of 15 persons(75 %) have expressed their opinion in the same directions, in regard to the matter which most prosecutor always prosecute criminal cases is because prosecutors will consider the investigations report carefully, if the evidence was sufficient to prosecutor, the prosecutor will issue a prosecution at the court, however, if the evidence is not sufficient, the prosecutor will not issue prosecution. Apart from this, the number of the criminal case which the prosecutor prosecute are much more than non prosecution case, this is why there is a statement which mention that “most public prosecutor always prosecute criminal cases”. However, there are some cases; such as, the case which the evidence is rather vague and unclear and the investigation has already took place until there is no doubt in such evidence. Most prosecutor issue a prosecution in the court in order to allow the court to consider and weigh the possibility of the

evidence as mention in an interview from Senior Attorney who used to remain in the position of Attorney General on 21 November, 2012, at 12.40 p.m. at Office of the Attorney General which mention in one paragraph that:

“In operating upon the duty in issuing criminal order in the cases, if the evidence is sufficient, the public prosecutor will issue prosecution, however, if the evidence is not sufficient, the prosecutor will not prosecute. However, there could be a minority of the prosecutor who will decide to prosecute the criminal case; such as the case which the evidence is rather vague and unclear, the public prosecutor will decide to prosecute in order to prevent problems which could arise. In this matters, the discretion in weighing the possibility of the evidence will depend on each individual’s experience, not solely on the legal principle.”

However, in this issue, some of the public prosecutor in the administrative level with a number of 5 persons accounted as 25% agree to the point that most of the prosecutor prefer to prosecute the case is the fact since the investigator did their best to collect all evidence and it is considered appropriate for the court to consider the possibility of the evidence. This may be the case which the prosecutor who has less experience or to prevent scandal which may happen to them such as other people may believe they took bribes from ordering non prosecution. There are several procedures in examining both from internal and external organization. Apart from this, there are limitations in the time frame; such as the prosecutor may have receive the investigation report from the investigator in short time together with the time allow for prosecution or detain of suspect as define by the law. If such period was exceeded than the time allow, the public prosecutor may be blame and warn, therefore, to prevent such problem, the public prosecutor decided to prosecute in the court.

4.5.1.2 Issue 2: Before the public prosecutor decided to order prosecution in criminal cases, how did the public prosecutor consider the public benefits?

The majority of the public prosecutor responsible for the management of the Office of the Attorney General with a number of 17 persons accounted as 85 % do agree in the same direction that before the prosecutor prosecute

in criminal cases, there were a consideration on the matters of public interest in terms of peace and order in the society. It is considered that the law intended to protect the public interest which prosecutor will act strictly upon the law. This is consistent with an interview from the prosecutor who is an expert in terms of the principle of law on 30 October, 2012, at 12.00 p.m. at Office of the Attorney General which stated that:

“Before issuing a criminal cases, public prosecutor, whether deciding to prosecute or not prosecute, not only will the public prosecutor need to consider the evidence, but public prosecutor will also need to take into consideration on the public interest particularly peace and citizen’s happiness and the society’s order.”

However, in this issue, there are a few public prosecutor responsible for the management of the Office of the Attorney General with a number of 3 persons accounted as 15 % expressed their opinion that in operating upon criminal cases, most prosecutor prefer to consider only the principle of law and the evidence in the investigation report, but in terms of prosecution or non prosecution, however, the consideration on the public interest was not really take into account.

4.5.1.3 Issue 3: How can the public prosecutor’s discretion not prosecuting the non public interest cases benefit the public.

All of the public prosecutor responsible for the management of the Office of the Attorney General with a number of 20 persons accounted as 100% do agree in the same direction that if the public prosecutors use their discretion not prosecuting the non public interest cases would cause a tremendous benefit; as follows;

1. Create a whole public interest; such as, the society could be much more reconciliation which could enable the people to live peacefully in the society.

2. The accused could access benefits; such as, the accuse could have the opportunity to return themselves as a good citizen, with no history of being prosecute, no guilt in the criminal justice system and the person who may have been relate to the accuse may not be damage as well.

3. It could enable benefits to the criminal justice system which is to save cost and budget for prosecution within the court by decrease the number of unnecessary cases in the court.

Such as an interview from senior attorney who gave an interview on 30 October, 2012, at 16.30 p.m. at Office of the Attorney General.

“In case that the public prosecutors did use their discretion not prosecuting non public interest cases, it is considered beneficial to various aspects such as, the accused, the victim and the society as a whole; together with it could enable benefits to the criminal justice system. The use of such discretion allows an opportunity for the accused to return themselves as a good citizen, reduce the procedures of prosecution, the accused would not have to be detain during the trial and there will be no recorded criminal history, victim could be rehabilitate in a faster pace, and it could cut the cost of state’s budget as well.”

4.5.1.4 Issue 4: What are the conditions of the problem if public prosecutor use their discretion not prosecuting the non public interest cases?

All of the public prosecutor responsible for the management of the Office of the Attorney General with a number of 20 persons accounted as 100% do agree in the same direction that if the prosecutors are fear to use their discretion not prosecuting non public interest cases since the order of non prosecution in such cases must consider all of the evidence until there is no doubts in such evidence. The evidence must be sufficient to indicate whether the accused is guilty or not? In terms of reason and exception relating to not prosecuting non public interest cases will be the final issue to consider. However, this may cause doubts for the society to why the prosecutor did not prosecute the accused even if the evidence is sufficient enough. In this reason, the public prosecutor responsible for the case or anyone who may have the authority to prosecute may fear to use their discretion not prosecute non public interest cases due to the reason above. Above all, there are no distinct characteristics or related facts which could help in identifying which case will be consider non public interest in the investigation report, the prosecutor thus could not indicate appropriate reason to

defend the order of non prosecution which is consistent with an interview from Deputy Attorney General which was made on 25 October, 2012, at 12.30 p.m. at Office of the Attorney General which stated that:

“The condition of the problem which the public prosecutor may encounters in using their discretion not prosecuting the non public interest cases is because they do not have confidence in using their discretion not prosecuting since the decision of ordering non prosecution needs to get an approval from the start up until the final procedures whether it is appropriate to prosecute the accused or not even if the evidence is sufficient to prosecute which is considered as an exception for the order of prosecution. In this regard, the victim or even the society itself may have suspicion upon the reason prosecutor decided not to prosecute in the court; whether there would be a bribe offered for prosecutor in case of non prosecution? In order to avoid such scandal and all possible difficulties, prosecutors have decided to prosecute.”

4.5.1.5 Issue 5: Reason why the number of not prosecuting the non public interest cases are a few?

The majority of the public prosecutor responsible for the management of the Office of the Attorney General with a number of 18 persons accounted as 90% do agree in the same direction that the use of discretion not prosecuting non public interest cases is an exception of prosecution principle, this could explain to why most of the prosecutors have decided not to use this reason because they fear that there may be an accusation against them from the victim or even the society. In addition, there are several procedures concerning to the proposal of comments which allow only for the Attorney General to decide not prosecuting. The process of prosecution requires several steps and take a long time to propose to the chain of command which could retard the case. In terms of a case of prosecution in the court, there could be a pleading the same day as the day which prosecution take place in order to facilitates the accused rather than decided not prosecuting non public interest cases which is consistent with an interview from Inspector General which was made on 8 October, 2012, at 12.30 p.m. at Office of the Attorney General which stated that:

“The use of discretion not prosecuting non public interest cases is an exception of prosecution principle which could explain to why most of the prosecutors have decided not to use this reason because they fear that there may be an accusation against them from the victim or even the society; including with there are several procedures concerning to the proposal of comments in the line of command up to the level of Attorney General. During this period, the prosecutor responsible for the case still has to mind the matters of time frame for lawsuit, delay of prosecution, request of detainment, however, if there was already a prosecution made to the case, the court may chose the date of verdict the same date as for prosecution, prosecution would not have to responsible any further in the matters of prosecution and the accused could leave home early. In some cases, the victim may have been a compensation at the court on that day, this could be the reason why the public prosecutor usually do not use their discretion not prosecuting non public interest cases, the visible statistics are rather a few.”

Moreover, the minority of the prosecutor responsible for the management of the Office of the Attorney General with a number of 2 persons accounted as 20%, have different comments such as the reason which the number of cases relating to not prosecuting non public interest cases are rather a few is because the facts are usually came from the investigation report, not the prosecutor at the first place.

4.5.1.6 Issue 6: Laws and regulations relating to the use of discretion of public prosecutor in not prosecuting the non public interest cases which are presently enforced, should there be any amendments and how? (Laws and regulations such as Code of Criminal Procedure. The Public Prosecutor’s Organization and the Public Prosecutor Act 2553 B.E.,The Regulation on the Order to not Prosecuting the Non Public Interest Criminal Cases or the Case which may Affects the Safety and the Stability or National Security of the Country B.E. 2554.)

The majority of the public prosecutor in the level of management in the Office of the Attorney General with a number of 16 persons

accounted as 80% do agree in the same direction that related laws and regulations should be amended in order to speed up the procedures, the authority in issuing this types of cases should be decentralized and assigned from the Attorney General to Director of the office or to District Attorney, with a clearer definition of " not prosecuting the non public interest cases" which is consistent with an interview from one of the Director of the Office of the Attorney General who gave an interviewed on 6 November, 2012., at 16.30 p.m. at Office of the Attorney General which stated in one paragraph that:

"Owing to the fact that there aren't any part which define the character of non public cases within the related laws and regulations, it is therefore difficult for the public prosecutor themselves to pick up any example to compare and analyze , including that there are several procedures to propose comments through the chain of command and up to the level of the Attorney General, it is also crucial for the executive level to decentralized the authority power to their sub-ordinate to act on their behalf and to allow the procedures to be more flexible."

However, there are 4 public prosecutors in the management level who disagree, accounted as 20%. They believe that there should not be a fixed terms of "not prosecuting the non public interest cases", discretion in this matter should be more open and flexible. In terms of the authority of issuing not prosecuting should also remain in the hand of the Attorney General since he/she is the chief of the organization and must take responsible for the citizen through the house of Senate.

4.5.2 Results of interviews from all Legal experts in the field of justice administration, Criminal Justice System or in the field of Criminology with at least 10 years in experience.

All Legal experts composed with 2 judges, 2 policemen, 2 professors who teach law in the university, 2 lawyers, 1 expert in the field of criminology and an expert in the field of probation and surveillance. The results of the interview are as follows;

4.5.2.1 Issue 1: Comments on the statement which mention that why most of the public prosecutor always prosecute criminal cases

The majority of experts with a number of 8 persons accounted as 80% do agree in this issue that the public prosecutor did not sufficiently exercise their discretion and consideration on the evidence in terms of public interest; including the morality of the accused which is considered to be strictly according to the law. However, there may be some of the public prosecutor who may be fear to prosecute and also the possible accusation against themselves, decided to issue prosecution in the court. Even though, the court may dismiss the prosecution, it still consider better than issue non prosecution since it is a self defense system in accordance with the Thai bureaucracy which is consistent with an interview from one of the experts who gave an interview on 30 October, 2012, at 17.00 p.m.. at Office of the Attorney General which stated in one paragraph that:

“The public prosecutor did not consider the subject of discretion not prosecuting non public interest cases sufficiently which could result from their desirability not to be inspected even if they have operate honestly. Therefore, it is perceived that the prosecutor may consider solely on evidence and legal principle, not exceeding to public interest, it became the burden of the defendant to proceed the case himself. Even in some cases, prosecution should not be made, some of the public prosecutor still decide to prosecute, Even the court would order dismiss of the prosecution, it still consider better than the issue of non prosecution since it is a self defense system in accordance with the Thai bureaucracy”

However, there are a minority of the experts with a number of 2 persons accounted as 20% who expressed their opinion that the reason public prosecutor prosecute is due to the adherence of evidence appeared in the investigation report because the public prosecutor believe that police officers have already operate legally upon the law. Therefore, the prosecution was not made before the court has ruled out a verdict. This is a proven fact that police officers do have an important role in the layout or the content of the case right in the start.

