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Comparative Study of the Law of Deferred Prosecution Agreements or *Deferred Prosecution Agreement (Dpa)* in the Code Old Criminal Procedure Law and the Criminal Procedure Code New Criminal Code

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Abstract

The development of modern criminal law shows a shift from a repressive approach to a more restorative and efficient approach, particularly in handling corporate crimes. Prior to the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code, the Indonesian criminal procedure system did not recognize the Deferred Prosecution Agreement (DPA) mechanism. This study aims to analyze the comparative provisions of the DPA in the old and new Criminal Procedure Codes and examine their advantages and disadvantages in handling corporate crimes. This study uses normative legal methods with statutory, conceptual, and comparative approaches. The results show that the old Criminal Procedure Code, based on Law Number 8 of 1981, only recognizes the termination of prosecution based on certain legal reasons and does not provide a mechanism for postponing prosecution based on an agreement. In contrast, Article 328 of Law Number 20 of 2025 has regulated the DPA as an alternative mechanism for corporations through the fulfillment of obligations in the form of restitution, compliance programs, improved governance, and cooperation with law enforcement officials. The DPA has advantages in terms of efficient case resolution, accelerated recovery of losses, and increased corporate compliance. However, weaknesses remain, including the broad discretion of public prosecutors, the unclear definition of crimes that can be used for DPA, and suboptimal oversight and transparency mechanisms. Therefore, regulatory improvements are needed to ensure legal certainty, accountability, and justice.

Keywords: Deferred Prosecution Agreement; Corporation; Criminal Procedure Code.

INTRODUCTION

The development of modern criminal law shows a shift from a repressive approach to punishment to a more restorative and efficient approach, particularly in handling crimes committed by corporations. Corporations play a strategic role in national

economic development, but on the other hand, they also have the potential to commit crimes that can cause significant losses to the state and society. In practice, conventional criminal law enforcement mechanisms are often considered ineffective because

they require lengthy and expensive judicial processes and may not provide optimal restitution to victims. This situation has encouraged the development of various more flexible case resolution mechanisms, including the Deferred Prosecution Agreement (DPA), as a form of reform in the modern criminal justice system (Alaydrus, 2025).

Before the enactment of the new Criminal Procedure Code, the Indonesian criminal procedure law system did not yet recognize the Deferred Prosecution Agreement (DPA) mechanism. The Criminal Procedure Code based on Law Number 8 of 1981 only regulates the termination of prosecution as stated in Article 140 paragraph (2), namely if there is insufficient evidence, the alleged event does not constitute a crime, or the case is closed by law. The termination of prosecution is essentially a formal legal action and is fundamentally different from the DPA because it is not based on an agreement between the public prosecutor and the perpetrator of the crime. Thus, the old criminal procedure law system does not yet provide a mechanism for resolving criminal cases through an agreement that allows prosecution to be postponed accompanied by the fulfillment of certain requirements by the perpetrator (Alviora et al., 2025).

A Deferred Prosecution Agreement (DPA) is a mechanism for postponing prosecution through an agreement between the public prosecutor and a corporation suspected of committing a crime. Through this mechanism, the corporation can be required to fulfill a number of requirements, including payment of compensation, restitution of losses incurred, improvement of corporate governance, implementation of legal compliance programs, and cooperation with law enforcement officials. The DPA concept developed as part of modern criminal law reforms that seek to balance the interests of law enforcement with the interests of restitution, economic stability, and the sustainability of corporate activities. Therefore, the DPA is not solely oriented towards punishment, but also emphasizes accountability and improvement of corporate behavior to prevent similar crimes from occurring again (Hidayat & Noerdajasakti, 2025).

