Deferred Prosecution Agreement In Handling Corporate Corruption: A Comparative Study Of Implementation In The United States and the United Kingdom and Its Relevance For State Loss Recovery In Indonesia

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Abstract: Corporate corruption causes massive state financial losses and has systemic impacts on the national economy. Conventional prosecution mechanisms often cannot maximize state asset recovery while ensuring sustainable corporate governance reform. A Deferred Prosecution Agreement (DPA) is a legal instrument that suspends prosecution against a corporation under specific conditions, including paying financial penalties, restoring losses, and implementing compliance programs. This research analyzes the legal framework and practical implementation of DPAs in handling corporate corruption in the United States and the United Kingdom, while evaluating their relevance and potential adaptation into Indonesia's legal system. Using a normative legal research method with a comparative approach, this study finds that DPAs in both jurisdictions have maximized state loss recovery, encouraged corporate cooperation, and prevented the negative collateral consequences of full prosecution. This research concludes that Indonesia must establish a comprehensive legislative foundation for DPA implementation, while upholding the principles of legal certainty, restorative justice, and public accountability.

Keywords: Deferred Prosecution Agreement; Corporate Corruption; State Loss Recovery

Introduction

Corporate corruption constitutes one of the most pressing legal challenges faced by many countries, including Indonesia. Corporate-level corruption not only inflicts direct financial losses upon the state treasury, but also distorts fair market competition, erodes investor confidence, and impedes sustainable economic development. Data from the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* — KPK) reveal that from 2003 to 2023, more than 1,300 corruption cases were handled, with accumulated state losses reaching hundreds of trillions of Indonesian rupiah.[1]

Globally, mechanisms for handling corporate corruption continue to evolve significantly. One legal instrument that has proven effective across numerous developed jurisdictions is the Deferred Prosecution Agreement (DPA). A DPA is a mechanism in which a prosecutor agrees to suspend prosecution against a corporation suspected of committing a criminal offense, provided the corporation fulfills a set of stipulated conditions within an agreed timeframe.[2]

The United States pioneered the use of DPAs to address corporate crime. Since the Prudential Securities case in 1994, the DPA has evolved into a key instrument of the U.S. Department of Justice (DOJ) for resolving large-scale corporate corruption and financial crime. Brandon Garrett has documented that through DPAs, the DOJ has consistently secured asset recovery far exceeding what conventional prosecution typically yields.[3]

The United Kingdom, with its robust common law tradition, formally adopted the DPA through the Crime and Courts Act 2013. This more structured legislative framework provides greater legal certainty for corporations while ensuring adequate judicial oversight through mandatory court approval of every DPA reached. The Serious Fraud Office (SFO) has successfully applied DPAs in several internationally significant corruption cases. [4]

In Indonesia, although provisions on corporate criminal liability exist under Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption, as well as Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases Committed by Corporations, a mechanism equivalent to the DPA has yet to find a place in the Indonesian criminal justice system. The absence of such an instrument is widely regarded as a structural weakness in efforts to recover state losses attributable to corporate corruption.[5]

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[1] Corruption Eradication Commission (KPK), "KPK Annual Report 2023" (Jakarta: KPK, 2023), pp. 12–15

[2] United Nations Office on Drugs and Crime (UNODC), "An Introduction to Deferred Prosecution Agreements" (Vienna: UNODC, 2020), p. 3.

[3] Brandon Garrett, Too Big to Jail: How Prosecutors Compromise with Corporations (Cambridge: Harvard University Press, 2014), p. 8

[4] U.S. Department of Justice, "Justice Manual: Principles of Federal Prosecution of Business Organizations" (Washington D.C.: DOJ, 2018), Section 9-28.1000.