4.5.2.2 Issue 2: In the issuance of criminal cases, how should the public prosecutor consider the matters of public interest?

All the experts with a number of 10 persons accounted as 100 % do agree in the same direction that whether the public prosecutor will issue prosecution or non prosecution in criminal cases, public interest should be taken into consideration. In this regard, the ratio between the damages which could affects the public should also be considered together with the interest of the victim, defendants and the society as well. This is consistent with an interview from one of the expert who gave an interview on 6 November, 2012, at 08.00 a.m. at the Department of Probation, Ministry of Justice which stated that:

“Attorney intended to issue prosecution in criminal cases, need to adhere to the principal of public interest which should not concentrated solely on the legal texts but the prosecutors should have expertise and are not afraid to bring the subject to defend. Public interest should concern the matters of balancing the consequences which may occur in the society, defendants and the victims as a whole and not particularly focusing on protecting each individual’s rights.”

4.5.2.3 Issue 3: Can public prosecutor use their discretion not prosecuting the non public interest cases and how?

All the experts with a number of 10 persons accounted as 100 % do agree in the same direction that the prosecutor as a state attorney could exercise their semi-judicial discretion in the order not prosecuting the non public interest cases since the public prosecutors who operate upon their duty have the authority to appropriately decide whether to prosecute or not prosecute. The organization of prosecutor must establish a credible system in order to earn an acceptance from the society and should allow other external organization to monitor its operation as mentioned in the interview from one of the experts who gave an interview on 20 October, 2012, at 11.00 a.m. at one of the University which stated in one paragraph that:

“The public prosecutor as a state attorney could exercise their semi-judicial discretion in diagnosing which criminal cases should be brought into the court. The characteristics of prosecution in Thailand allows the prosecutor to use their discretion in deciding which case should be prosecute or not prosecute. There are no requirements for the prosecutor to enforce a prosecution. Meanwhile the organization of prosecutor must establish a credible system in order to earn an acceptance from the society.”

4.5.2.4 Issue 4: Can public prosecutor’s discretion not prosecuting the non public interest cases solve the problems of crime and how?

The majority of the experts with a number of 8 persons accounted as 80% do agree in the same direction that public prosecutor’s discretion not prosecuting the non public interest cases could solve the problems of crime. The defendant who was granted such opportunity should aware and willingly reform themselves as a good citizen. This could be considered a contribution to an indirect channel of crime solution by granting a criminal justice system in a mercy means which is consistent with the interview from one of the experts who gave an interview on 13 November, 2012, at 12.20 p.m. at the Office of the Permanent Secretary, Ministry of Justice who stated that:

“The public prosecutor’s discretion not prosecuting non public interest cases is known for the judicial power in mercy manner, though, it could not solve the problems of crime directly, it could provide an indirect solution which could enable the defendant to aware of their bad habits and modify their behavior.”

However, 2 of the experts accounted as 20% disagree that this method could enable a crime solution since it could not prevent the crime at the first place. Moreover, it may decrease the sacredness of law enforcement.

4.5.2.5 Issue 5: Which reason responsible for the small number of the public prosecutor's discretion not prosecuting the non public interest cases?

All of the experts with a number of 100 persons accounted as 100% do agree in the same direction that the related laws and regulation do requires several procedures and unclear in defining which criminal cases are not public interest which results to why public prosecutors usually chose to defend themselves by avoiding an unexpected accusations in the future. Above all, if the prosecutors have decided to prosecute and the court ruled out the verdict to proceed, acceptance will be gain from the whole society. This is consistent with the interview from one of the experts who gave an interview on 9 October, 2012, at 12.20 p.m. at 1st floor, Rajaburi Direkridhhi Building which stated in a paragraph that:

“Comparing prosecution procedures to public prosecutor's discretion not prosecuting the non public interest cases proves that the procedures of not prosecuting appears to composed more procedures than prosecution. Such procedures need to propose to the chain of command up to the level of the Attorney General. In addition, the related regulations are not clear in indicating which case should be considered non public interest if prosecution will take place. The order of non prosecution involves the defendants and the evidence intended to use for prosecution, if prosecutors have decided not to prosecute, they may subject to accusations. In practice, prosecution do gain more acceptance than non prosecution, causing less number of the cases involves with public prosecutor's discretion not prosecuting the non public interest.”

4.5.2.6 Issue 6: What are the principles and patterns of public prosecutor's discretion not prosecuting in the non public interest criminal cases from abroad and how can this be applied in Thailand?

The experts with a number of 10 persons accounted as 100 % do agree in the same direction that the law enforce in foreign countries e.g. Britain, Japan, United States and South Korea are considered much more flexible. The principal discretion will focus on the consequences of such cases whether it will generate public interest or not and how? This means should be adjust to the public

prosecutor's operation in Thailand. The most important thing is to create an international standards of discretion, all along with building trust and acceptance from the society which is consistent with the interview from one of the experts who gave an interview on 29 September, 2012, at 10.00 a.m. at one of the university which stated in one paragraph that:

“In countries which allows the public prosecutors to have more roles in the criminal justice system e.g. the United States, Britain, South Korea and Japan, discretion can widely use with flexibility and greatly accepted from the society. Our country can do the same by adjusting to our own way, however, the prosecutor organization should set a standard which could be accepted similarly to other countries and the society must be open-minded to this role.”

4.6 Part 6 : Analysis of Hypothesis.

4.6.1 Hypothesis 1.8.1 : Personal background may influence the public prosecutor's discretion not prosecuting the non public interest criminal cases.

The analysis could be interpreted in terms of statistics and percentage from Table 4-5 and 4-6 as follows;

From Table 4-5 in the attitudes of prosecutor in prosecuting criminal cases was found that the majority of prosecutor have attitudes to prosecute if the evidence is sufficient. When categorized in terms of personal backgrounds; e.g. gender, age, highest education level, duration of working as prosecutor responsible in consider the issuance of criminal cases and experience in working as a prosecutor according to Appendix A, Table A-1, found that the distinction in personal factor or personal background do not affects the public prosecutor's discretion not prosecuting the non public interest criminal cases, even the sample group do have differences in terms of personal factor, however, they have attitudes to prosecute if the evidence is sufficient, similar to the overall results from Table 4-5.

In addition, from Table 4-6, It could be concluded that personal factors of prosecutor do not affects the public prosecutor's discretion not prosecuting the non public interest criminal cases concerning to attitudes relating to cause and factors which affects the prosecutor's discretion to always prosecute criminal cases is to enforce a strict law enforcement, when categorized in terms of personal backgrounds; e.g. gender, age, highest education level, duration of working as prosecutor responsible in consider the issuance of criminal cases and experience in working as a prosecutor, found that the distinction in personal factor or personal background do not affects the public prosecutor's discretion not prosecuting non public interest criminal cases, even the sample group do have differences in terms of to attitudes relating to cause and factors which affects the prosecutor's discretion to always prosecute criminal cases which is to enforce a strict law enforcement, similar to the overall results from Table 4-6.

Therefore, it could be summarized that personal factor of prosecutor do not affects the public prosecutor's discretion not prosecuting the non public interest criminal cases owing to the fact that the majority of the sample group do have attitudes to prosecute criminal cases if the evidence is sufficient with an intention to enforce a strict law enforcement rather than the personal factor of prosecutor who operate on such duty.

4.6.2 Hypothesis 1.8.2 : If the public prosecutor has a positive attitude toward the use of discretion not prosecuting the non public interest criminal cases. As a result, discretion to order such a prosecution.

The analysis could be interpreted in terms of statistics and percentage as follows;

From Table 4-7, attitudes on the consideration of the consequences which may affects the offenders if there were an issuance of criminal cases; such as offenders could have been suffered or stigmatized and label as a criminal. From table 4-8, the attitudes in considering public interest represent the overall total of attitudes in the issuance of criminal cases every time. Were there any consideration in the matters of public interest or not? It was found that the majority of the sample group do have attitudes in considering public interest. In Table 4-9, represent attitudes on the

consideration of the consequences which may affect the offenders if there were an issuance of criminal cases, it was found that the majority of the sample group agree that the issuance of criminal cases could contribute a negative impact to the defendants. From the overall total of Table 4-16: Attitude towards the discretion not prosecuting non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen, it was found that the majority of the sample group have discretion towards not prosecuting non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen and from the overall results from Table 4-15,4-17,4-18,4-21 and 4-22, it was found that the majority of the sample group have attitudes to exercise their discretion not prosecuting non public interest cases if it would enable the offenders to reform themselves as good citizens or enhance crime solving, prevention of repeated crime from the same perpetrator and they have attitudes in disagreeing that the discretion not prosecuting non public interest criminal cases will enhance similar patterns of crime, by believing that this discretion will not affect the strictness of law enforcement. In this regard, the sample group do have trust that such discretion could enable public interest, this is an indication that the majority of sample group have positive attitudes towards the discretion not prosecuting the non public interest criminal cases.

Therefore, from an analysis from attitudes above could indicate that the majority of the public prosecutor do have positive attitudes towards the discretion not prosecuting non public interest criminal cases. However, in order to correctly analyze this hypothesis, whether the prosecutor may have positive attitudes towards the discretion not prosecuting non public interest criminal cases or not? Researcher did study actual facts and study case which are cases relating to the Attorney General's discretion not prosecuting non public interest criminal cases such as cases of misdemeanor or cases of small amount worth of money, cases which the defendant is poor and has never committed any crime previously or the case which the defendant is a delinquent or the case which the defendant could reform themselves as a good citizen which the nature of these cases did not affect public interest and re write into questionnaires, the results in Table 4-10 to 4-14 found that the majority of the sample

group chose to order prosecution by describing facts within the issuance statement rather than decided not prosecuting the non public interest criminal cases as follows;

4.6.2.1 Results of Table 4-10: Attitude of the public prosecutor in filing criminal charges in minor offenses which the offenders could return themselves as a good citizen from a sample group with a number of 235 persons, it was found that the issuance of criminal order in a misdemeanor case, there was a fact that the offender could reform themselves as a good citizen, the majority of the sample group will order prosecution by describing facts within the issuance statement with a number of 116 persons(49.40 %) and in part of the issue not prosecuting the non public interest criminal cases with a number of 27 persons(11.50 %) only.

4.6.2.2 Results of Table 4-11: Attitudes relating to the consideration in the issuance of criminal offense in case which the offender have never committed any crime previously. The offender is a garbage collector, he sold old VCD's from a garbage bin in order to gain more income for his poor family of the sample group with a number of 235 persons, it was found that the majority of the sample group have the attitude to order prosecution by describing facts within the issuance statement with a number of 113 persons(48.10 %) and in part of the issue not prosecuting the non public interest criminal cases with a number of 27 persons (11.50 %) only.

4.6.2.3 Results of Table 4-12: Attitudes on the consideration of the issuance of criminal order on the case which the offender was dating with his girlfriend, ran away to live together and his girlfriend is pregnant from a sample group with a number of 235 persons, it was found that the issuance of criminal case which the case is appear to be that the defendant was dating with his girlfriend who is over 15 years but not over 18 years and under the supervision of her parents, however, the offender and his girlfriend ran away to live together and his girlfriend is pregnant. The majority of the sample group have the attitude to order prosecution by describing facts within the issuance statement with a number of with a number of 125 persons (53.20 %) and in part of the issue not prosecuting the non public interest criminal cases with a number of 33 persons(14.10 %) only.

4.6.2.4 Results of Table 4-13: Attitude on the consideration for the issuance of criminal cases which the offender is a youth and has never commit any

crime before, stole other's people belonging worth of little money of the sample group with a number of 235 persons, it was found that the majority of the sample group during their consideration in the issuance of criminal order, there was a facts that the offender has never commit any crime before, the offender is not over 18 years old, act with an adolescent manner and stole other people's belonging worth of little money. The prosecutor has an attitude to prosecute by describing facts within the issuance statement with a number of 125 persons(53.20 %) and in part of the issue not prosecuting the non public interest criminal cases with a number of 31 persons(13.20 %) only.

