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The Urgency of Implementation of Deferred Prosecution Agreements for Corporate Crimes in Indonesia

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ABSTRACT

Criminal law is one of the main pillars of justice enforcement and public order. As a normative instrument, criminal law serves not only to punish perpetrators of criminal acts but also to prevent crime and protect the rights and interests of society. Along with social and economic developments, new challenges have emerged for the Indonesian criminal law system, particularly in addressing corporate crime. The enactment of Law Number 1 of 2023 concerning the Criminal Code marks a paradigm shift in the Indonesian criminal justice system from a predominantly retributive orientation toward a more modern approach to criminal justice, including the recognition of corporate criminal liability. This study aims to examine the Deferred Prosecution Agreement (DPA) in relation to corporate criminal liability in Indonesia. This research employs a normative juridical method using statutory, case, and comparative approaches, particularly through comparison with the United Kingdom. The findings indicate that the development of corporate criminal liability in Indonesia demonstrates the need for alternative mechanisms for resolving corporate criminal cases. The DPA provides a potential mechanism for resolving corporate criminal cases while maintaining corporate accountability and facilitating the recovery of state losses. Corporate crimes in Indonesia, particularly corruption, frequently result in significant losses to the state, thereby strengthening the need to consider the implementation of a DPA mechanism. The study concludes that the implementation of DPA in Indonesia requires a clear legal framework and strengthened coordination among law enforcement authorities to ensure accountability, legal certainty, and effective resolution of corporate criminal cases.

Keywords:
Deferred Prosecution Agreement; Korporasi; Pembaruan Hukum Pidana

ABSTRACT

Hukum pidana merupakan salah satu pilar utama dalam penegakan keadilan dan ketertiban umum. Sebagai instrumen normatif, hukum pidana tidak hanya berfungsi untuk memberikan sanksi kepada pelaku tindak pidana, tetapi juga untuk mencegah terjadinya kejahatan serta melindungi hak dan kepentingan masyarakat. Seiring dengan perkembangan sosial dan ekonomi, muncul berbagai tantangan baru bagi sistem hukum pidana Indonesia, khususnya dalam menangani tindak pidana korporasi. Berlakunya Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana menandai adanya pergeseran paradigma dalam sistem peradilan pidana Indonesia dari orientasi yang dominan bersifat retributif menuju pendekatan peradilan pidana yang lebih modern, termasuk dengan diakuinya pertanggungjawaban pidana korporasi. Penelitian ini bertujuan untuk mengkaji Deferred Prosecution Agreement (DPA) dalam kaitannya dengan pertanggungjawaban pidana korporasi di Indonesia. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, kasus, dan perbandingan, khususnya melalui perbandingan dengan sistem hukum di Inggris. Hasil penelitian menunjukkan bahwa perkembangan pertanggungjawaban pidana korporasi di Indonesia menunjukkan adanya kebutuhan terhadap mekanisme alternatif dalam penyelesaian perkara pidana korporasi. DPA berpotensi menjadi mekanisme dalam penyelesaian perkara pidana korporasi dengan tetap mempertahankan akuntabilitas korporasi serta memfasilitasi pemulihan kerugian negara. Tindak pidana korporasi di Indonesia, khususnya tindak pidana korupsi, sering kali menimbulkan kerugian negara yang signifikan sehingga semakin memperkuat kebutuhan untuk mempertimbangkan penerapan mekanisme DPA. Penelitian ini menyimpulkan bahwa penerapan DPA di Indonesia memerlukan kerangka hukum yang jelas serta penguatan koordinasi antaraparat penegak hukum untuk menjamin akuntabilitas, kepastian hukum, dan penyelesaian perkara pidana korporasi secara efektif.

1. INTRODUCTION

Criminal law is one of the main pillars in the enforcement of justice and public order. As a normative instrument, criminal law not only serves to punish perpetrators of criminal acts but also to prevent crime and protect the rights of the community. Along with the development of society, various social and economic dynamics have created new challenges for the criminal law system and demonstrated the limitations of traditional criminal law. The old Criminal Code (KUHP), which has been in use since the Dutch colonial era (1918/1946), is considered less relevant for addressing modern crimes and contemporary social phenomena (Aditama, 2026).