[5] Alexander & Spence, "Deferred Prosecution Agreements: Shovel Ready?" Law Quarterly Review, Vol. 126, 2010, p. 583

This study's relevance is further heightened by Indonesia's serious challenges in recovering state assets (pemulihan aset) from corporate corruption. Protracted criminal proceedings, difficulties in tracing and freezing corporate assets, and limited enforcement capacity represent concrete obstacles that demand innovative legal instruments. At the same time, concerns persist that DPAs may serve as a vehicle for large corporations to effectively "buy" freedom from legal accountability, thereby potentially compromising the principles of justice. [6]

Against this background, this article answers three research questions. First, what is the legal framework and practical application of DPAs in handling corporate corruption in the United States and the United Kingdom? Second, how do the DPA models in both jurisdictions compare from the perspective of state loss recovery effectiveness? Third, to what extent is the DPA relevant and adaptable to the Indonesian legal system in the context of recovering state losses caused by corporate corruption? [7]

This research aims to make a scholarly contribution by offering a conceptualization of a DPA model suitable for the Indonesian legal context, as well as providing policy recommendations to legislators and law enforcement institutions in their efforts to maximize state loss recovery

Method

This research employs a normative legal research method, which examines library materials and secondary data comprising primary, secondary, and tertiary legal sources. Soerjono Soekanto and Sri Mamudji define normative legal research as encompassing the study of legal principles, legal systematics, levels of vertical and horizontal synchronization, comparative law, and legal history. [8]

Three complementary approaches are adopted. First, the statutory approach (statute approach), which examines legislation pertaining to DPAs and corporate corruption in the United States, the United Kingdom, and Indonesia. Second, the comparative approach (comparative approach), which juxtaposes the legal systems and DPA practices in both jurisdictions to obtain a comprehensive understanding of the respective advantages and limitations of each model. Third, the conceptual approach (conceptual approach), which draws upon prevailing academic doctrines in legal scholarship, particularly concerning corporate criminal liability, restorative justice, and asset recovery. [9]

The legal materials used in this research comprise three categories. First, primary legal materials, including statutes, international agreements, and relevant

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[6] Wulf A. Kaal and Timothy A. Lacine, "The Effect of Deferred and Non-Prosecution Agreements on Corporate Governance: Evidence from 1993–2013", Business Lawyer, Vol. 70, No. 1, 2014, p. 16.

[7] Peter Spivack and Sujit Raman, "Regulating the New Regulators: Current Trends in Deferred Prosecution Agreements", American Criminal Law Review, Vol. 45, 2008, p. 162.

[8] Soerjono Soekanto and Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat [Normative Legal Research: A Brief Overview] (Jakarta: RajaGrafindo Persada, 2001), pp. 13–14.

[9] Peter Mahmud Marzuki, Penelitian Hukum [Legal Research], Revised Edition (Jakarta: Kencana Prenada Media Group, 2011), p. 46.

court decisions. In the United States, these include the Foreign Corrupt Practices Act (FCPA) 1977, the DOJ Justice Manual, and a selection of publicly available DPAs. In the United Kingdom, they include the Crime and Courts Act 2013 and the SFO DPA Code of Practice. In Indonesia, primary materials include Law Number 31 of 1999 jo. Law Number 20 of 2001, Law Number 8 of 1981 (KUHAP), and Supreme Court Regulation Number 13 of 2016.[10]

Second, secondary legal materials consisting of legal textbooks, academic law journals, scientific papers, reports from international organizations such as UNODC, OECD, and Transparency International, and annual reports of relevant enforcement agencies. Third, tertiary legal materials including legal dictionaries, legal encyclopedias, and other reference sources that provide guidance on primary and secondary materials.[11]

Legal materials were collected through library research by compiling and examining relevant legal sources from electronic legal databases, university libraries, and official government document repositories. The materials were analyzed qualitatively through systematic, teleological, and comparative interpretation. Findings are presented in a descriptive-analytical manner that describes, explains, and evaluates the legal phenomena under study.