4.6.2.5 From Table 4-14: Attitude in the consideration of the issuance of criminal order which the offender is poor and invaded the land which belongs to the National Conserve Forest of the sample group with a number of 235 persons, it was found that the majority of the sample group have an attitude during their consideration in the issuance of criminal order which the offender is poor, own no land of his own, invaded the land with a small space which belongs to the National Conservative Forest in order to make a living and the housing, the prosecutor will order prosecution by describing facts within the issuance statement with a number of 121 persons(51.50 %) and in part of the issue not prosecuting non public interest criminal cases with a number of 53 persons(22.50 %) only.

Therefore, it could be summarized from the attitudes above that even the public prosecutor may have positive attitudes toward the discretion not prosecuting the non public interest criminal cases, it did not affects the public prosecutor's discretion not prosecuting non public interest criminal cases.

4.6.3 Hypothesis 1.8.3 : Laws and regulations relating to the discretion not prosecuting the non public interest criminal cases will affect the discretion decision of the public prosecutor as not to prosecute.

The analysis could be interpreted in terms of statistics and percentage from Table 4-23 as follows;

From Table 4-23: represents the consequences of laws and regulations relating to the public prosecutor's discretion in not prosecuting the non public interest

cases, it was found that the majority of the sample group agree that the issue of prosecution in criminal cases, will be lesser in terms of legal procedures and regulations compared to the order of non-prosecution, however,

The various procedures of laws and regulations relating to the prosecutor's discretion in not prosecuting the non public interest cases will affects the issuance of criminal cases and the clarity on the characteristic of the related laws and regulations not prosecuting the non public interest cases are not clearly define within the related laws and regulations. Meanwhile, if there was a complaint or an accusations concerning to the prosecutor's discretion in not prosecuting the non public interest cases, the prosecutor himself could not use such law in a way to defend themselves that they have already acted fairly and in accordance with justice. In addition, the application of the patterns of discretion not prosecuting non public interest cases of the public prosecutor's abroad; such as the discretion of the public prosecutors in Britain and Wales, Scotland should be use and apply with the issuance of the criminal cases which should have been stated in the related laws and regulation.

Therefore, the procedures of laws and regulations relating to the public prosecutor's discretion in not prosecuting the non public interest cases which requires several procedures and are rather complicated and unclear could affects the public prosecutor in deciding not prosecuting the non public interest cases for further consideration.

CHAPTER V

DISCUSSIONS

The research study on “The Principles of Public Prosecutor’s Discretion Not Prosecuting the Non Public Interest Criminal Cases” was done by using the mix methods research which focus on quantitative research and supplemented by qualitative research, the results can be discuss respectively to the independent variables within the conceptual framework as follows;

5.1 Personal Background. (Personal Factor)

In this research, researcher has defined the terminology of Personal background of public prosecutor consist of gender, age, highest education background, years in service in a position of public prosecutor responsible for issuance an order of the criminal case, experience in a position of public prosecutor, it was found that the majority are mostly male than female age between 40-50 years, follow by age between 51-60 years, with highest education background as certificate (higher than bachelor degree) the Thai Bar (required qualification for applicants applying for the position of Assistant Prosecutor). Follow by master degree, with the time length of current position as provincial prosecutor or special prosecutor between 1-5 years, follow by the time length less than 1 year and an experience of working as prosecutor between 15-25 years, follow by experience between 26-35 years. The sample group made comments that prosecutor’s main authority on the matters of criminal cases is the investigation and consideration on the criminal report, follow by the prosecuting and non prosecuting the case respectively and the majority of the sample group prosecute according to the law rather than using prosecution and the majority of the sample group do not have experience in using discretion not prosecuting the non public interest cases, follow by the sample group do have experience with less than 5 cases. In this regard, there were hypothesis that personal factor of public prosecutor could

affects the use of discretion not prosecuting the non public interest cases, by analyzing the data in Chapter 4, discussions on the independent variables as defined in the conceptual framework can be presented as follows;

5.1.1 Gender

From the study, it was found that the difference in gender do not affects the discretion not prosecuting the non public interest cases, though, the sample group may have different gender, their attitude in prosecuting criminal cases when there were sufficient evidence are quite similar.

5.1.2 Age

From the study, it was found that the difference in age do not affects the discretion not prosecuting the non public interest cases, though, the sample group may have different age, their attitude in prosecuting criminal cases when there were sufficient evidence are quite similar.

5.1.3 Highest Education Background

From the study, it was found that the difference in highest education level do not affects the discretion not prosecuting the non public interest cases, though, the sample group may have different education background, their attitude in prosecuting criminal cases when there were sufficient evidence are quite similar.

5.1.4 The maximum amount of time working in the position of public prosecutor responsible in issuing criminal order

From the study, it was found that the difference in the time-length for operating in the position of public prosecutor responsible in issuing criminal order (Provincial Chief Public Prosecutor and Executive Director) responsible for the issuance of criminal order do not affects the discretion not prosecuting the non public interest cases, though, the sample group may have different the time-length for operating in the position of public prosecutor responsible in issuing criminal order, their attitude in prosecuting criminal cases when there were sufficient evidence are quite similar.

5.1.5 Experiences in working in the position of prosecutor

From the study, it was found that the difference in experiences in working in the position of public prosecutor do not affects the discretion not

prosecuting the non public interest cases, though, the sample group may have different year of experience, their attitude in prosecuting criminal cases when there were sufficient evidence are quite similar.

Therefore, it could be seen that the difference in personal background (personal factor) of public prosecutor such as gender, age, highest education background, year in service in a position of public prosecutor responsible for issuance an order of the criminal case, experience in a position of public prosecutor did not affects the discretion not prosecuting the non public interest cases. This indicates that public prosecutor do adhere to the facts as appeared in the evidence which is the investigation statement and principle of law. It could have been said that if the evidence is not sufficient, the prosecution will not be issue, on the other hand, if the evidence is sufficient, prosecution will be made automatically. The public prosecutor did not consider or use their discretion not prosecuting the non public interest cases which is the final consideration after the evidence was found sufficient. In this regard, this is inconsistent with the new labeling theory which intended to divert offender away from criminal justice system. The objective of this theory is to divert the offender away from criminal justice system as soon as possible in order to prevent other consequences which may arise and cause the offenders inability to fit in the normal society.

An interview from one of the Deputy Attorney General. Interview on October 25, 2555 at 12.30 p.m. at Office of the Attorney General Mentioned, paragraph was stated that:

“The authority of prosecutor whether they will use their discretion to prosecute or not prosecute in the criminal case will be based on the principle of law and evidence as presented in the investigation statement. If the evidence was not sufficient enough, the decision will be not prosecuting, however, if the evidence is sufficient, prosecution will then take place.”

5.2. Attitude of public prosecutor in issuing prosecution in criminal cases.

In this research the definition or terminology used in the study of the word “attitude” means the action or feeling towards the public prosecutor's discretion in ordering not prosecuting the non public interest cases. The word “attitude” in English is consistent with “Attitude”, which is a term derived from Latin “Aptud” which has similar meaning as attitude. Modern scholars use the term “Attitude” instead of the word “point of view” with the need to update a modern terminology, the word “attitude” as defined by Royal Academy dictionary refers to an attitude or feeling of a person for something.

Thurston (as cited in Wiruangrong Ratanawilaisakul,2526:13-14) said that attitude is all about human feelings and emotions, a fear of something, an expression of the words, opinions and comments are a symbol of attitude, therefore, if you wish to measure the scale of attitude it can be done by measuring a person's opinions on things, therefore, to test attitude can be done by testing their opinion towards things. Apart from this, Muns said that attitude is a feeling and opinion on things, individual, situation, institution and other proposal in a way as to accept or reject is, leading to person's readiness to express their response by single behavior all the time.

Adisorn Chaikupt(2542) did a study on “Public Prosecutor's discretion not prosecuting criminal cases”, he found that the decision to prosecute a person is an important step because a fair and efficient prosecution is a key point of maintaining peace and order in the society, not only that, the prosecution could affect the rights and freedom of citizen. Even a small litigation will relate to the accused, witnesses, victims and the families of such persons, including government officials in the criminal justice system and the state's budget. In addition, the decision to consider prosecution must also consist of evidence and legal proceedings and in particular the purpose of punishment. In the criminal charges, prosecutor who is responsible for providing justice according to the law is also assigned to engage the public interest in terms of prosecuting and punishing the actual offender. Such punishment is intended to raised offender's consciousness to avoid committing any illegal activities and causing trouble for other people. This objective is therefore consistent with the current punishment which intended to modify the wrongdoers, thus, the interest which the public may

receive will arrive from the prosecution of the prosecutor which is distinct from other criminal cases which the citizen is plaintiff itself.

The study of this research about the attitude of the public prosecutor which is the sample group relating to the study concerning to criminal charges found that prosecutors have a common attitude in prosecuting criminal cases when there is enough evidence. The usual cause and factor which made the public prosecutor to always prosecute is because they want to enforce efficient law. In addition, the prosecution of criminal cases will also consider on the consequences which may occur to the offender and public interest and the attitude towards the consideration that prosecuting may affects the offenders in a negative manner. In this regard, the sample have the attitude that the discretion not prosecuting the non public interest criminal cases will result in helping the offender to have the opportunity to adjust themselves as a good citizen which is consistent with the new labeling theory, with the principle that the negative impact of prosecution in criminal justice system may eventually enable the offender to have a criminal behavior and enhance the social reaction against those offender who have already been punished. Braitewaith(as cited in Ponchai:280) has proposed the methods of prosecuting the offender in an attempt to modify those wrongdoers to returned as a person who respect the laws and regulations of the society by rendered them a forgiveness or by making them not feeling being stigmatize or label as a criminal (reintegrative shaming). Any society which use this process to treat with the wrongdoers, that society will have lower crime.

In this part of attitude, the hypothesis is that if the public prosecutor has a positive attitude towards the discretion not prosecuting non public interest criminal cases will use their discretion not prosecuting the non public interest cases. As researcher has analyzed the outcome in Chapter IV which found that although the public prosecutor has the attitude in considering the consequences which may occur to the offender together with the public interest and the attitude in considering that the prosecution in criminal cases may cause negative impact to the offender. The sample group also have the attitude that using discretion not prosecute the non public interest cases will enable the offender to adjust themselves as a good citizen. However, when question the public prosecutor by provide further facts that in a minor offenses such as

a case which is worth in a small amount of money, if the offender is poor and has never commit any crime or if the offender is young, such case may not affect the public interest that much and the offender may have an opportunity to rehabilitate themselves as a good citizen, if you are the prosecutor responsible for the issuance of prosecution, what will you do? It seems that the majority of the sample group mostly chose to use their discretion in prosecuting the case by narrating the facts along the case rather than not prosecuting the non public interest criminal cases.

This is consistent with the opinion of the public prosecutor (Provincial Chief Public Prosecutor or Executive Director) in the survey. The results of the in-depth interviews showed that the target population provide further comment and most of the interviewees have made comments concerning to the benefit which the prosecutor has use their discretion not prosecuting the non public interest cases, however, the conditions of the problem arise from the fact that the prosecution did use their discretion not prosecuting the non public interest cases, the society or the victim of the case may be skeptical about the acts of the prosecutor in terms of wondering why the prosecutor did not file a lawsuit while there is sufficient evidence and may cause a scandal due to the public prosecutor's operation. More to this, it also lack the potential to enforce the offender to aware of their own gilts, victims may have not been cured or repay by the offender, other people may also copy the patterns of crime since punishment will not be made, there could be a complaint sent to the court concerning to the standards of prosecution. In order to avoid such problem, the prosecutor chose the alternative of prosecuting the offender by narrating the facts in the investigation report rather than deciding not prosecuting the non public interest cases, as of interview from as senior public prosecutor who gave an interview on October 30, 2555,16.30 p.m. at Office of the Attorney General which stated that:

“The discretion of the public prosecutor not prosecuting the non public interest cases is very useful in terms of offender himself, the victims and the society as a whole, also it is beneficial to the criminal justice system since the use of such discretion will open up an opportunity for the offender to adjust themselves as good citizen, reduce the procedures of prosecution, the offender may not have to be detain during the trial, no

criminal record will be made, the offender could have been rehabilitate much faster and also it will be able to save the cost of the state”.