The old Criminal Code contained numerous rigid provisions that were unable to accommodate new forms of crime emerging as a result of social developments and changes. This situation has created an urgent need for criminal law reform capable of adapting regulations to the context of modern society while continuing to prioritize the principles of justice and the protection of human rights. Law Number 1 of 2023 concerning the new Criminal Code represents one of the government's strategic measures to address this challenge (Aditama, 2026). Indonesia is entering a new era with the enactment of the 2023 Criminal Code. This change is not merely the replacement of a legal code that is more than a century old, but also represents a paradigm shift that transforms the orientation of the judicial system from its original retributive orientation toward a restorative approach. Whereas the criminal justice system has traditionally focused more on creating a deterrent effect through the imposition of sanctions, its orientation has now shifted toward restoring relationships and preventing the recurrence of criminal acts (Saputra, 2025).

This regulation affirms a change in the orientation of punishment, which no longer focuses solely on punishment but also on the recovery of losses suffered by victims and the restoration of social relations disrupted by criminal acts (Pane et al., 2025). The strengthening of the position of the Criminal Code and the reform of the criminal justice system in Indonesia through Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) opens up space for a restorative justice approach as an instrument for resolving criminal cases. This approach marks a paradigm shift from a retributive orientation toward a more humanistic, participatory, and socially reconciliation-oriented model. Research conducted by Sunnah of Ibn Chaldun University in 2026 states that the provisions of the Criminal Code have strong philosophical legitimacy in the values of Pancasila (Sunnah, 2026). This is in line with the ideals of justice upheld within the Indonesian criminal justice system, which, prior to the reform of the Indonesian criminal justice system, was more dominantly oriented toward retaliatory justice (Sulaiman, 2023).

The new Criminal Code more clearly regulates corporate crime and provides mechanisms that can be used in the settlement of cases, namely Restorative Justice and Deferred Prosecution Agreements (DPA). The DPA regulation under Article 328 of the New Criminal Code has been improved through provisions concerning agreements, examinations, and court decisions (DA, 2025). The Deferred Prosecution Agreement (DPA), or deferred prosecution agreement, has emerged as one of the alternative instruments that has the potential to strengthen criminal law enforcement by providing corporations with an opportunity to restore losses, comply with legal requirements, and improve their governance systems in exchange for the postponement or termination of prosecution if the agreed obligations are fulfilled (Zhou, 2025).

Based on the above explanation, it can be seen that the DPA has the potential to accelerate the recovery of state losses and encourage corporate governance reforms. However, its implementation requires clear regulations and strict oversight mechanisms to maintain transparency and accountability. The DPA can become an effective corporate law enforcement instrument in Indonesia if it is supported by a comprehensive legal framework and accountable implementation (Alaydrus, 2025). The DPA in the new Criminal Code opens progressive legal avenues for resolving economic crimes effectively, efficiently, and fairly through tightly controlled negotiations. Major cases involving corporations range from e-KTP projects and corruption in the mining sector to environmental scandals, money laundering, and market manipulation. Meanwhile, court decisions often punish intellectual actors within corporations or corporate organs, while imprisonment ultimately targets only individuals and adds to the burden on the state. In fact, losses suffered as a result of corporate crimes amounting to trillions of rupiah are difficult to recover (FHUI, 2025).

In several countries, this situation has led to the development of alternative settlements for criminal cases committed by corporations through the Deferred Prosecution Agreement (DPA) mechanism. This mechanism prioritizes efficiency without sacrificing fairness. In the United Kingdom, the DPA came into force on 24 February 2014 and was introduced through Sections 45 and 17 of the Crime and Courts Act 2013 (CCA 2013). At the time, the DPA was introduced with the aim of providing prosecutors with additional tools to address economic crimes in England and Wales that were considered too frequent and insufficiently addressed. The DPA must first be assessed by an independent judge. If the judge approves the agreement and the suspect also agrees to a number of obligations, particularly the payment of damages, cooperation, and the prevention of similar acts in the future, prosecution will be suspended by the prosecutor. Considering the advantages of the DPA and the difficulty of recovering losses caused by corporations, the urgency of implementing the DPA within the Indonesian criminal law system requires further examination.