Results & Discussion

1. Legal Framework and Practice of DPAs in the United States & United Kingdom

1.1. History and Legal Foundation of DPAs in the United States

The DPA in the United States originated from pre-trial diversion practices initially developed for individual offenders in the 1970s. Its formal application to corporations began in the early 1990s, with Prudential Securities Inc. becoming the first corporation to undergo this process in 1994. Since then, DOJ use of DPAs has grown exponentially, particularly following the Enron and WorldCom scandals of the early 2000s, which severely undermined public confidence in corporate governance in the United States.[12] The legal basis for DPAs in the United States is essentially informal, meaning that there is no standalone statute explicitly regulating the mechanism. Instead, DPAs rest on prosecutorial discretion, a well-established principle in the American legal system. The substantive legal bases most frequently invoked in DPAs include the Foreign Corrupt Practices Act (FCPA) 1977 for cross-border bribery cases,

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[10] Johnny Ibrahim, Teori dan Metodologi Penelitian Hukum Normatif [Theory and Methodology of Normative Legal Research] (Malang: Bayumedia Publishing, 2006), p. 57.

[11] Ibid., p. 58

[12] United States v. Siemens AG, Criminal Information No. 08-CR-367 (D.D.C. 2008). See also: DOJ Press Release, "Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations", 15 December 2008.

as well as various provisions of the United States Code governing fraud, money laundering, and securities violations.[13]

Substantive guidance for federal prosecutors negotiating DPAs with corporations has been articulated through a series of DOJ internal memoranda, commencing with the Thompson Memorandum (2003), followed by the McNulty Memorandum (2006) and the Filip Memorandum (2008). This guidance is now consolidated within the Justice Manual, which sets out the principles of corporate prosecution, including the criteria prosecutors must consider in determining whether to offer a DPA to a corporation.[14]

1.2. Structure and Key Components of U.S. DPAs

A DPA negotiated between the DOJ and a corporation typically contains the following principal components. First, a statement of facts setting out a comprehensive account of the alleged criminal conduct. Corporations signing a DPA are ordinarily required to acknowledge the accuracy of these facts, though not necessarily to admit formal criminal liability. Second, financial penalties and/or disgorgement of proceeds, calibrated under the Federal Sentencing Guidelines with reference to applicable aggravating and mitigating factors. Third, implementing a comprehensive compliance program. Fourth, the appointment of an independent compliance monitor to oversee implementation of the compliance program and report periodically to the DOJ. [15]

A U.S. DPA typically lasts one to three years. If the corporation successfully fulfills all conditions during this period, the DOJ will dismiss the previously filed charges. Conversely, if the corporation breaches the DPA, the DOJ may resume prosecution using the corporation's own acknowledged statement of facts as evidence. This mechanism creates powerful incentives for corporate compliance with all agreed conditions.[16]

The Siemens AG case in 2008 serves as one of the clearest illustrations of DPA effectiveness in recovering state losses. Siemens AG, a German multinational, was

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[13] Foreign Corrupt Practices Act of 1977 (FCPA), 15 U.S.C. §§ 78dd-1 et seq

[14]Thompson Memorandum, "Principles of Federal Prosecution of Business Organizations" (2003); subsequently replaced by the McNulty Memorandum (2006) and the Filip Memorandum (2008).

[15] U.S. Department of Justice, "Corporate Enforcement Policy" (Washington D.C.: DOJ, 2017, updated 2019).

[16] Brandon Garrett, op. cit., pp. 58–62.

charged with paying bribes to government officials across multiple countries totaling more than USD 1.4 billion. Through a DPA with the DOJ and parallel resolutions with other regulators, Siemens ultimately paid fines and disgorgement exceeding USD 1.6 billion at the time the largest settlement in FCPA enforcement history. Siemens was also required to undertake comprehensive reform of its compliance program under an independent monitor.

1.3. Adoption of DPAs through the Crime and Courts Act 2013

The United Kingdom adopted DPAs more formally and systematically than the United States. The Crime and Courts Act 2013 represents a landmark in the history of corporate criminal law in England and Wales, as it provided, for the first time, an explicit statutory basis for DPAs. The Act empowers the Director of Public Prosecutions and the Director of the Serious Fraud Office to negotiate DPAs with legal entities suspected of committing serious economic crimes, including bribery, fraud, money laundering, and market abuse. [17]

The philosophical underpinning of U.K. DPAs rests on three pillars. First, the public interest in achieving resolutions that maximize loss recovery. Second, preventing collateral consequences that harm innocent third parties, such as employees and minority shareholders. Third, promoting a culture of legal compliance within the corporate ecosystem.[18]