In Indonesia, the DPA mechanism has begun to receive normative regulation through Article 328 of Law Number 20 of 2025 concerning the Criminal Procedure Code. This regulation demonstrates a more progressive reform of criminal procedure law, emphasizing efficient case resolution, victim recovery, and increased corporate legal compliance. In its implementation, judges are authorized to examine and ratify DPA agreements to ensure that they continue to meet the principles of accountability, proportionality, and legal certainty. The involvement of judges is crucial to provide oversight of the agreement process, ensuring that the public prosecutor's authority is not used arbitrarily and that the rights of interested parties are protected (Maulana et al., 2026).

Nevertheless, the DPA regulation in Indonesia still raises various issues that require further study. One of the main problems lies in the broad authority of the public prosecutor in accepting or rejecting DPA requests without detailed and measurable parameters, thus potentially leading to abuse of authority and non-uniformity in its application. Furthermore, the absence of clear limits on the types of crimes that can be resolved through the DPA mechanism raises concerns that serious crimes, including corruption, can be resolved through this mechanism without adequate consideration of the public interest. Based on these issues, this article will examine in more depth " A Comparative

Study of Deferred Prosecution Agreements (DPA) in the Old Criminal Procedure Code and the New Criminal Procedure Code ."

RESEARCH METHODS

This research uses normative legal research method, namely research that examines the law based on norms, principles, and provisions of laws and regulations related to the research object. This research aims to analyze the comparative regulation of Deferred Prosecution Agreement (DPA) in the old Criminal Procedure Code based on Law Number 8 of 1981 and the new Criminal Procedure Code based on Law Number 20 of 2025. The legal materials used consist of primary legal materials in the form of laws and regulations, especially Law Number 8 of 1981, Law Number 20 of 2025, and the Crime and Courts Act 2013 as the basis for regulating DPA in England; secondary legal materials in the form of books, scientific journals, articles, and expert opinions; and tertiary legal materials in the form of legal dictionaries and encyclopedias.

The research approaches used include a statutory approach, a conceptual approach, and a comparative approach. The statutory approach is used to examine the provisions regarding the termination of prosecution in the old Criminal Procedure Code and the provisions of the DPA in Article 328 of the new Criminal Procedure Code. The conceptual approach is used to analyze the concept of DPA, corporate criminal liability, restorative justice, prosecutorial discretion, legal certainty, and the efficiency of law enforcement. Meanwhile, the comparative approach is used to compare the DPA provisions in Indonesia with the English legal system, particularly regarding the authority of the public prosecutor, DPA requirements, forms of corporate obligations, court involvement, oversight mechanisms, and legal consequences if the agreement is not implemented.

The collection of legal materials was conducted through library research by inventorying and identifying various legal materials relevant to the research problem. Furthermore, the legal materials were analyzed qualitatively using descriptive-analytical and comparative methods. Descriptive-analytical analysis was used to describe and examine the substance of the DPA regulations in the old and new Criminal Procedure Codes, while comparative analysis was used to identify similarities, differences, and strengths and weaknesses of the DPA regulations in Indonesia and the United Kingdom. The results of this analysis were then used to draw conclusions regarding the development of DPA regulations in Indonesian criminal procedure law and the need to strengthen these regulations to ensure legal certainty, accountability, and effective law enforcement against corporate crimes.

RESULTS AND DISCUSSION

A. Comparison of the Law on Deferred Prosecution Agreements (DPA) in the Old Criminal Procedure Code and the New Criminal Procedure Code

The Deferred Prosecution Agreement (DPA) arrangement in the Indonesian legal system is a form of reform of criminal procedural law that has developed along with the increasing complexity of corporate crimes. Before the birth of the new Criminal Procedure Code, Indonesia did not yet recognize the mechanism for postponing prosecution based on an agreement between the public prosecutor and the perpetrator of the crime. The Criminal Procedure Code based on Law Number 8 of 1981 only regulates

the termination of prosecution as regulated in Article 140 paragraph (2), namely if there is insufficient evidence, the incident that occurred does not constitute a crime, or the case is closed by law. This regulation shows that the orientation of the old criminal procedural law still relies on a retributive approach and case resolution through a formal litigation process in court (Nelson, 2025).