The Lecturer of Criminal Procedure Law at the Faculty of Law, University of Indonesia, Dr. Febby M. Nelson, S.H., M.H., stated that the DPA mechanism can serve as an alternative for resolving cases and can be more effective in recovering state losses than the conventional approach based solely on criminalization. In practice, the use of DPAs in several countries can result in the recovery of substantial state losses, whereas conventional penal approaches often result only in the imprisonment of individuals with relatively limited recovery of losses.

2. RESEARCH METHODS

This study employs normative legal research by identifying legal principles, rules, and norms related to the urgency of implementing DPA within the Indonesian criminal law system. Several approaches are used, namely the statutory approach and the comparative approach (Muhaimin, 2020). The statutory approach examines the national Criminal Code, the Criminal Procedure Code, and other relevant regulations, while the comparative approach examines the implementation of DPA within the British criminal law system. These approaches are employed to examine how the relevant regulations are formulated and implemented and how the mechanism is applied in another legal system. In conducting the research, literature studies involving primary and secondary legal materials are analyzed descriptively in order to obtain comprehensive findings related to the object and subject of the research (Qamar & Syah Reza, 2020).

3. RESULT AND DISCUSSION

3.1. Regulation of Pending Prosecution Agreements (DPA) in the Indonesian Criminal Code System after the Enactment of the 2025 Criminal Code

Currently, the Criminal Code formulates restorative justice in dealing with corporate criminal acts through the DPA mechanism, which results in a Prosecution Suspension Agreement agreed upon by the prosecutor and the suspect or defendant and ratified by a panel of judges, with its implementation supervised by the court. The settlement of corporate crimes through the DPA mechanism constitutes a new mechanism for resolving criminal cases in Indonesia (Daneswara & Sugama, 2026). The DPA is often regarded as a more lenient mechanism for corporations because it opens up the possibility of postponing prosecution and allows cases not to end with conventional prosecution. This may appear to constitute leniency, but at the same time, it establishes a more nuanced, prolonged, and, in some respects, more intensive form of supervision than the conventional prosecution model. The purpose of DPA is formulated not only in terms of criminal justice efficiency but also in terms of legal compliance and the recovery of losses resulting from criminal acts (Ichwanudin, 2025).

The DPA has the potential to increase the effectiveness of law enforcement and the recovery of state losses. However, its implementation must be clearly formulated in accordance with the principle of legality and must not create opportunities for the abuse of authority. In addition, limiting DPA exclusively to corporations has the potential to raise issues of equality before the law. Therefore, the regulation must be proportionate, transparent, and accountable (Nuryani & Novriyandra, 2025). The regulation of DPA is explicitly provided for in the Criminal Procedure Code, or Law Number 20 of 2025, through Article 328, which regulates the Deferred Prosecution Agreement with the following provisions:

1. The Prosecution Deferral Agreement aims at legal compliance, recovery of losses due to criminal acts, and efficiency in criminal justice
2. The Delay of Prosecution Agreement can only be applied to criminal acts by the Corporation
3. An application for a Prosecution Delay Agreement can be submitted by the Suspect, Defendant, or Advocate to the Public Prosecutor before the case is transferred to court
4. The Prosecutor may accept or reject the application as referred to in the paragraph based on the consideration of justice, victim, and compliance with the provisions of the law and regulations
5. If the Public Prosecutor accepts the application, the Public Prosecutor is obliged to notify the relevant court that the process of the Prosecution Deferral Agreement will be carried out and recorded in the minutes
6. The results of the agreement regarding the Prosecution Postponement Agreement must be submitted by the Public Prosecutor to the court within a maximum period of 7 (seven) days after the agreement is signed by the parties