1.4. Mechanism and Procedure of U.K. DPAs

One defining feature distinguishing the U.K. model from its American counterpart is robust judicial oversight. Under the *Crime and Courts Act* 2013, every DPA agreed between the prosecutor and a corporation must be approved by the Crown Court. The court assesses whether the proposed DPA is in the interests of justice and whether its terms are fair, reasonable, and proportionate.[19]

The DPA procedure in the United Kingdom encompasses three principal stages. First, the pre-negotiation stage, during which the SFO conducts an evidential assessment to determine whether there is sufficient evidence to prosecute the

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[17] Serious Fraud Office (SFO) United Kingdom, "Deferred Prosecution Agreements: Code of Practice" (London: SFO, 2014), pp. 4–5.
[18] Crime and Courts Act 2013 (UK), Schedule 17, Paragraph 7.
[19]Ibid., Paragraph 8.

corporation and whether the public interest supports resolving the matter by way of a DPA. Second, the negotiation stage, during which the SFO and the corporation negotiate the terms of the DPA confidentially. Third, the court approval stage, during which the Crown Court judge conducts two hearings: first, an in-principle hearing to confirm that negotiations may proceed, and second, a final hearing to grant formal approval of the agreed DPA.[20]

The Standard Bank PLC case in 2015 was the first DPA to be concluded under the U.K. statutory framework. Standard Bank was charged with failing to prevent bribery under the *Bribery Act* 2010 in connection with payments made to Tanzanian officials relating to the arrangement of a USD 600 million government bond. Through a DPA approved by Lord Justice Leveson, Standard Bank was required to pay USD 25.2 million in financial penalty, USD 7 million in disgorgement, and USD 16.8 million to the Tanzanian government. The case marked a new era in corporate corruption enforcement in the United Kingdom and attracted widespread international recognition.[21] The Rolls-Royce PLC case in 2017 subsequently became the largest DPA in U.K. history to that date. Rolls-Royce was found to have engaged in bribery across eight different countries over more than two decades. Through a DPA negotiated with the SFO, Rolls-Royce was required to pay more than £671 million, comprising financial penalties, disgorgement, and investigative costs. This case demonstrated the U.K. DPA model's capacity to address complex, multi-jurisdictional corporate corruption of extraordinary scale.[22]

1.5. Comparative Analysis of DPA Models in the United States and United Kingdom

A comparison of the U.S. and U.K. DPA models reveals several fundamental differences with direct implications for the effectiveness of state loss recovery and the protection of the public interest. On legal foundations, U.S. DPAs rest on prosecutorial discretion without an explicit statutory basis, whereas U.K. DPAs are comprehensively regulated by the *Crime and Courts Act* 2013 and accompanying guidance. This distinction has immediate implications for legal certainty and the

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[20] David Hicks, "Deferred Prosecution Agreements: The New Corporate Enforcement Tool", Criminal Law Review, Vol. 8, 2014, p. 491.

[21] Serious Fraud Office v. Standard Bank PLC, Case No. U20150854 (Crown Court at Southwark, 30 November 2015).

[22] Serious Fraud Office v. Rolls-Royce PLC, Case No. U20170036 (Crown Court at Southwark, 17 January 2017).

consistency of DPA application in each jurisdiction.[23]

On judicial oversight, the U.K. model uses a far more stringent mechanism. The mandatory court approval requirement in every U.K. DPA is designed to ensure that the public interest and principles of justice are not sacrificed for pragmatic case settlement. The judiciary in the U.K. system plays an active role as guardian of the public interest, rather than serving as a mere administrative formality. Lord Justice Leveson in the Standard Bank case emphasized that the court's function is to ensure that the proposed DPA represents a genuinely fair and proportionate resolution, rather than simply a form of plea bargaining by another name.[24]