The nature of the old criminal procedural law demonstrated a lack of flexibility and restorative resolving of corporate criminal cases. Public prosecutors only had the option to proceed to court or discontinue prosecution based on certain limited legal grounds. This situation rendered the old criminal procedural law system incapable of accommodating the needs of handling corporate crimes, which often relate to economic aspects, investment, labor, and broad public interests. The absence of a Deferred Prosecution Agreement mechanism also demonstrated that the old criminal procedural law did not provide space for victim recovery, implementation of legal compliance programs, or improvement of corporate governance as part of criminal case resolution. Fundamental changes began to emerge after the regulation of the Deferred Prosecution Agreement in Article 328 of Law Number 20 of 2025 concerning the Criminal Procedure Code. This regulation is a form of reform of criminal procedural law specifically directed at handling corporate crimes through a more restorative and efficient approach. The existence of the Deferred Prosecution Agreement indicates a shift in the orientation of criminal law enforcement from conventional punishment to an approach that emphasizes recovery of losses and increased compliance, corporate law, and efficiency of criminal case resolution (Nuarta & Sukedi, 2025).

Based on Article 328 paragraph (2) of Law Number 20 of 2025, the Deferred Prosecution Agreement mechanism can only be applied to corporations. This limitation indicates that lawmakers view corporate crimes as having different characteristics than crimes committed by individuals. Criminalization of corporations not only impacts company managers but can also affect workers, investors, and national economic stability. Therefore, the Deferred Prosecution Agreement is positioned as an alternative instrument that allows the resolution of criminal cases without having to directly impose conventional criminal penalties on corporations.

The Deferred Prosecution Agreement mechanism begins with the submission of an application by the suspect, defendant, or advocate to the public prosecutor before the case is transferred to the court as stipulated in Article 328 paragraph (3). This provision emphasizes that the Deferred Prosecution Agreement can only be carried out at the pre-trial stage before the main case examination begins in court. The public prosecutor is then given the authority to accept or reject the application based on considerations of justice, the interests of the victim, and compliance with the provisions of laws and regulations as stipulated in Article 328 paragraph (4). This construction shows that the public prosecutor's discretion holds a central position in the implementation of the Deferred Prosecution Agreement (Nuryani & Novriyandra, 2025).

If the Deferred Prosecution Agreement application is accepted, the public prosecutor is required to notify the court regarding the implementation of the Deferred Prosecution Agreement process and record it in the minutes as stipulated in Article 328 paragraph (5). The results of the Deferred Prosecution Agreement must then be submitted to the court no later than seven days after the agreement is signed as stipulated in Article 328 paragraph (6). The

court is then required to hold an examination hearing to assess the suitability and validity of the Deferred Prosecution Agreement as stipulated in Article 328 paragraph (7). At this stage, the judge has the authority to assess the suitability of the terms of the agreement with legal provisions, the proportionality of the corporation's obligations, its impact on the victim, society, the environment, the national economy, and the corporation's ability to carry out its obligations as stipulated in Article 328 paragraph (8).

The involvement of the court in ratifying the Deferred Prosecution Agreement demonstrates that the mechanism is not merely a private agreement between the public prosecutor and the corporation. Ratification of the Deferred Prosecution Agreement remains under the control of the judicial power as a form of oversight of the use of discretion by the public prosecutor. If the judge approves the Deferred Prosecution Agreement, the ratification is stated in a court decision and the case is suspended in accordance with the contents of the agreement as stipulated in Article 328 paragraph (10). If the judge rejects the Deferred Prosecution Agreement, the case continues through a regular examination in court as stated in Article 328 paragraph (11). The conditions that can be included in the Deferred Prosecution Agreement are regulated in Article 328 paragraph (12). These provisions include payment of compensation or restitution to the victim, implementation of legal compliance programs and improvements in anti-corruption corporate governance, reporting obligations and cooperation with law enforcement officials, and other corrective actions deemed necessary by the public prosecutor. This regulation shows that the orientation of the Deferred Prosecution Agreement is not only focused on punishment, but also on recovering losses and preventing the recurrence of criminal acts through internal corporate reform. In the supervisory aspect, Article 328 paragraph (13), paragraph (14), and paragraph (15) stipulates that a case can be stopped if all obligations are fulfilled, while failure to fulfill obligations authorizes the public prosecutor to continue the prosecution without additional approval.