So it could be discussed that although public prosecutors do have positive attitude towards the use of discretion not prosecuting the non public interest cases, it may not affect the discretion not prosecuting the non public interest cases. The public prosecutor may chose to protect the rights or allowing an opportunity of the offender by narrating the actual facts in the criminal report in order to let the court decide a less penalty to the offender rather than using their discretion not prosecuting the non public interest cases due the fear of the scandal that might arise, as mentioned above.

5.3 Laws and regulations relating to the public prosecutor’s discretion in prosecuting or not prosecuting the non public interest cases.

Laws and regulations relating to the public prosecutor’s discretion in prosecuting or not prosecuting the non public interest cases such as

- Code of Criminal Procedure
- The Public Prosecutor’s Organization and the Public Prosecutor Act 2553

B.E

-The Regulation on the Order to not Prosecuting the Non Public Interest Criminal Cases or the Case which may Affects the Safety and the Stability or National Security of the Country B.E. 2554.

There are hypothesis on laws and regulations relating to the public prosecutor’s discretion in prosecuting or not prosecuting the non public interest cases that law procedures and related regulations on not prosecuting the non public interest cases could result in the use of prosecutor’s discretion in not prosecuting criminal cases. From the study and analyzing the information in Chapter IV, it was found that the majority of the sample group thinks that the issue of prosecution in criminal cases, will be lesser in terms of legal procedures and regulations compared to the order of non-prosecution.

The issue of public prosecutor's discretion in not prosecuting the non public interest cases will have the most legal and regulation procedures. The legal and regulations procedures concerning to the discretion not prosecuting non public interest cases requires various steps and will impact the issuance of criminal order and since the cause and character of cases which will not facilitate public interest have not been clearly stated in the laws and related regulations, when there are complaints, any rumor or scandal arise from the discretion not prosecuting the non public interest cases, the public prosecutor himself could not apply the related laws and regulations to defend themselves in a way that they have already acted fairly and in accordance with justice. Apart from this, the patterns of discretion not prosecuting the non public interest cases from abroad; such as Britain and Wales, Scotland could be use and apply with the issuance of the criminal cases which have been stated in the related laws and regulations.

This is consistent with the research of Adisorn Chaiyakupt (2542) who did a study of "The public prosecutor's discretion not prosecuting the non public interest cases" which found that content of laws and regulations in Thailand has been defined broadly by allowing an opportunity for the public prosecutor to use their discretion in prosecute criminal cases in a broader aspect. However, in practice, public prosecutor has used their discretion in ordering criminal cases very little due to the lack of clear criteria and guidelines in consideration.

Apart from this, there are an in-depth interviews from the target group which stated that the set out criteria concerning to the case not prosecuting the non public interest which requires various steps and time-consuming. There should be an amendments on related laws and regulations on the proposal of comments in not prosecuting the non public interest cases in order to reduce the procedures or the authority to consider the issuance of this particular cases in decentralized manner by assigning the authority of the Attorney-General to the level of Director even in the Office or District Attorney. This indicates that the procedures of laws and regulations relating to not prosecuting the non public interest cases do affects the public prosecutor's discretion as mention in the interview from Deputy Director from one of the Office which was recorded on 16 November, 2555, 08.10 a.m. at Office of the Attorney General that:

“The issue of non-prosecution on criminal cases which may not be beneficial to the public takes several stages of proposals and all the procedures take quite some times, causing the responsible prosecutor to rather just prosecute the case instead since it is fast and convenient for prosecutors, victims and defendants to save time from traveling to the court. Apart from this, the limited time of investigation according to the laws, public prosecutors most likely did not take into account the issue of non-prosecution. Therefore, there should be an improvement to enact the related laws and regulations to be short and brief in its procedures by decentralized the authority of the Attorney-General to the Director in the office.”

It could be seen that the procedures of laws and regulations relating to not prosecuting non public interest cases do affect the public prosecutor's discretion not prosecuting the non public interest cases.

Above all, it could also be claimed that the public prosecutor's discretion not prosecuting the non public interest cases is accorded to the ideology of the evolution of punishment at present time in terms of rehabilitation and the principle of Utilitarian (Utilitarian Theory). The goal of punishment is to deter crime (deterrence) from re-occurring. Also, it will result in a correction (reformative effect) and rehabilitation of the offenders (rehabilitative effect) enable the offender to change their attitudes and values by respecting and not violating the law. The serious punishment may not always work well because it could reinforce stigma for offenders to return to the crime cycle once again. Moreover, the prosecutor's discretion in such cases was considered to be consistent with the process of reintegrative shaming which is an opportunity for the offender to behave in accordance with social norms in the future. The discretion of the prosecutor not prosecuting non public interest cases is a pattern of diverting the offender out of the criminal justice system by the public prosecutor in order to prevent the offender from being condemned by the society. Therefore, the main purpose of diversion is to take the offender out of the criminal justice system as early as possible in order to prevent the potential impact to offenders which in turn can return to normal life in a normal society.

Therefore it could be summarized that even though, the public prosecutors who are sample group of this study may be distinct in terms of personal background; such as, gender, sex, age, highest education level, time-length of operating as prosecutor who responsible for the issuance of criminal case and experiences working in the position of prosecutor, it may not affect the discretion not prosecuting the non public interest cases due to the fact that public prosecutors still have positive attitude towards the issuance of criminal cases when there is sufficient evidence to prosecute and the cause and factor which contributes the public prosecutor to always prosecute criminal cases is owe to the desirability to enforce an efficient and effective law. Apart from this, although, the public prosecutor do have positive attitude towards the discretion not prosecuting the non public interest cases, it still do not affects the discretion not prosecuting the non public interest cases. The public prosecutor chose to protect the rights and offer an opportunity for the offender by describing the facts in the criminal indictment which may enable the court to use their discretion to alleviate the penalty rather than use their discretion not prosecuting the non public interest cases because they fear that a scandal may happen. In this regard, the procedures of laws and related regulations on not prosecuting the non public interest cases will affect the use of public prosecutor's discretion in not prosecuting the non public interest criminal cases.

CHAPTER VI

CONCLUSIONS AND RECOMMENDATIONS

Research study on: “The Principles of Public Prosecutor’s Discretion Not Prosecuting the Non Public Interest Criminal” have objectives as follows;

1. To study personal background and attitudes of the public prosecutor which may affecting the use of discretion not prosecuting the non public interest criminal cases.

2. To study the processes and procedures relating to the criminal justice and any regulations which intends not to prosecute any criminal case which may not be useful to the public in a way that affect the public prosecutor’s discretion not prosecuting the non public interest criminal.

3. To study the principles of public prosecutor’s discretion not prosecuting the non public interest criminal cases and leads to further development in the administration of justice system in part of public prosecutor.

This research study was done by using the mixed methods research which focus on quantitative research and supplemented by qualitative research The study population in terms of quantitative study will be based on a prosecutor who is responsible for the issuance of order relating to criminal case; such as Prosecutor in a position of Provincial Chief Public Prosecutor (from region-wide) and Executive Director (in Bangkok area).

The study population in terms of qualitative research are the public prosecutor in charge of the management within the Office of the Attorney General in a position either from the position of Deputy Director General, Special Section Attorney General, and Director General in various offices, The Inspector General, Attorney General, Deputy Attorney General and the Senior Executive of the Attorney General who has responsibility in the field of administrator and legal experts in the field of justice administration, Criminal Justice System or in the field of Criminology, with at least 10 years in experience.

Data collection in this research was done by sending 263 questionnaires to the target group such as prosecutor in a position of Provincial Chief Public Prosecutor (from region-wide) and Executive Director (in Bangkok area), with 235 questionnaires were returned to the researcher. In-depth interview were chosen for the public prosecutor in charge of the management within the Office of the Attorney General with an amount of 20 persons and legal experts in the field of justice administration, Criminal Justice System or in the field of Criminology with at least 10 years in experience with an amount of 10 persons. Researcher conducted and collected all data personally by using purposive sampling, both questionnaires and in-depth interview forms have been approved and accepted by the Committee of Research Ethics in human from the faculty of Social Sciences and Humanity, Mahidol University.

After the information were successfully collected. Researcher also analyzed those information by using basic descriptive statistics such as percentage in terms of current data by demographic characteristics; such as gender, age, highest level of education, time-length of current position as Provincial Chief Public Prosecutor or Executive Director , experience in working as a prosecutor, authority of the public prosecutor on the criminal case, duty as a prosecutor on the basis of any criminal charges and experience in the use of public prosecutor's discretion not to prosecute the non public interest criminal cases, information relating to the attitudes of public prosecutor's discretion to prosecute or not prosecute the non public interest criminal cases.

Researcher did a literature review on the origin of the public prosecutor in Thailand and abroad, the Principle of Criminal Prosecution, Principles of the public prosecutor's discretion not prosecuting the non public interest criminal cases, Related Theories; such as Labeling Theory, New Labeling Theory, Theories related to Personal's Attitude, Ideology and Evolution of Punishment Theory, Ideology and Principle of Public Prosecutor's Discretion not prosecuting the Non Public Interest Criminal Cases; such as Prosecutor in Britain & Wales, Prosecutor in Scotland, Public Prosecutor in the United States of America, Problem of Interpretation of the word "Public Interest", Laws and Regulations related to the Public Prosecutor's Discretion not prosecuting the Non Public Interest Criminal Cases, Example of Attorney

General's order on the cases which used discretion not prosecuting the non public interest criminal cases.

6.1 Summary of Findings

6.1.1 Definition of the public prosecutor's discretion to prosecute or not prosecute the non public interest criminal cases.

In this study, the researcher has defined the meaning of the public prosecutor's discretion to prosecute or not prosecute the non public interest criminal cases means that the prosecutor has considers that the case has enough evidence to prosecute, however, the case is in the process which can be diagnosed in prosecutor's sole discretion whether or not to consider to prosecute the criminal charges to court since the prosecution may not be in accordance with public, victims or offender's interest or even country's peace and order.

6.1.2 Personal background of sample group

In this research, researcher has determined that the personal background (personal factor) means personal background of prosecutor; such as, gender, age, highest education background, year in service in a position of prosecutor responsible for issuance an order of the criminal case and experience in a position of public prosecutor, from the study, it can be concluded that demographic characteristics of sample group with a number of 235 persons are mostly male with a number of 173 persons(73.60 %) and female with a number of 62 persons(26.40 %); age between 40-50 years with a number of 117 persons(49.70 %), follow by age between 51-60 years with a number of 115 persons(81.20 %), with the highest education background of certificate level (higher than bachelor degree) with a number of 122 persons(51.90 %), follow by master degree with a number of 112 persons(47.70 %). Apart from this, the majority of sample group have currently work in the position of Provincial Chief Public Prosecutor or Executive Director between 1-5 years accounted as 55.70%, follow by 1 year with a number of 75 persons(31.90 %) and have experience in

working as a public prosecutor between 15-25 years with a number of 165 persons(70.20 %), follow by 26-35 years of experience with a number of 50 persons(21.00 %).

Even though, there were a distinction in the sample group which are prosecutors in terms of variables relating to personal background; such as, gender, age, highest education background, year in service in a position of prosecutor responsible for issuance an order of the criminal case and experience in a position of prosecutor, the results prove that these factors do not affects the public prosecutor's discretion in not prosecuting the non public interest criminal cases. Therefore, it can be summarized that gender, age, highest education background, year in service in a position of prosecutor responsible for issuance an order of the criminal case and experience in a position of prosecutor will not affects the public prosecutor's discretion in not prosecuting the non public interest criminal cases. This indicates that public prosecutor do operate upon actual facts and evidence which appeared in the investigation report and principle of law. It could have been said that if there isn't enough evidence, public prosecutor will not issue criminal cases, however, if the evidence is sufficient, prosecution will likely take place, prosecutor did not consider or take into account on the issues of using their discretion not prosecuting the non public interest criminal cases, this is inconsistent with the diversion of offenders from criminal justice system as stated in the new labeling theory.