7. The court is obliged to hold an examination hearing to assess the feasibility and validity of the Deferral of Prosecution Agreement before it is ratified
8. In the examination hearing as stipulated in paragraph (7), the Judge shall consider:
   a. the conformity of the provisions of the Suspension of Prosecution Agreement with the provisions of law and regulations;
   b. proportionality of administrative sanctions or other obligations given to the Suspect or Defendant;
   c. impact on victims, society, the environment, the state economy, and the criminal justice system; and
   d. the ability of the Suspect or Defendant to meet the conditions set
9. In examining the Prosecution Delay Agreement, the Judge may request additional information or clarification from the Prosecutor, the Suspect, the Defendant, or other interested parties
10. If the Judge makes a Prosecution Delay Agreement, the ratification is described in the court decision and the case is suspended in accordance with the agreement
11. If the Judge rejects the Prosecution Delay Agreement, the case will proceed to trial with a normal hearing
12. The provisions in the Deferred Prosecution Agreement can be in the form of:
    a. payment of compensation or restitution to the victim;
    b. implementation of legal compliance programs or improvement of anti-corruption corporate governance;
    c. the obligation to report and cooperate with law enforcement during the prosecution delay process; or
    d. other corrective actions deemed necessary by the Prosecutor.
13. If the Suspect or Defendant fulfills all obligations under the Prosecution Agreement within the stipulated period of time, the case may be terminated without further prosecution based on the court's determination
14. The Court is authorized to monitor the execution of the Deferred of Prosecution Agreement in accordance with the time specified in the agreement
15. If the Suspect or Defendant fails to fulfill the obligations under the Prosecution Deferred Agreement agreement, the Public Prosecutor is authorized to proceed with the Prosecution process without requiring additional approval.

16. Each Prosecution Deferral Agreement is formally recorded and submitted to the Judge to be recorded in the minutes of the court
17. Violations of the Suspension of Prosecution Agreement's procedures may be null and void and become grounds for the Suspect or Defendant to file an objection or resistance

Based on the provisions of the New Criminal Code, it is clear that the regulation addresses the normative framework of DPA, the respective roles of law enforcement officials, and the provisions applicable before, during, and after the implementation of DPA as stipulated in the agreement. From these provisions, it can be seen that the time limitation only regulates the submission of the results of the agreement by the prosecutor to the court, namely no later than seven days after the agreement has been signed by the parties.

Previous research has stated that the regulation of Deferred Prosecution Agreement applications under Article 328 of Law Number 20 of 2025 concerning the Criminal Procedure Code constitutes an alternative mechanism for resolving corporate crimes. However, the absence of a time limit for the Public Prosecutor and judge to examine a DPA application creates a legal vacuum. This normative research concludes that the absence of such a time limit is detrimental to the principles of legality and legal certainty. The implication is that this situation may trigger arbitrary law enforcement (Maulana et al., 2026).

3.2. Comparison of Pending Prosecution Agreements (DPAs) in the Indonesian and UK Criminal Law Systems

The Deferred Prosecution Agreement (DPA) mechanism was first introduced in the United Kingdom in February 2014 to encourage companies to self-report crimes and address fraud, bribery, and economic crimes. To have legal force, a DPA must be approved by the court, which will only approve the agreement if it is considered to be in the interests of justice and contains provisions that are fair, reasonable, and proportionate.

A Deferred Prosecution Agreement (DPA) is an agreement between a prosecutor and a business entity that allows the prosecution of a business entity for certain economic crimes, such as bribery, to be suspended for a specified period, provided that the business entity fulfills certain obligations, such as the payment of fines, compensation, and/or costs. As long as the provisions of the DPA are fulfilled, the company will not face prosecution.