The provisions for Deferred Prosecution Agreements in the new Criminal Procedure Code are essentially similar to those in the English legal system, which regulates Deferred Prosecution Agreements through the Crime and Courts Act 2013. Both legal systems recognize Deferred Prosecution Agreements as an alternative mechanism for resolving corporate criminal cases outside of conventional criminal penalties. Indonesia and the UK also both position the court as the institution with the authority to oversee and ratify Deferred Prosecution Agreements before they become legally binding. The involvement of the courts demonstrates that Deferred Prosecution Agreements remain within the framework of due process of law and accountability for criminal law enforcement (Paramita et al., 2025).

The fundamental differences between Indonesia and the UK are evident in the implementation mechanism and parameters for using Deferred Prosecution Agreements. In the UK legal system, prosecutors are required to meet both an evidentiary test and a public interest test before offering Deferred Prosecution Agreements to corporations. The evidential test relates to the sufficiency of evidence against a corporate crime, while the public interest test assesses whether a settlement through a Deferred Prosecution Agreement is in the public interest. The UK system also implements two stages of judicial oversight, through a preliminary hearing and a final hearing, which provide judges with

greater latitude to assess the fairness, reasonableness, and proportionality of the agreement. These regulations demonstrate that the UK system is more detailed and stringent in controlling the use of prosecutorial discretion.

Another difference is seen in the substance of the obligations and the principle of transparency in the implementation of the Deferred Prosecution Agreement. In the Indonesian legal system, the requirements for a Deferred Prosecution Agreement include restitution, a legal compliance program, improvements in corporate governance, reporting obligations, and other corrective actions as stipulated in Article 328 paragraph (12). In the English legal system, the contents of a Deferred Prosecution Agreement generally include payment of financial fines, victim compensation, payment of prosecution costs, reform of the corporate compliance program, cooperation in the prosecution of certain individuals, and certain social obligations. The English system also places greater emphasis on the principle of transparency because the ratification process and the contents of the agreement are in principle publicly available. The new Indonesian Criminal Procedure Code does not yet regulate in detail regarding information disclosure, periodic evaluation, or a more structured monitoring mechanism for the implementation of the Deferred Prosecution Agreement.

B. Advantages and Disadvantages of Deferred Prosecution Agreements (DPA) in the New Criminal Code

The Deferred Prosecution Agreement (DPA) in the new Criminal Procedure Code represents a reform of criminal law that demonstrates a shift in the orientation of criminal law enforcement in Indonesia. The presence of the Deferred Prosecution Agreement indicates a shift from a solely punishment-oriented approach to a more restorative, efficient, and loss-recovery-oriented approach. In the context of corporate crime, conventional punishment mechanisms often do not provide optimal benefits because the lengthy and complex judicial process does not necessarily allow for rapid recovery of losses to victims or the state. Therefore, the Deferred Prosecution Agreement is presented as an alternative instrument for resolving corporate criminal cases that maintains the interests of law enforcement while considering economic stability and the sustainability of corporate businesses (Patmos & Lasmadi, 2025).

One of the main advantages of a Deferred Prosecution Agreement lies in its ability to expedite the recovery of losses for victims and the state. In conventional criminal justice mechanisms, the process from evidence to a final and binding decision often takes a long time, delaying recovery. Through a Deferred Prosecution Agreement, corporations can immediately fulfill their obligations in the form of compensation payments, restitution, or other corrective actions as stipulated in Article 328 paragraph (12) of Law Number 20 of 2025 concerning the Criminal Procedure Code. This regulation shows that the Deferred Prosecution Agreement places more emphasis on substantial settlement and real recovery rather than merely formal punishment for corporations.