6.1.3 The Attitudes of public prosecutor in issuing criminal cases

The public prosecutor in sample group have attitudes on the consideration of the consequences which may affects the offenders if there were an issuance of criminal cases; such as offenders could have been suffered or stigmatized and label as a criminal. It was found that the majority of sample group have attitudes in considering the affects which may happen to offenders and also tends to consider public interest, they have attitudes in considering that the issuance of criminal cases may cause negative impact to offenders and they tends to exercise their discretion not prosecuting the non public interest cases if it would enable the offenders to return themselves as good citizens.

In addition, it also found that the majority of sample groups have attitudes to use their discretion not prosecuting the non public interest criminal cases if it could contribute of crime solving, prevention of repeated crime from the same perpetrator and tends to have disagreement that the discretion not prosecuting the non public interest criminal cases will enhance similar patterns of crime, by believing that this discretion will not affects the sacredness of law enforcement. In this regard, the sample group do have faith that such discretion could enable public interest, this is an indication that the majority of sample group have positive attitudes towards the discretion not prosecuting the non public interest criminal cases.

6.1.4 Laws and regulations relating to the public prosecutor's discretion in prosecuting or not prosecuting the non public interest cases

In this research, researcher found that the majority of sample group agree that the issue of prosecution in criminal cases, will be lesser in terms of legal procedures and regulations compared to the order of non-prosecution and the issue of prosecution in criminal cases will have less procedures than the issue of non-prosecution. The issue of public prosecutor's discretion in not prosecuting the non public interest cases will have the most legal and regulation procedures. The laws and regulation procedures relating to public prosecutor's discretion in not prosecuting the non public interest cases which have various stages will affects the issuance of prosecuting a criminal case. The characteristics of criminal cases which may not be beneficial to the public have not been defined clearly within the related laws and regulations, however, if there was a complaint or a claim concerning to the discretion which have order not to prosecute the criminal case which may not be beneficial to the public, the public prosecutor himself could apply the related laws and regulations in a way that they have already acted fairly and in accordance with justice. The patterns of discretion in non-prosecution in criminal cases which may not be beneficial to the public of the public prosecutor's abroad could be use and apply with the issuance of the criminal cases which have been stated in the related laws and regulations; such as the discretion of the prosecutors in Britain and Wales, Scotland.

6.1.5 Analysis results of hypothesis

6.1.5.1 Hypothesis number 1.8.1: Personal background may influence the public prosecutor's discretion not prosecuting the non public interest criminal cases.

It was found that the distinction in personal factor or personal background do not affects the public prosecutor's discretion not prosecuting the non public interest criminal cases, even the sample group do have differences in terms of personal factor, however, they have attitudes to prosecute if the evidence is sufficient and in order to enforce sacred law rather than personal factor or personal background. It could be concluded that personal factors of public prosecutor do not affects the public prosecutor's discretion not prosecuting the non public interest criminal cases

6.1.5.2 Hypothesis number 1.8.2: If the public prosecutor has a positive attitude toward the use of discretion not prosecuting the non public interest criminal cases. As a result, discretion to order such a prosecution.

It was found that the majority of sample group in the matters relating to the issuance of criminal cases, they tends to have attitudes on the consideration of the consequences which may affects the offenders if there were an issuance of criminal cases; such as offenders could have been suffered or stigmatized and label as a criminal. It was found that the majority of sample group have attitudes in considering the affects which may happen to offenders and also tends to consider public interest, they have attitudes in considering that the issuance of criminal cases may cause negative impact to offenders and they tends to exercise their discretion not prosecuting the non public interest cases if it would enable the offenders to return themselves as good citizens or enhance crime solving, prevention of repeated crime from the same perpetrator and tends to have disagreement that the discretion not prosecuting the non public interest criminal cases will enhance similar patterns of crime, by believing that this discretion will not affects the sacredness of law enforcement. In this regard, the sample group do have faith that such discretion could enable public interest, this is an indication that the majority of sample group have positive attitudes towards the discretion not prosecuting the non public interest criminal cases.

However, since researcher did present actual facts and case samples relating to the non prosecution on cases which will not enable public interest particularly the misdemeanor cases; such as, petty theft or cases which offenders were poor and have never committed any crime before or the case which the offender was young and could change and rehabilitate as good citizen in patterns of questionnaires provided to sample group, it seems that most sample group have chose to prosecute by describing actual facts in the prosecution statement rather than using discretion not prosecuting the non public interest criminal cases.

It could been summarized that even though public prosecutors have positive attitudes towards discretion not prosecuting the non public interest criminal cases, it will not affects the discretion to prosecute whatsoever.

6.1.5.3 Hypothesis number 1.8.3: Laws and regulations relating to the discretion not prosecuting the non public interest criminal cases will affect the discretion decision of the public prosecutor as not to prosecute.

It was found that the majority of sample group agree that the issue of prosecution in criminal cases, will be lesser in terms of legal procedures and regulations compared to the order of non-prosecution and the issue of prosecution in criminal cases will have less procedures than the issue of non-prosecution. The issue of public prosecutor's discretion in not prosecuting the non public interest cases will have the most legal and regulation procedures. The legal and regulation procedures relating to public prosecutor's discretion in not prosecuting the non public interest cases which have various stages will affects the issuance of prosecuting a criminal case. The characteristics of criminal cases which may not be beneficial to the public have not been defined clearly within the related laws and regulations, however, if there was a complaint or a claim concerning to the discretion which have order not to prosecute the criminal case which may not be beneficial to the public, the public prosecutor himself could apply the related laws and regulations in a way that they have already acted fairly and in accordance with justice. The patterns of discretion in non-prosecution in criminal cases which may not be beneficial to the public of the public prosecutor's abroad could be use and apply with the issuance of the criminal cases which have been stated in the related laws and regulations.

Therefore, it could have been said that legal proceedings and regulations relating to the public prosecutor's discretion not prosecuting the non public interest cases are rather complex and requires various complicated stages, with unclear stated of law could contribute to the public prosecutor's discretion not prosecuting the non public interest criminal cases.

6.2 Recommendations

In this research, researcher discover important issues as follows;

6.2.1. From the study, it was found that most of the sample group do concern on the matters of public prosecutor's discretion not prosecuting the non public interest cases that there will be rumors relating to corruption both within and outside organization for fear that the related laws and regulations could not assist them in defending the allegations. Thus, Office of the Attorney General should enhance public prosecutor's confidence and ensure them that they will be immune during their operation in the protection of the rights and freedoms of the citizens.

6.2.2 From the study, it was also found that the procedures of related laws and regulations are unclear in terms of interpreting which types of cases could be considered the non public interest. Moreover, the procedures of proposing comments consist of various steps ranging from practitioners to the highest commanding, which is considered to be more than necessary, causing a delay in prosecution. Therefore, there should be a clear definition and character of the non public interest cases in order to create a brief order in terms of decentralize the authority in a top-down manner. The authority in deciding this types of cases should be assign to the director of various offices or district attorney which in turn should report the progress to the Attorney General.

6.2.3 From the study, it was also found that public prosecutor's discretion not prosecuting the non public interest cases may not have been accepted by the victim and the society as much as it should be, therefore, Office of the Attorney General

should publicize and create an understanding on the matters of public prosecutor's authority in this part by informing through media and arranging a seminar for every sectors to attend.

6.2.4 Office of the Attorney General should insert the issues of the principle of public prosecutor's discretion not prosecuting the non public interest criminal cases as a subject within the public prosecutor training course in order to enhance an awareness and understanding in this issues.

6.2.5 Office of the Attorney General should prepare the guidelines of the operation of using the principle of public prosecutor's discretion not prosecuting the non public interest cases in order to set a standards of public prosecutor's operation.

6.2.6 Office of the Attorney General should disseminate the examples of cases which the public prosecutor use their discretion not prosecuting the non public interest cases as a case study for the future operation of public prosecutor.

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APPENDICES

APPENDIX A

Table A-1: Attitudes of public prosecutor in prosecuting criminal cases.

Categorized from	Prosecutors will issue prosecution due to (Answers could be more than one)					Total
	1	2	3	4	5	
<u>Gender</u>						
Male	170 42.00	62 15.30	11 2.71	20 4.93	5 1.24	268 66.18
Female	62 15.31	51 12.60	8 1.97	13 3.20	3 0.74	137 33.82
<u>Age (Years)</u>						
40-50	120 29.10	70 17.26	12 2.96	17 4.11	3 0.74	222 54.21
51-60	110 26.64	41 10.12	12 2.96	15 3.65	5 1.24	183 44.61
Over 60	2 0.5	1 0.24	0 0	1 0.24	1 0.24	5 1.22
<u>Highest education background</u>						
Certificate (Higher than Bachelor)	119 29.35	58 14.32	11 2.78	19 4.69	5 1.24	212 52.39
Masters degree	112 27.65	54 13.33	8 1.97	14 3.45	3 0.74	191 47.13
Doctoral degree	1 0.24	1 0.24	0 0	0 0	0 0	2 0.48
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>						
Less than 1	52 13.02	40 10.10	13 3.20	6 1.50	2 0.50	113 28.32
1-5	160 39.54	61 15.56	14 3.45	8 2.00	4 1.00	247 61.55
More than 5	20 4.93	12 2.96	4 1.00	3 0.74	2 0.50	41 10.13

Table A-1: Attitudes of public prosecutor in prosecuting criminal cases.

(continue)

Categorized from	Prosecutor will issue prosecution due to (Answers could be more than one)					Total
	1	2	3	4	5	
<u>Experiences in working in the position of prosecutor (Years)</u>						
15-25	165 40.74	59 14.57	11 2.72	16 3.95	4 1.00	255 62.98
26-35	49 12.15	39 9.62	13 3.20	6 1.50	3 0.74	110 27.19
over 35	18 4.42	15 3.65	4 1.00	2 0.5	1 0.24	40 9.83
<u>Total</u>						
Frequency	232	113	19	33	8	405
Percentage	57.30	27.90	4.80	8.10	1.90	100.00

Remarks: 1= Sufficient evidence to prosecute 2= Offenders confessed 3= Prosecutor wants the court to punish the offenders himself 4= Prosecution took place before hand since there are limited time to monitor the case report.5= Other than this; for example, the prosecutor may want the offenders to rehabilitate

Table A-2: Attitudes relating to cause and factors which affects the prosecutor's discretion to always prosecute criminal cases.

Categorized from	Cause and factors which affects the prosecutor's discretion to always prosecute criminal cases (Answers could be more than 1)					Total
	1	2	3	4	5	
<u>Gender</u>						
Male	65 12.28	168 33.20	163 33.00	36 7.10	10 1.98	442 87.56
Female	12 2.35	22 4.30	18 3.48	7 1.31	5 1.00	64 12.44
<u>Age(Years)</u>						
40-50	61 12.20	104 20.60	101 19.96	26 5.14	9 1.78	301 59.68

Table A-2: Attitudes relating to cause and factors which affects the public prosecutor’s discretion to always prosecute criminal cases. (continue)

Categorized from	Cause and factors which affects the public prosecutor’s discretion to always prosecute criminal cases. (answers could be more than 1)					Total
	1	2	3	4	5	
51-60	14 2.77	83 16.30	78 15.30	16 3.16	6 1.20	197 38.73
Over 60	2 0.40	3 0.60	2 0.40	1 0.19	0 0	8 1.59
<u>Highest education background</u>						
Certificate (Higher than Bachelor)	41 8.11	93 18.40	88 17.32	28 5.54	6 1.20	256 51.00
Masters degree	36 7.11	97 19.14	92 18.00	15 3.00	9 1.56	249 48.81
Doctoral degree	0 0	0 0	1 0.19	0 0	0 0	1 0.19
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>						
Less than 1	22 4.30	72 14.20	68 13.40	17 3.36	5 1.00	184 36.26
1-5	42 8.30	93 18.38	92 18.25	21 4.15	8 1.60	256 50.68
Over 5	13 2.57	25 4.94	21 4.15	5 1.00	2 0.40	66 13.06
<u>Experiences in working in the position of prosecutor (Years)</u>						
15-25	42 8.30	130 25.70	128 25.30	27 5.36	8 1.60	335 66.26
26-35	22 4.30	42 8.30	38 7.51	8 1.60	5 1.00	115 22.71
Over 35	13 2.55	18 3.48	15 3.00	8 1.60	2 0.40	56 11.03

Table A-2: Attitudes relating to cause and factors which affects the public prosecutor's discretion to always prosecute criminal cases. (continue)

Categorized from	Cause and factors which affects the public prosecutor's discretion to always prosecute criminal cases. (answers could be more than 1)					Total
	1	2	3	4	5	
<u>Total</u>						
Frequency	77	190	181	43	15	506
Percentage	15.20	38.00	35.80	8.00	3.00	100.00

Remarks: 1=Wants the offender to acknowledge and fear of committing an offense
2=In order to enforce a sacred law 3=Wants peace and order in the society 4=Prevent rumors from the society which arise from the order not to prosecute 5=Others; such as, news coverage by the media or determined the high penalty

Table A-3: The attitude on the awareness of consequences which may occur to offenders in ordering the criminal issuance.