Under the DPA concept in the United Kingdom, a DPA can only be applied to corporations, considering that the application of criminal sanctions against corporations can have a significant impact on the company and may cause substantial losses that can automatically affect employees. In the United Kingdom, the approval of whether a case should be resolved through a DPA depends on the court's decision. The conditions that must be fulfilled by the defendant are determined at the request of the court. In the United Kingdom, the Serious Fraud Office (SFO) and the Director of Public Prosecutions (DPP) have roles in the prosecution process, and special prosecutions are conducted by these institutions. The scope of settlement through DPA in the United Kingdom is narrower, as DPA can be used to resolve bribery and other economic crime cases involving corporations (Ferdian, 2021).

The stages of implementing DPA in the United Kingdom began with the introduction of the framework for deferred prosecution agreements through the Crime and Courts Act 2013. With the enactment of the DPA framework on 24 February 2014, the Serious Fraud Office (SFO) and the Director of Public Prosecutions (DPP) obtained the authority to offer and enter into DPAs subject to court approval. The mechanism constitutes an important instrument for resolving allegations of corporate crime. As a discretionary instrument, the DPA is reached between the prosecutor and the defendant when the defendant is accused of bribery. This involves the suspension of criminal charges for an agreed period in exchange for the fulfillment of certain conditions agreed upon by the defendant (Bu, 2021).

Final approval of the Deferred Prosecution Agreement rests with the court. The prosecutor informs the court that the suspended criminal proceedings should be terminated on the condition that the defendant has fulfilled the terms and conditions after the DPA period ends. In the event of a violation, the court may terminate the agreement and refer the matter to the SFO to proceed with criminal prosecution. Thus, corporations can avoid the stigma of criminal penalties and the collateral consequences that prosecution may cause while still being effectively sanctioned for their crimes.

Based on the explanation above, there is an opportunity to implement DPA within the Indonesian criminal law system. Article 51 of the New Criminal Code states that the purpose of punishment is not only to punish perpetrators but also to resolve conflicts caused by criminal acts, restore disturbed balance, and create a sense of security and peace in society. Another opportunity arises from the compatibility of DPA with several basic principles of criminal procedural law, such as the principle of a fast, simple, and low-cost justice system, which supports efforts to accelerate the recovery of state losses without having to undergo a long and complex judicial process. In addition, the application of the dominus litis principle, which is inherent in the prosecutor as the controller of the case, allows this mechanism to be integrated into the national criminal procedure law as part of the discretionary authority of the Public Prosecutor to conditionally terminate prosecution. One of the corporate crimes currently committed by many companies is corruption. This can be observed from the numerous corporate corruption cases in which corporations are involved as defendants in Indonesia (Manullang, 2025).

The Corruption Eradication Commission (KPK) has designated six corporations as suspects since the enactment of Supreme Court Regulation (Perma) Number 13 of 2016 concerning the Procedures for Handling Criminal Cases by Corporations. The six companies are PT DGI or PT NKE, PT TS, PT NK, PT T, PT ME, and PT PS. One of these companies was named a suspect in connection with alleged corruption in the transfer of forest functions. State losses arising from corruption in the natural resources sector are substantial. It was estimated that the state lost up to 7.24 trillion during the 2003–2014 period from harvested timber and 66.6 trillion from irregularities in timber-use permits during the same period. Meanwhile, state losses resulting from non-payment of mineral and coal taxes were estimated at 15.9 trillion, with additional losses of 28.5 trillion resulting from poor administration and licensing. Therefore, according to Lili, the KPK pays significant attention to preventing corruption in the natural resources sector (Yasin, 2020).

Corruption in a number of state-owned enterprises continues to burden the state. Of the 16 corruption cases alone, limited to significant cases of public concern during the 2000–2024 period, state financial losses reached Rp83.3 trillion. One of these cases involved corruption at PT Timah, which caused state financial losses of Rp29 trillion, in addition to state economic losses of Rp271 trillion. State financial losses amounting to Rp83.3 trillion represented almost 15 percent of the total state capital participation in state-owned enterprises during 2005–2021, which amounted to Rp369.17 trillion.