On financial recovery outcomes, both models perform impressively. In the United States, between 2003 and 2023, the DOJ recovered more than USD 100 billion through corporate case resolutions via DPAs and Non-Prosecution Agreements (NPAs). In the United Kingdom, although the DPA regime began in 2015, the SFO recovered more than £1.5 billion through completed DPAs by 2023. These remarkable recovery rates position the DPA as a substantially more efficient instrument than conventional prosecution for maximizing the return of losses to the state.[25]

2. Relevance of DPAs for State Loss Recovery in Indonesia

2.1. The Legal Framework for Corporate Criminal Liability in Indonesia

Indonesia has recognized corporate criminal liability across multiple statutes. Law Number 31 of 1999, together with Law Number 20 of 2001 on the Eradication of Corruption, explicitly identifies corporations as potential subjects of criminal corruption. Article 1(1) of the Law defines a corporation as a group of persons and/or organized wealth, whether constituting a legal entity or otherwise.[26] Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases Committed by Corporations represents a significant milestone in the development of corporate criminal law in Indonesia. This regulation provides detailed rules on when corporate liability may be sought, the applicable procedure, and the types of sanctions that may

[23]Crime and Courts Act 2013 (UK), Schedule 17, Paragraph 5(1).

[24]Lord Justice Leveson in Serious Fraud Office v. Standard Bank PLC, op. cit., paragraph 32.

[25] Serious Fraud Office, "Annual Report and Accounts 2022–2023" (London: SFO, 2023), p. 28.

[26]Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption (State Gazette of the Republic of Indonesia Year 2001 Number 134).

be imposed on corporations. However, the regulation remains essentially procedural and does not address the dimension of out-of-court settlement that constitutes the core of the DPA mechanism.[27]

Indonesia's criminal procedure framework, governed by Law Number 8 of 1981 on the Code of Criminal Procedure (KUHAP), fundamentally adheres to a strict principle of mandatory prosecution, under which the public prosecutor is in principle obliged to prosecute every case that meets the evidentiary threshold (*dominus litis*). While Article 140(2) of KUHAP recognizes a power to discontinue prosecution, it is confined to narrow grounds: insufficient evidence, the event does not constitute a criminal offense, and closure by operation of law. This stands in fundamental contrast to the broad prosecutorial discretion as practiced in the United States.[28]

2.2. Challenges and Opportunities for DPA Implementation in Indonesia

Several structural challenges must be addressed in order to adopt the DPA mechanism into the Indonesian legal system. First, juridical-normative challenges. The principles of legality and equality before the law guaranteed under Article 27(1) of the 1945 Constitution demand that every person enjoys equal standing before the law. Granting prosecutorial deferrals to large corporations risks being perceived as legal discrimination contrary to this equality principle, particularly where individual perpetrators from the same corporate context receive no comparable treatment.[29]

Second, institutional capacity challenges. Effective DPA implementation requires high-level investigative capacity from enforcement authorities, sophisticated negotiating skills, and a reliable compliance monitoring system. While the KPK has relatively stronger investigative capacity than other Indonesian enforcement agencies, it still needs significant reinforcement in managing post-agreement corporate compliance programs.[30]

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[27]Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases Committed by Corporations.

[28]Law Number 8 of 1981 on Criminal Procedure Law (KUHAP), Article 140(2).

[29]Indriyanto Seno Adji, Korupsi dan Hukum Pidana [Corruption and Criminal Law] (Jakarta: Kantor Pengacara dan Konsultan Hukum Prof. Oemar Seno Adji & Rekan, 2002), p. 122.

[30]Eddy O.S. Hiariej, Prinsip-Prinsip Hukum Pidana [Principles of Criminal Law] (Yogyakarta: Cahaya Atma Pustaka, 2014), p. 205.