Categorized from	In all of the issuance of prosecution in each criminal proceedings; were there a consideration on the consequences which may affects the offenders; such as offenders could have been suffered or stigmatized and label as a criminal.			Total
	1	2	3	
<u>Gender</u>				
Male	33 14.04	133 56.60	7 2.98	173 73.62
Female	16 6.81	43 18.30	3 1.28	62 26.38
<u>Age(Years)</u>				
40-50	24 10.53	89 37.56	4 1.70	117 49.79
51-60	22 9.68	87 36.70	6 2.55	115 48.93
Over 60	1 0.43	2 0.85	0 0	3 1.28

Table A-3: The attitude on the awareness of consequences which may occur to offenders in ordering the criminal issuance. (continue)

Categorized from	In all of the issuance of prosecution in each criminal proceedings; were there a consideration on the consequences which may affects the offenders; such as offenders could have been suffered or stigmatized and label as a criminal.			Total
	1	2	3	
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	25 10.64	90 38.14	7 2.98	122 51.76
Masters degree	24 10.54	85 36.00	3 1.28	112 47.81
Doctoral degree	0 0	1 0.43	0 0	1 0.43
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	20 8.51	52 22.13	3 1.28	75 31.92
1-5	22 9.68	104 43.93	5 2.13	131 55.74
Over 5	7 2.98	20 8.51	2 0.85	29 12.34
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	24 10.53	125 52.87	7 0.85	165 66.38
26-35	22 9.68	35 14.57	2 0.85	50 25.10
Over 35	3 1.28	16 6.81	1 0.43	20 8.52
<u>Total</u>				
Frequency	49	176	10	235
Percentage	20.90	74.90	4.30	100.00

Remarks: 1=There were no consideration on the consequences 2=There were a consideration on the consequences 3= Others; such as, consideration will be made case by case

Table A-4: Attitude in regard to the public interest to order prosecution.

Categorized from	In issuing prosecution in each criminal case, were the consideration been made on the matters of public interest?			Total
	1	2	3	
<u>Gender</u>				
Male	10 4.25	159 67.66	4 1.70	173 73.61
Female	5 2.13	54 22.98	3 1.28	62 26.39
<u>Age (Years)</u>				
40-50	10 4.25	103 43.84	4 1.70	117 49.79
51-60	4 1.70	108 45.96	3 1.28	115 48.94
Over 60	1 0.43	2 0.85	0 0	3 1.28
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	10 4.25	102 44.46	5 2.13	122 50.78
Masters degree	5 2.13	105 45.75	2 0.85	112 48.79
Doctoral degree	0 0	1 0.43	0 0	1 0.43
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	4 1.70	68 28.94	3 1.28	75 31.92
1-5	8 3.40	121 51.49	2 0.85	131 55.74
Over 5	3 1.28	24 10.21	2 0.85	29 12.34

Table A-4: Attitude in regard to the public interest to order prosecution.

(continue)

Categorized from	In issuing prosecution in each criminal case, were the consideration been made on the matters of public interest?			Total
	1	2	3	
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	8 3.40	154 65.44	3 1.28	165 71.01
26-35	4 1.70	44 18.55	2 0.85	50 21.10
Over 35	3 1.28	15 6.65	2 0.85	20 8.78
<u>Total</u>				
Frequency	15	213	7	235
Percentage	6.40	90.60	3.00	100.00

Remarks: 1=There were no consideration on the issue 2=There were a consideration on the issue 3= Others: such as, consideration will be case by case.

Table A-5: Attitude of the prosecutor in filing criminal charges which could affects the defendants.

Categorized from	Were the criminal justice process in criminal proceedings of prosecutor cause negative effects to offenders			Total
	1	2	3	
<u>Gender</u>				
Male	36 15.32	133 56.59	4 1.70	173 73.61
Female	18 7.66	43 18.30	1 0.43	62 26.39
<u>Age (Years)</u>				
40-50	29 12.35	85 36.20	3 1.30	117 49.85
51-60	24 10.22	89 37.88	2 0.81	115 48.87
Over 60	1 0.43	2 0.81	0 0	3 1.28

Table A-5: Attitude of the prosecutor in filing criminal charges which could affects the defendants. (continue)

Categorized from	Were the criminal justice process in criminal proceedings of prosecutor cause negative effects to offenders			Total
	1	2	3	
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	30 12.75	90 38.29	2 0.81	122 51.85
Masters degree	24 10.22	85 36.20	3 1.30	112 47.72
Doctoral degree	0 0	1 0.43	0 0	1 0.43
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	28 11.94	46 19.60	1 0.43	75 31.97
1-5	15 6.40	114 48.15	2 0.81	131 55.72
Over 5	11 4.69	16 6.81	2 0.81	29 12.31
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	36 15.32	126 53.60	3 1.30	165 70.22
26-35	10 4.25	39 16.58	1 0.43	50 21.26
Over 35	8 3.40	11 4.69	1 0.43	20 8.52
<u>Total</u>				
Frequency	54	176	5	235
Percentage	23.00	74.90	2.10	100.00

Remarks: 1=will not affect 2=will affect 3= Others; such as, the affect will be negative depends on the consequences of the case

Table A-6: Attitude towards the discretion not prosecuting the non public interest cases and the solutions to the problems of the crime.

Categorized from	Were the discretion not prosecuting the non public interest cases will affects the solution in solving the crime?			Total
	1	2	3	
<u>Gender</u>				
Male	51 21.70	116 49.36	6 2.55	173 73.61
Female	29 12.34	30 12.77	3 1.28	62 26.39
<u>Age (Years)</u>				
40-50	48 20.41	64 27.24	5 2.13	117 49.78
51-60	31 13.20	80 34.04	4 1.70	115 48.94
Over 60	1 0.43	2 0.85	0 0	3 1.28
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	28 11.91	88 37.25	6 2.55	122 51.91
Masters degree	52 22.13	57 24.25	3 1.28	112 47.66
Doctoral degree	0 0	1 0.43	0 0	1 0.43
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	32 13.62	41 17.45	2 0.85	75 31.92
1-5	40 17.02	86 36.59	5 2.13	131 55.74
Over 5	8 3.40	19 8.09	2 0.85	29 12.34

Table A-6: Attitude towards the discretion not prosecuting the non public interest cases and the solutions to the problems of the crime.(continue)

Categorized from	Were the discretion not prosecuting the non public interest cases will affects the solution in solving the crime?			Total
	1	2	3	
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	57 24.37	110 46.17	6 2.55	165 73.09
26-35	15 6.21	33 12.41	2 0.85	50 19.47
Over 35	6 2.55	13 4.46	1 0.43	20 7.44
<u>Total</u>				
Frequency	80	146	9	235
Percentage	34.00	62.10	3.90	100.00

Remarks: 1=will not affect 2=will affect 3= Others; such as, the affect will be negative, other measures should be added for consideration.

Table A-7: Attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen.

Categorized from	Discretion not prosecuting non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen.			Total
	1	2	3	
<u>Gender</u>				
Male	14 5.96	148 62.98	11 4.68	173 73.62
Female	6 2.55	54 22.98	2 0.85	62 26.38
<u>Age (Years)</u>				
40-50	12 5.11	98 41.70	7 2.98	117 49.79
51-60	8 3.40	102 43.40	5 2.13	115 48.93

Table A-7: Attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen. (continue)

Categorized from	Discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen.			Total
	1	2	3	
Over 60	0 0	2 0.85	1 0.43	3 1.28
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	12 5.11	102 43.40	8 3.40	122 51.91
Masters degree	8 3.40	99 42.13	5 2.13	112 47.66
Doctoral degree	0 0	1 0.43	0 0	1 0.43
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	6 2.55	64 27.03	5 2.13	75 31.71
Over 5	6 2.55	22 9.15	1 0.85	29 12.55
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	11 4.68	151 64.26	3 1.28	165 70.22
26-35	4 1.70	40 17.02	6 2.55	50 21.27
Over 35	5 2.13	11 4.68	4 1.70	20 8.51

Table A-7: Attitude towards the discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen. (continue)

Categorized from	Discretion not prosecuting the non public interest cases and assistance rendered to offender in order to rehabilitate themselves as a good citizen.			Total
	1	2	3	
<u>Total</u>				
Frequency	20	202	13	235
Percentage	8.50	86.00	5.50	100.00

Remarks: 1=will not affect 2=will affect 3= Others; such as, the affect will be negative, other measures should be added for consideration.

Table A-8: Attitude towards the discretion not prosecuting the non public interest cases on recidivism.

Categorized from	The discretion not prosecuting the non public interest cases in order to prevent crimes which could occurs repeatedly from the same perpetrator.			Total
	1	2	3	
<u>Gender</u>				
Male	50 21.28	107 45.53	16 6.80	173 73.61
Female	23 9.79	37 15.75	2 0.85	62 26.39
<u>Age (Years)</u>				
40-50	38 16.17	72 30.64	7 2.98	117 49.79
51-60	35 14.89	70 29.79	10 4.25	115 48.93
Over 60	0 0	2 0.85	1 0.43	3 1.28
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	40 17.02	74 32.11	8 3.40	122 52.53
Masters degree	33 12.41	69 29.96	10 4.25	112 46.62

Table A-8: Attitude towards the discretion not prosecuting the non public interest cases on recidivism. (continue)

Categorized from	The discretion not prosecuting the non public interest cases in order to prevent crimes which could occurs repeatedly from the same perpetrator.			Total
	1	2	3	
Doctoral degree	0 0	1 0.85	0 0	1 0.85
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	22 9.36	47 20.00	6 2.55	75 31.91
1-5	47 20.00	74 31.50	10 4.25	131 55.75
Over 5	4 1.70	23 9.79	2 0.85	29 12.34
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	56 23.83	97 41.28	12 5.11	165 70.22
26-35	11 4.68	35 14.89	4 1.70	50 21.70
Over 35	6 2.55	12 5.11	2 0.85	20 8.51
<u>Total</u>				
Frequency	73	144	18	235
Percentage	31.10	61.30	7.70	100.00

Remarks: 1=will not affect 2=will affect 3= Others; such as, the recidivism of crime could be prevented if other measures were added into account.

Table A-9: Attitude towards the discretion not prosecuting the non public interest cases and the support in the same type of crime committed.