KPK
Komisi Pemberantasan Korupsi

TENTANG KPK RUANG INFORMASI KEGIATAN PUBLIKASI DATA LAYANAN

Penindakan TPK INSTANSI TPK PROFESI/JABATAN TPK JENIS PERKARA TPK WILAYAH INKRACHT JENIS KELAMIN

TPK Instansi

Updated : Per-Maret 2026 | TW I

NO	INSTANSI	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
1	DPR RI					7	10	7	2	6	2	2	3	15	9	4	7		1
2	Kementerian/Lembaga	1	5	10	12	13	13	16	23	18	46	26	21	39	31	47	44	12	19
3	BUMN/BUMD		4			2	5	7	3	1			5	11	13	5	17	16	8
4	Komisi		9	4	2	2		2	1									2	
5	Pemerintah Provinsi	1	1	9	2	5	4		3	13	4	11	18	13	15	29	11	11	5
6	Pemkab/Pemkot			4	8	18	5	8	7	10	18	19	10	21	53	114	66	50	75
	JUMLAH	**2**	**19**	**27**	**24**	**47**	**37**	**40**	**39**	**48**	**70**	**58**	**57**	**99**	**121**	**199**	**145**	**91**	**108**

Cases by Institution by the KPK

In examining corruption crimes in greater detail and measuring them mathematically, case data based on institutions released by the KPK are presented below. Based on the KPK data above, the implementation of DPA in Indonesia provides a signal that DPA should be implemented immediately. The challenges in its implementation are related to differences between legal systems in countries that use the DPA mechanism and the shift in the principle of enforcing corruption crimes as extraordinary crimes from primum remedium to ultimum remedium (Pravidjayanto et al., 2025).

On May 1, 2026, the United Kingdom's Serious Fraud Office (SFO) obtained court approval for a Deferred Prosecution Agreement (DPA) with Ultra Electronics Holdings Limited, concluding an eight-year investigation into alleged bribery abroad. The settlement, amounting to approximately £15 million, was the SFO's first DPA since 2021, its thirteenth overall, and the first successful corporate bribery law enforcement action since 2022. Although relatively small by global anti-corruption settlement standards, the Ultra Electronics DPA was larger than some previous SFO DPAs and served as an important preliminary test of the April 2025 SFO Guidelines on Corporate Law Cooperation and Enforcement in Relation to Corporate Criminal Offences. The case provides an important indication of how the SFO intends to use the DPA as a future law enforcement instrument.

4. CONCLUSION

Based on the results of the research, it can be concluded that the regulation of Deferred Prosecution Agreement (DPA) in the Indonesian criminal law system represents an important development in resolving corporate criminal cases, particularly following Article 328 of Law Number 20 of 2025 concerning the Criminal Procedure Code. The normative construction of DPA places legal compliance, recovery of losses resulting from criminal acts, and judicial efficiency as its main objectives, while allowing corporations to fulfill certain obligations under judicial supervision. A comparison with the United Kingdom shows similarities in the application of DPA to corporations, prosecutorial involvement in formulating agreements, and the requirement for court approval, but differences in scope and institutional construction. The UK model is primarily directed at corporate economic crime, whereas the Indonesian regulation provides broader objectives, including legal compliance, loss recovery, and judicial efficiency; therefore, the UK model cannot be adopted directly and must be adapted to Indonesia's institutional structure, criminal procedural principles, and corporate criminal liability. The comparative findings also indicate that DPA implementation cannot be regarded as evidence of a reduction in corporate crime or as automatically more effective than conventional prosecution, as existing UK data and practice do not establish a causal relationship between DPA implementation and reduced corporate crime rates. The main issue in Indonesia is the need to strengthen the normative and procedural design of DPA, particularly the absence of a clear time limit for prosecutorial and judicial examination of DPA applications, which may create legal uncertainty and expand discretion. Accordingly, DPA implementation in Indonesia should establish clear limits of authority, measurable examination standards, effective judicial supervision, and transparent application criteria to ensure legal certainty, proportionality, transparency, accountability, and corporate responsibility without assuming that DPA itself will reduce corporate crime.

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