Third, legal culture challenges. Indonesia, with its persistently low corruption perception index, must build sufficient public trust that DPAs are not a mechanism for purchasing immunity from legal accountability, but rather an instrument that is substantively more effective in recovering state losses and deterring future violations. Barda Nawawi Arief has cautioned that criminal law reform must be accompanied by reform of the legal culture within society if the objectives of penalization are to be optimally achieved.[31]

Conversely, compelling arguments support adopting DPAs in Indonesia. First, recovery effectiveness. The American and British experience demonstrates that DPAs consistently generate significantly larger and faster financial recoveries than conventional prosecution. In a context where Indonesia faces fiscal pressures from massive state losses, improving asset recovery efficiency is a strategic imperative that cannot be disregarded. Second, prevention of collateral harm. Full corporate prosecution risks causing job losses for thousands of employees uninvolved in the offense, which may ultimately generate social harm disproportionate to any punitive benefit.[32]

2.3. A Relevant DPA Model for Indonesia

Drawing upon the comparative analysis of the U.S. and U.K. models, and taking into account the characteristics of Indonesia's legal system and societal context, several elements should form the core components of an Indonesian DPA model if this mechanism is ultimately adopted. First, Indonesia should adopt the U.K. approach of an explicit legislative foundation. Unlike the United States, which relies on prosecutorial discretion, Indonesia's civil law tradition demands a statute that expressly regulates the procedure, requirements, and limitations of DPA application. A robust legislative basis will provide legal certainty and prevent enforcement authorities from abusing discretion. Satjipto Rahardjo emphasized that in a legal system with a positivistic character such as Indonesia's, formal legality is an

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[31] Barda Nawawi Arief, Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan [Law Enforcement Issues and Criminal Law Policy in Crime Prevention] (Jakarta: Kencana Prenada Media Group, 2007), p. 78.

[32] Mahrus Ali, "Kejahatan Korporasi: Kajian Relevansi Sanksi Pidana terhadap Korporasi" [Corporate Crime: A Study on the Relevance of Criminal Sanctions Against Corporations], Jurnal Hukum Ius Quia Iustum, Vol. 18, No. 2, 2011, p. 240.

indispensable foundation that cannot be bypassed in creating new legal instruments.[33]

Second, rigorous judicial oversight must be a defining feature of the Indonesian DPA model. Every DPA reached between the KPK or the Attorney General's Office and a corporate suspect must be approved by the competent Corruption Court (*Pengadilan Tipikor*). This is essential to ensure public accountability and prevent non-transparent negotiations between enforcement authorities and corporations. This approach also aligns with the judiciary’s role as the guardian of public interest within Indonesia's legal system. Third, state loss recovery must be a non-negotiable primary condition of every DPA. Distinct from financial penalties, which serve a punitive function, state loss recovery aims to restore the state's financial position to that which existed prior to the commission of the offense. This aligns with the restorative principle underpinning restorative justice, which has gained acceptance in contemporary Indonesian criminal law scholarship.[34]

Fourth, robust reporting and public transparency mechanisms must be established to ensure that the DPA negotiation process does not proceed without public visibility. Publishing every concluded DPA, including the penalty amount, the required compliance program, and the identity of the corporation involved, is critical to building public confidence in the instrument. This is particularly pertinent given Indonesia's Corruption Perception Index (CPI) score of 34 out of 100 in 2023, which positions the country as one that requires concrete steps to strengthen anti-corruption governance.[35] Fifth, clear restrictions must be established as to which corporations are eligible for a DPA. Based on the American and British experience, DPAs are typically offered only to corporations that actively cooperate with the investigation, demonstrate genuine willingness to reform their internal governance, and whose full prosecution would impose disproportionate negative consequences on innocent third parties. Corporations that are recidivists or that committed the offense with the highest

[33]Satjipto Rahardjo, Ilmu Hukum [Legal Science] (Bandung: Citra Aditya Bakti, 2006), p. 181.

[34]KPK, "Studi Kajian DPA untuk Perkara Tindak Pidana Korupsi Korporasi" [Study on DPA for Corporate Corruption Cases] (Jakarta: KPK Research and Development Directorate, 2021), pp. 45–47.