In addition, this mechanism also creates efficiency in the criminal justice system because the resolution of cases does not have to go through all stages of criminal trials that require large costs, long time, and high use of law enforcement resources. Another advantage is related to efforts to encourage legal compliance and improve corporate governance. Article 328 paragraph (12) provides space for public prosecutors to require the implementation

of legal compliance programs, improvements in anti-corruption corporate governance, as well as reporting obligations and cooperation with law enforcement officials as part of the Deferred Prosecution Agreement. These regulations indicate that the orientation of the Deferred Prosecution Agreement is not only limited to the resolution of criminal cases, but is also directed at preventing the recurrence of criminal acts through internal corporate reform (Prasetya & Indraswara, 2025).

From the perspective of modern criminal law reform, this mechanism reflects a more adaptive preventive and corrective approach to the increasingly complex development of corporate and economic crimes. Despite its advantages, the Deferred Prosecution Agreement also has weaknesses. One of the main problems lies in the extent of the public prosecutor's authority in accepting or rejecting a Deferred Prosecution Agreement application as stipulated in Article 328 paragraphs (3) and (4). This regulation is not accompanied by detailed and objective parameters regarding the measures of justice, public interest, or legal compliance that form the basis for accepting the Deferred Prosecution Agreement. This condition has the potential to give rise to abuse of authority, closed negotiation practices, and the potential for buying and selling cases if not balanced with a strict and transparent oversight mechanism. From the perspective of criminal procedural law, excessive discretion without clear boundaries can create legal uncertainty and reduce public trust in the integrity of criminal law enforcement.

Another weakness relates to the lack of explicit restrictions on the types of crimes that can utilize the Deferred Prosecution Agreement mechanism. Article 328 of Law Number 20 of 2025 does not provide any limiting provisions regarding certain crimes that are excluded from the Deferred Prosecution Agreement. This condition raises concerns that serious crimes, including corruption, can be resolved through the mechanism of deferred prosecution. Furthermore, the provisions regarding the supervision of the implementation of the Deferred Prosecution Agreement are still general in nature. Article 328 paragraph (14) only authorizes the court to monitor the implementation of the Deferred Prosecution Agreement without explaining in detail the supervision mechanism, periodic evaluation, or the form of reporting on the implementation of corporate obligations. This lack of clarity has the potential to lead to weak control over the implementation of the Deferred Prosecution Agreement and has implications for low accountability in practice (Tabasi & Tobondo, 2025).

Another important weakness relates to the potential for inequality in justice between corporations and individual criminals. Deferred Prosecution Agreements can only be applied to corporations as stipulated in Article 328 paragraph (2), while individual perpetrators continue to undergo conventional criminal proceedings. This condition can create the perception that corporations receive more lenient legal treatment than ordinary criminals. From the perspective of the principle of equality before the law, the implementation of Deferred Prosecution Agreements must still pay attention to the balance between the efficiency of law enforcement and the public's sense of justice. Based on this, Deferred Prosecution Agreements can be understood as an instrument of criminal law reform that has positive value in creating more restorative and efficient case resolution, but still requires regulatory improvements related to the parameters of public prosecutor discretion, limitations on the types of crimes, oversight mechanisms, and transparency of implementation in

order to be able to guarantee legal certainty, accountability, and justice in the Indonesian criminal justice system (Zhou, 2025).