Categorized from	The discretion not prosecuting the non public interest cases will enhance crime in the similar patterns due to the understanding that when crime were committed, the prosecutor will not prosecute the case.			Total
	1	2	3	
<u>Gender</u>				
Male	86 36.66	67 28.49	20 8.51	173 73.66
Female	35 14.89	25 10.60	2 0.85	62 26.34
<u>Age (Years)</u>				
40-50	59 25.10	48 20.43	10 4.25	117 49.78
51-60	60 25.53	43 18.30	12 5.11	115 48.94
Over 60	2 0.85	1 0.43	0 0	3 1.28
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	64 27.21	46 18.28	12 5.11	122 50.60
Masters degree	67 27.27	46 18.30	8 3.40	112 48.97
Doctoral degree	1 0.43	0 0	0 0	1 0.43
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	44 18.73	24 10.21	7 2.98	75 31.92
1-5	60 25.53	59 25.10	12 5.11	131 55.74
Over 5	18 7.66	8 3.40	3 1.28	29 12.34

Table A-9: Attitude towards the discretion not prosecuting the non public interest cases and the support in the same type of crime committed. (continue)

Categorized from	The discretion not prosecuting the non public interest cases will enhance crime in the similar patterns due to the understanding that when crime were committed, the prosecutor will not prosecute the case.			Total
	1	2	3	
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	78 33.20	70 29.79	17 7.23	165 70.22
26-35	33 14.04	14 5.96	3 1.28	50 21.38
Over 35	10 4.25	8 3.40	2 0.85	20 8.50
<u>Total</u>				
Frequency	121	92	22	235
Percentage	51.50	39.10	9.40	100.00

Remarks: 1=will not affect 2=will affect 3= Others; such as, other measures should be added in order to create more understanding in this issue

Table A-10: Attitude towards the discretion not prosecuting the non public interest cases and the accusation which could affects the public prosecutor.

Categorized from	The discretion not prosecuting the non public interest cases could cause scandal to the prosecutor responsible for the case.			Total
	1	2	3	
<u>Gender</u>				
Male	73 31.06	83 35.32	17 7.23	173 73.61
Female	18 7.66	41 17.45	3 1.28	62 26.39
<u>Age (Years)</u>				
40-50	50 21.28	59 25.10	8 3.40	117 49.78
51-60	40 17.02	63 23.83	19 8.09	122 48.94

Table A-10: Attitude towards the discretion not prosecuting non public interest cases and the accusation which could affects the public prosecutor. (continue)

Categorized from	The discretion not prosecuting the non public interest cases could cause scandal to the prosecutor responsible for the case.			Total
	1	2	3	
Over 60	1 0.43	2 0.85	0 0	3 1.28
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	48 20.41	62 26.38	12 5.11	122 51.90
Masters degree	43 18.31	61 25.96	8 3.40	112 47.67
Doctoral degree	0 0	1 0.43	0 0	1 0.43
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	29 12.34	40 17.02	6 2.55	75 31.91
1-5	56 23.86	65 27.66	10 4.25	131 55.74
Over 5	6 2.55	19 8.10	4 1.70	29 12.35
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	73 31.04	80 33.04	12 5.11	165 69.19
26-35	11 4.68	34 14.31	5 2.13	50 21.12
Over 35	7 2.98	13 5.43	3 1.28	20 9.69
<u>Total</u>				
Frequency	91	124	20	235
Percentage	38.70	52.80	8.50	100.00

Remarks: 1=Do not agree 2= Agree 3= Others; such as, depends on the cause and discretion whether it could explain in a way that could be accepted and understood by the society

Table A-11: Attitude towards the discretion not prosecuting the non public interest cases and the facilitation of unlawful benefits.

Categorized from	The discretion not prosecuting the non public interest cases and the wrongful benefits which the persons involved in the case may received			Total
	1	2	3	
<u>Gender</u>				
Male	64 27.23	95 40.43	14 5.96	173 73.62
Female	9 3.83	49 20.85	4 1.70	62 26.38
<u>Age (Years)</u>				
40-50	37 15.75	71 30.21	9 3.83	117 49.79
51-60	35 14.89	71 30.21	9 3.83	115 48.93
Over 60	1 0.43	2 0.85	0 0	3 1.28
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	36 15.32	79 33.62	7 2.98	122 51.92
Masters degree	37 15.74	64 27.23	11 4.68	112 47.65
Doctoral degree	0 0	1 0.43	0 0	1 0.43
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	23 9.79	49 20.84	3 1.28	75 31.91

Table A-11: Attitude towards the discretion not prosecuting the non public interest cases and the facilitation of unlawful benefits. (continue).

Categorized from	The discretion not prosecuting the non public interest cases and the wrongful benefits which the persons involved in the case may received			Total
	1	2	3	
1-5	38 16.17	81 34.46	12 5.11	131 55.74
Over 5	12 5.11	14 5.96	3 1.28	29 12.35
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	48 20.43	105 44.68	12 5.11	165 70.22
26-35	18 7.65	27 11.48	5 2.13	50 21.26
Over 35	7 2.98	12 5.11	1 0.43	20 8.52

Remarks: 1= Do not agree 2= Agree 3= Others; such as, depends on each case concerning to the channel allowing the persons involved to seeks wrongful benefits from the case or not.

Table A-12: Attitude towards the discretion not prosecuting the non public interest cases and law enforcement.

Categorized from	The discretion not prosecuting the non public interest cases may reduce the sacredness of law enforcement			Total
	1	2	3	
<u>Gender</u>				
Male	125 53.26	38 16.17	10 4.25	173 73.78
Female	34 14.31	27 11.48	1 0.43	62 26.22
<u>Age (Years)</u>				
40-50	81 35.15	31 13.87	5 2.13	117 51.15

Table A-12: Attitude towards the discretion not prosecuting the non public interest cases and law enforcement.(continue)

Categorized from	The discretion not prosecuting the non public interest cases may reduce the sacredness of law enforcement			Total
	1	2	3	
51-60	75 32.61	33 12.41	6 2.55	115 47.57
Over 60	2 0.85	1 0.43	0 0	3 1.28
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	68 28.94	47 20.00	7 2.98	122 51.92
Masters degree	90 38.30	18 7.65	4 1.70	112 47.65
Doctoral degree	1 0.43	0 0	0 0	1 0.43
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	57 24.42	15 6.21	3 1.28	75 31.91
1-5	87 37.20	38 16.17	6 2.55	131 56.04
Over 5	15 6.21	12 5.11	2 0.85	29 12.17
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	118 50.21	40 17.02	7 2.98	165 70.21
26-35	27 11.48	20 8.51	3 1.28	50 21.27
Over 35	14 5.96	5 2.13	1 0.43	20 8.52

Table A-12: Attitude towards the discretion not prosecuting the non public interest cases and law enforcement. (continue)

Categorized from	The discretion not prosecuting the non public interest cases may reduce the sacredness of law enforcement			Total
	1	2	3	
<u>Total</u>				
Frequency	159	65	11	235
Percentage	67.60	27.70	4.70	100.00

Remarks: 1= Do not agree 2= Agree 3= Others; such as, depends on each case concerning to the channel allowing the persons involved to seeks wrongful benefits from the case or not.

Table A-13: Attitude towards the confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases.

Categorized from	The confidence in the benefit which the society may gain regarding to the use in discretion in not prosecuting the non public interest cases.			Total
	1	2	3	
<u>Gender</u>				
Male	25 10.60	140 59.61	8 3.40	173 73.61
Female	7 2.96	54 22.98	1 0.43	62 26.39
<u>Age (Years)</u>				
40-50	14 5.96	99 42.13	4 1.70	117 49.79
51-60	18 7.65	93 39.98	4 1.70	115 48.93
Over 60	0 0	2 0.85	1 0.43	3 1.28
<u>Highest education background</u>				
Certificate(Higher than Bachelor)	19 8.09	97 41.28	6 2.55	122 51.92

Table A-13: Attitude towards the confidence in the benefit which the society may gain regarding to the discretion in not prosecuting the non public interest cases. (continue)

Categorized from	The confidence in the benefit which the society may gain regarding to the use in discretion in not prosecuting the non public interest cases.			Total
	1	2	3	
Masters degree	13 5.43	96 40.94	3 1.28	112 47.65
Doctoral degree	0 0	1 0.43	0 0	1 0.43
<u>The maximum amount of time working in the prosecutor to consider criminal responsibility (Years)</u>				
Less than 1	4 1.70	69 31.32	2 0.85	75 33.87
1-5	14 5.96	111 49.10	6 2.55	131 51.61
Over 5	5 2.13	14 5.96	1 0.43	20 8.52
<u>Experiences in working in the position of prosecutor (Years)</u>				
15-25	22 9.36	136 57.87	7 2.98	165 70.21
26-35	7 2.98	42 17.87	1 0.43	50 21.28
Over 35	3 1.28	16 6.80	1 0.43	20 8.51
<u>Total</u>				
Frequency	32	194	9	235
Percentage	13.60	82.60	3.80	100.00

Remarks: 1= Do not have confidence 2= Do have confidence 3= Others; such as, depends on the facts in each case and the cooperation of every sectors.

APPENDIX B

**Questionnaires of prosecutors in the position of Provincial Chief
Public Prosecutor and Executive Director responsible for the issuance
of order relating to criminal case in order to use for
the research: Title
“THE PRINCIPLES OF PUBLIC PROSECUTOR’S DISCRETION
NOT PROSECUTING THE NON PUBLIC INTEREST
CRIMINAL CASES”**

Please answers the question in the given choice and tick \checkmark in front of the choice nearly to the actual facts.

Part 1: Personal Information (Personal Background)

1. Gender Male Female

2. Age (Years)
 40-45 46-50 51-55 56-60 Over 60

3. Highest Education Background
 Certificate(Higher than Bachelor) Master Degree Doctoral Degree

4. How many years of your service working in the position of Provincial Chief
Public Prosecutor and Executive Director.(Years)
 Less than 1 1 2 3 4 5 Over 5

5. How many years of your experience working in the position of prosecutor.(Years)
- 15-20 21-25 26-30 31-35 Over 35
6. What are the main authority of public prosecutor in relations to criminal cases. (answer can be more than 1)
- Considering investigation report Issue criminal charges
 Issue non prosecution Plead the case
7. In operating the position of prosecution; which principle did you use.
- Prosecute according to the law Prosecute by using discretion
8. Do you have experience in using discretion not prosecuting the non public interest criminal cases? (Cases)
- No experience Experience with less than 5 Experience with over 5
 Experience with over 10

Part 2: Attitude of public prosecutor in issuing criminal cases

1. When do you think public prosecutor will likely issue criminal cases? (answer could be more than 1)
- Sufficient evidence to prosecute Offender confessed
 Prosecutor wants the court to consider the offender's offense.
 Prosecute beforehand due to limited time in investigating report.
 Others (Please specify)
2. Which cause or factor contribute the prosecutor to always issue criminal cases? (answers could be more than 1)
- Prosecute in order to enable offenders to acknowledge their crime
 Prosecute in order to enforce efficient law
 Prosecute in order to create peace and order in the society
 Prosecute in order to prevent themselves from scandal
 Others(Please specify).....

3. In all of the issuance of prosecution in each criminal proceedings; were there a consideration on the consequences which may affects the offenders? such as offenders could have been suffered or stigmatized and label as a criminal.
- No consideration There were consideration on the issue
 Others (Please specify).....
4. In issuing prosecution in each criminal case, were the consideration been made on the matters of public interest?
- No consideration There were consideration on the issue
 Others (Please specify).....
5. Were the criminal justice process in criminal proceedings of public prosecutor cause negative effects to offenders?
- Will not affect Will affect Others (Please specify).....
6. In a minor offense, there were facts stated that offender could rehabilitate and adjust himself to a good citizen, if you are the public prosecutor responsible in issuing criminal cases, what would you do?
- Prosecute Prosecute by explaining facts in the report
 Not Prosecute
 Not prosecute due to the fact that the case may not be beneficial to the public
 Others(Please specify).....
7. The case appeared that the offender has never commit any criminal offense before, he is a garbage collector who has collected old VCD from the garbage bin and re-sell it in a market in order to earn more income to help his poor family, he has been charged and prosecuted by police officers according to the Film and Vidiotape Act B.E. 2551 section 38, if you were the public prosecutor responsible for the case, how will you consider the issuance of the case?