[35]Transparency International, "Corruption Perceptions Index 2023" (Berlin: Transparency International, 2024), p. 4.

degree of deliberateness should not qualify for a DPA.[36]

A study on the feasibility of DPA implementation in Indonesia, published by the KPK in 2021, concluded that Indonesia needs to amend the Anti-Corruption Law and the KUHAP simultaneously to create the legal space required for DPA application. The study further recommended establishing a dedicated unit within the KPK with expertise in corporate law, forensic accounting, and compliance program management to support effective DPA implementation. In a broader international framework, Indonesia's adoption of DPAs must also consider compatibility with international instruments it has ratified, including the United Nations Convention Against Corruption (UNCAC), ratified through Law Number 7 of 2006. UNCAC encourages international cooperation in asset recovery and does not prohibit out-of-court settlement mechanisms, provided the principles of accountability and transparency are upheld. This creates sufficient legal space for Indonesia to develop a DPA mechanism aligned with international standards.[37]

From a criminal law reform perspective, the new Criminal Code enacted as Law Number 1 of 2023 contains provisions that could serve as an entry point for developing a DPA mechanism. Although the new Criminal Code does not yet explicitly regulate DPAs, this normative development provides an opportune moment for Indonesia to promptly formulate a comprehensive legal framework for DPA application in the handling of corporate corruption.[38]

Conclusion

Based on the analysis of the legal framework and practice of DPAs in the United States and the United Kingdom, and their relevance to the Indonesian legal system, this research draws the following conclusions.

First, DPAs have proven effective in addressing corporate corruption in both

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[36]Article 28, Law Number 30 of 2002 on the Corruption Eradication Commission as amended by Law Number 19 of 2019.

[37]Jimly Asshiddiqie, Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia [The Idea of Popular Sovereignty in the Constitution and Its Implementation in Indonesia] (Jakarta: Ichtiar Baru-van Hoeve, 1994), p. 67.

[38]Academic Paper of the Draft Criminal Code (RKUHP) 2022, National Law Development Agency (BPHN), Ministry of Law and Human Rights of the Republic of Indonesia.

the United States and the United Kingdom. Despite differing in their legal foundations, implementation mechanisms, and levels of judicial oversight, both models have maximized the recovery of state financial losses, promoted corporate governance reform, and expedited the resolution of complex cases. The U.S. model, which relies on prosecutorial discretion, has generated asset recovery at an extraordinary scale, while the U.K. model, built on legislative foundations, offers greater legal certainty and more structured judicial supervision.

Second, the comparison between the U.S. and U.K. models indicates that the U.K. model is a more relevant reference point for Indonesia. This assessment rests upon several considerations: (a) the shared tradition of written law and respect for the legality principle; (b) the presence of a judicial oversight mechanism ensuring accountability and transparency in the DPA process; (c) the explicit legislative foundation providing legal certainty for all parties involved; and (d) a stronger orientation toward public interest as compared to mere prosecutorial pragmatism.

Third, DPAs are highly relevant to Indonesia's efforts to recover state losses arising from corporate corruption. Their implementation, however, requires a comprehensive legislative foundation achieved through statutory amendment that encompasses at minimum: (a) explicit recognition of the DPA mechanism in anti-corruption legislation; (b) transparent negotiation procedures oriented toward the public interest; (c) mandatory approval from the Corruption Court (Pengadilan Tipikor) for every agreed DPA; (d) a non-negotiable minimum state loss recovery requirement; and (e) a reliable compliance monitoring mechanism throughout the DPA's operative period.

Fourth, the successful implementation of DPAs in Indonesia depends not solely upon legislative reform, but also upon institutional capacity-building within enforcement agencies, the cultivation of a robust anti-corruption culture, and consistent political commitment to prioritizing state loss recovery in the enforcement of corporate corruption law.

This research recommends that: (a) the Parliament and the Government promptly deliberate and formulate a legal framework for DPA application in Indonesia, ideally in the form of a standalone statute or as part of a comprehensive revision of the Anti-Corruption Law; (b) the KPK, the Attorney General's Office, and the National Police strengthen human resource and technical capacity in the fields of corporate law, forensic accounting, and compliance program management; (c) Indonesia develop more intensive international cooperation with the DOJ and the SFO to facilitate transfer of knowledge and expertise in DPA practice; and (d) academic institutions and legal researchers continue to advance empirical studies on the potential impact of DPA implementation within the Indonesian anti-corruption enforcement context.

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