CONCLUSION

Deferred Prosecution Agreement (DPA) in the new Criminal Procedure Code represents a form of reform of criminal procedure law in Indonesia that was previously unknown in the old Criminal Procedure Code. Through Article 328 Law Number 20 of 2025, Deferred Prosecution Agreement The Deferred Prosecution Agreement (DPA) is presented as an alternative mechanism for resolving corporate criminal cases, oriented towards loss recovery, judicial efficiency, and improving corporate legal compliance. This regulation has the advantage of accelerating loss recovery and reducing lengthy litigation processes. However, the regulation still has weaknesses, particularly related to the breadth of public prosecutor discretion, the absence of restrictions on specific types of crimes, and the suboptimal oversight and transparency mechanisms for the implementation of Deferred Prosecution Agreements. Therefore, regulatory improvements are needed to ensure that the implementation of Deferred Prosecution Agreements continues to guarantee legal certainty, accountability, and a sense of justice in the Indonesian criminal justice system.

REFERENCES

1. Alaydrus, H. (2025). Penerapan Deferred Prosecution Agreement (DPA) Sebagai Alternatif Penegakan Hukum Pada Tindak Pidana Korporasi Di Indonesia. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(5), 8036–8050.
2. Alviora, C., Hendriwan, H., Akbar, M. D., & Febriyani, E. (2025). Deferred Prosecution Agreements as an Alternative for Corporate Corruption Cases: A Study on Infrastructure Procurement in Indonesia. *Barelang Journal of Legal Studies*, 3(1), 79–100.
3. Hidayat, J., & Noerdajasakti, S. (2025). Reforming Criminal Procedure to Regulate Deferred Prosecution Agreements for Corporate Personal Data Breaches in Indonesia. *International Journal of Business, Law, and Education*, 6(2), 1220–1226.
4. Maulana, N., Bintang, D. A. K., Rosyida, F. N., & Chaliki, M. L. I. (2026). Akibat Hukum Ketidakpastian Hukum Batas Waktu Deferred Prosecution Agreement (DPA) Pada Sistem Peradilan Pidana Indonesia. *Jurnal Hukum Lex Generalis*, 7(7).
5. Nelson, F. M. (2025). In Search of a Deferred Prosecution Agreement Model for Effective Anti-Corruption Framework in Indonesia. *Hasanuddin Law Review*, 8(2), 122–138.
6. Nuarta, I. N., & Sukedi, M. (2025). Penanggulangan Tindak Pidana Korupsi Oleh Korporasi Dengan Konsep Deferred Prosecution Agreement. *KERTHA WICAKSANA*, 19(2), 142–150.
7. Nuryani, A., & Novriyandra, D. (2025). Urgensi Pengaturan Deferred Prosecution Agreement Dalam Hukum Indonesia: Analisis Asas Legalitas dan Kesetaraan Hukum. *Locus: Jurnal Konsep Ilmu Hukum*, 5(3), 526–534.
8. Paramita, D., Adi, A. B., Ghiffari, M., & Salim, J. (2025). Indonesia: New Criminal Law Framework Takes Effect in 2026—Highlights of Corporate Criminal Liability and Deferred Prosecution Agreement.
9. Patmos, Y., & Lasmadi, S. (2025). Cessation of Prosecution Agreements in Corruption Cases: Does Legal Expediency Threaten the Sustainability of a Fair Legal System? *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 24(2), 6202–6219.
10. Prasetya, D. A., & Indraswara, D. (2025). Lompatan Progresif Kitab Undang-Undang Hukum Acara Pidana (KUHP) sebagai Upaya Mewujudkan Peradilan Pidana Berkeadilan: Progressive Leaps in the Criminal Procedure Code (KUHP) as an Effort to Realize Fair Criminal Justice. *IPMHI Law Journal*, 5(2), 315–352.
11. Tabasi, Y., & Tobondo, Y. (2025). Optimalisasi Pendekatan Follow the Asset dan Follow the Money Melalui Deferred Prosecution Agreement Dalam Penanganan Perkara Pidana Di Indonesia. *Pandelo'e*, 5(1), 85–94.
12. Zhou, V. (2025). Deferred Prosecution Agreement dalam Hukum Pidana Korporasi Lingkungan: Instrumen Alternatif Penegakan Hukum untuk Pembangunan Berkelanjutan. *RIO LAW JURNAL*, 6(2), 1074–1092.