- Issuance prosecution Prosecute by explaining facts in the report
- Issuance non-prosecution
- Not prosecute due to the fact that the case may not be beneficial to the public
- Others(Please specify).....

8. The case appeared that the offender was with a girl age less than 15 years old who is not over 18 years of age and is under the supervision of guardian, the offender ran away with the girl and live together as husband and wife until the girl was pregnant, later the guardian file a criminal charges against the offender, if you were the public prosecutor responsible for the case, how will you consider the issuance of the case?

- Issuance prosecution Prosecute by explaining facts in the report
- Issuance non-prosecution
- Not prosecute due to the fact that the case may not be beneficial to the public
- Others(Please specify).....

9. The case appeared that the offender has never commit any criminal offense before, with an age not over 18 years old, and was acted with adolescent behavior by stealing other's people belonging worth with small amount of money, later was arrested by police officers, if you were the public prosecutor responsible for the case, how will you consider the issuance of the case?

- Issuance prosecution Prosecute by explaining facts in the report
- Issuance non-prosecution
- Not prosecute due to the fact that the case may not be beneficial to the public
- Others(Please specify).....

10. The case appeared that the offender was poor, has own no land, therefore, he invaded and occupied the land with a small amount of area located in the National Preservation Forest which was a degraded area to use for a living and housing area, he was later arrested, if you were the prosecutor responsible for the case, how will you consider the issuance of the case?
- Issuance prosecution Prosecute by explaining facts in the report
 Issuance non-prosecution
 Not prosecute due to the fact that the case may not be beneficial to the public
 Others(Please specify).....
11. Do you think that the public prosecutor's discretion not prosecuting the non public interest cases will affects the solution in solving the crime?
- Will not affect Will affect Others (Please specify).....
12. Do you think that the public prosecutor's discretion not prosecuting the non public interest cases will assist in helping the offenders to return as a good citizen?
- Will not affect Will affect Others(Please specify).....
13. Do you think that the public prosecutor's discretion not prosecuting the non public interest cases will be able to prevent crimes which could occurs repeatedly from the same perpetrator?
- Do not agree Agree Others(Please specify).....
14. Do you think that the public prosecutor's discretion not prosecuting the non public interest cases will enhance crime in the similar patterns due to the understanding that when crime were committed, the prosecutor will not prosecute the case?
- Do not agree Agree Others(Please specify).....

15. Do you think that the public prosecutor's discretion not prosecuting the non public interest cases could cause scandal to the prosecutor responsible for the case?
 Do not agree Agree Others(Please specify).....
16. Do you think that the public prosecutor's discretion not prosecuting the non public interest cases could facilitates the wrongful benefits for the persons involved in the case?
 Do not agree Agree Others(Please specify).....
17. Do you think that the public prosecutor's discretion not prosecuting the non public interest cases may reduce the sacredness of law enforcement?
 Do not agree Agree Others(Please specify).....
18. Will the confidence in the benefits of the society be enhanced if the discretion were used to order non-prosecution in criminal cases which may not be beneficial to the public?
 Do not have confidence on the matter Do have confidence
 Others(Please specify).....

Part 3: Laws and regulations relating to the Public Prosecutor's discretion not prosecuting the non public interest cases; such as Code of Criminal Procedure ,The Public Prosecutor's Organization and the Public Prosecutor Act 2553 B.E. and The Regulation on the Order to not Prosecuting the Non Public Interest Criminal Cases or the Case which may Affects the Safety and the Stability or National Security of the Country B.E. 2554.

In this regard, it is therefore requested you to consider the above law and regulations whether such law and regulations could affects the prosecutor's discretion in prosecuting or not prosecuting criminal cases. Please tick \surd in an answer you think suits your opinion.

Number	Question	Answer	
		Agree	Do not agree
1.	The issue of prosecution in criminal cases, will be lesser in terms of legal procedures and regulations compared to the order of non-prosecution.		
2.	The issue of prosecution in criminal cases will have less procedures than the issue of non-prosecution		
3.	The issue of Prosecutor's discretion in not prosecuting the non public interest cases will have the most legal and regulation procedures.		
4.	The legal and regulation procedures relating to prosecutor's discretion in not prosecuting the non public interest cases which have various stages will affects the issuance of prosecuting a criminal case.		
5.	The characteristics of public prosecutor's discretion in not prosecuting the non public interest criminal cases have been defined clearly within the related laws and regulations.		
6.	While there was a complaint or a claim concerning to the discretion which have order not to prosecute the non public interest criminal cases, the prosecutor himself could apply the related laws and regulations in a way that they have already acted fairly and in accordance with justice.		

Number	Question	Answer	
		Agree	Do not agree
7.	The patterns of discretion not prosecuting the non public interest criminal cases of the prosecutor's abroad could be use and apply with the issuance of the criminal cases which have been stated in the related laws and regulations; such as the discretion of the prosecutors in Britain and Wales, Scotland.		

Part 4: Additional suggestions and Opinions

1. What is your opinion on the statement which mentioned that “most public prosecutors likely prosecute the case beforehand?”

.....

.....

.....

2. In regard to the point that the public prosecutor used their discretion not to prosecute in a criminal case, would that decision be beneficial to the public and how?

.....

.....

.....

3. In case which public prosecution's discretion not prosecuting the non public interest criminal case, what do you think the consequences of the case are likely to be?

.....

.....

.....

4. Why do you think that the number of cases involve with the public prosecutor's discretion not prosecuting the non public interest criminal cases was with small amount?

.....
.....
.....

5. Do you believed that current laws and regulations concerning to public prosecutors' discretion not prosecuting the non public interest criminal cases should be amended further or not?

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Thank you very much for taking the time to answer this questionnaire.

APPENDIX C

**In-Depth Interview of the management within
the Office of the Attorney General in order to use for the research**

Title:

**“THE PRINCIPLES OF PUBLIC PROSECUTOR’S DISCRETION
NOT PROSECUTING THE NON PUBLIC INTEREST
CRIMINAL CASES”**

1. What is your opinion concerning to the statement that “most public prosecutor always prosecute criminal cases?”

.....
.....
.....

2. Do you think that before the public prosecutor decided to order prosecution in criminal cases, did the public prosecutor consider the public benefits and how?

.....
.....
.....

3. How can the public prosecutor’s discretion not prosecuting the non public interest cases benefit the public?

.....
.....
.....

- 4. What are the conditions of the problem if public prosecutor use their discretion not prosecuting the non public interest cases?

.....
.....
.....

- 5. To what reason the number of not prosecuting the non public interest cases are a few?

.....
.....
.....

- 6. Laws and regulations relating to the use of discretion of public prosecutor not prosecuting the non public interest cases which are presently enforced, should there be any amendments and how? (Laws and regulations such as Code of Criminal Procedure, The Public Prosecutor’s Organization and the Public Prosecutor Act 2553 B.E. and The Regulation on the Order to not Prosecuting the Non Public Interest Criminal Cases or the Case which may Affects the Safety and the Stability or National Security of the Country B.E. 2554)

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APPENDIX D

An In-Dept Interview of Experts in the field of Law, Social Administration or Criminal Justice with an experience over 10 years in order to use for the research

Title:

“THE PRINCIPLES OF PUBLIC PROSECUTOR’S DISCRETION NOT PROSECUTING THE NON PUBLIC INTEREST CRIMINAL CASES”

1. What is your opinion on the statement which mentioned that “most public prosecutors likely prosecute the case beforehand?”
.....
.....
.....
2. Whether the prosecution in a criminal case may take place or not, what is your opinion on the matters of public interest which public prosecutor should take into consideration?
.....
.....
.....
3. Do you think that the public prosecutor’s discretion not prosecuting the non public interest criminal cases can be done or not and to what cause?
.....
.....
.....

4. Do you think that the public prosecutor's discretion in not prosecuting the non public interest criminal cases can solve the problem of crime or not and how?

.....
.....
.....

5. Why do you think that the number of cases involve with the public prosecutor's discretion not prosecuting the non public interest criminal cases was with small amount?

.....
.....
.....

6. What do you think would be the principle and patterns of the public prosecutor's discretion not prosecuting the non public interest criminal cases from abroad and how it could be adjust and applied in Thailand?

.....
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.....

APPENDIX E



COA.No.2012/268.2708

Documentary Proof of The Committee for Research Ethics (Social Sciences)

Title of Project: The Principles of Public Prosecutor's Discretion in Not Prosecuting the Non Public Interest Criminal Cases
(Thesis for Ph.D.)

Principal Investigator: Mr. Adulyakhup Thongjean

Name of Institution: Faculty of Social Sciences and Humanities, Mahidol University

Approval includes:

- 1) MU-SSIRB Submission Form version received date 13 July 2012
- 2) Participant Information Sheet for Expert version date 23 August 2012
- 3) Participant Information Sheet for Staff: Interview version date 23 August 2012
- 4) Participant Information Sheet for Staff: Questionnaire version date 23 August 2012
- 5) Informed Consent Form version date 13 July 2012
- 6) Interview Guideline for Expert received date 23 August 2012
- 7) Interview Guideline for Staff received date 23 August 2012
- 8) Questionnaire received date 23 August 2012

The Committee for Research Ethics (Social Sciences) is in full compliance with International Guidelines of Human Research Protection such as Declaration of Helsinki, The Belmont Report, CIOMS Guidelines and the International Conference on Harmonization in Good Clinical Practice (ICH-GCP)

Date of Approval: 27 August 2012

Date of Expiration: 26 August 2013

Signature of Chairman:.....

(Assoc. Prof. Pichet Kalamkasalt)

Signature of Head of the Institute:.....

(Assoc. Prof. Dr.Wariya Chirawanno)

Dean of Faculty of Social Sciences and Humanities

BIOGRAPHY

NAME-SURNAME	Mr.Adulyakhup Thongjean
DATE OF BIRTH	3 March 1974
CONTACT (WORK PLACE)	Executive Director's Office of Legal Development, Department of Technical Affairs ^{7th} ,Office of the Attorney General, The Government Complex Commenorating His Majesty., Lak-Si,Bangkok,10210.
CONTACT NUMBER	Tel :+66855548155
E-MAIL – ADDRESS	jum.khondee@gmail.com
HOME ADDRESS	1/78 La Maison 24, Phaholyothin Road, Soi Phaholyothin 24, Jom Pol Sub-District, Jatujak District, Bangkok 10900
EDUCATION	Study Primary School from Ban-Namkop and Ban Hin- Hao,
BACKGROUND	Study Secondary and High school from Lom Kao Pittayakom, Pethchabun Province. Bachelor of Law, Ram Khamheng University. Barrister of Law, The Association of Bar Council Received a scholarship and Certificate in the field of Law, Economics, Language and Culture from Tokai Bank of Japan Fund, Study from Nanzan University. Masters of Law, Ram Khamheng University.
WORK EXPERIENCE	Lawyer, Department of Intellectual Property Rights, Ministry of Commerce. Lawyer, Level 3, Institute of Technology King Rama 4 (Pranakorn Nuea). Lawyer, Level 4, Fiscal Policy Office, Ministry of Finance.

Assistant Public Prosecutor, Office of the Attorney General.

Provincial Assistant Public Prosecutor, Public Prosecutor's Office Juvenile and Family, Petchabun Province.

Provincial Deputy Public Prosecutor, Office of Public Prosecutor, Petchabun Province.

Provincial Deputy Public Prosecutor, Office of Public Prosecutor, Lom Sak Province.

Special Lecturer of Law, Ratchabhat University, Pethchabun Province.

Provincial Deputy Public Prosecutor, Office of Public Prosecutor, Chaibadan Province(Lopburi).

Provincial Deputy Public Prosecutor, Public Prosecutor's Office Juvenile and Family, Petchabun Province.

Public Prosecutor Attached to Executive Director's Office of Legal Development, Department of Technical Affairs, Office of the Attorney General.

PRESENT POSITION

Provincial Chief Public Prosecutor Attached to Executive Director's Office of Legal Development, Department of Technical Affairs, Office of the Attorney General.
