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Deferred Prosecution Agreements for Money Laundering Offenses under USA, UK, and Indonesia Law

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Abstract

Money laundering is a transnational crime that increasingly involves corporations using complex financial structures to conceal illicit assets. Indonesia currently relies on conventional criminal prosecution, yet no specific legal framework governs the use of Deferred Prosecution Agreements (DPAs) for corporate money laundering offenses. Meanwhile, several jurisdictions, including the United States and the United Kingdom, have adopted DPAs as an alternative prosecutorial mechanism that promotes corporate accountability, compliance, and asset recovery. This study aims to compare the regulation of DPAs for corporate money laundering offenses in Indonesia with other jurisdictions and to evaluate their effectiveness in addressing such offenses. The research employs a normative juridical method using statutory, conceptual, and comparative approaches through the analysis of legislation, legal doctrines, and relevant scholarly literature. The findings indicate that countries implementing DPAs provide clear legal frameworks supported by prosecutorial discretion, judicial oversight, and corporate compliance obligations, whereas Indonesia has yet to establish equivalent regulations. Nevertheless, existing prosecutorial authority and principles within the Indonesian legal system provide a potential basis for future legal development. The study concludes that DPAs may strengthen Indonesia's anti-money laundering framework by enhancing corporate cooperation, improving asset recovery, and promoting compliance, provided that their implementation is supported by comprehensive legislation ensuring legal certainty, transparency, and accountability.

Keywords: Deferred Prosecution Agreement, Money Laundering, Corporate Criminal Liability, Asset Recovery, Indonesian Law

Introduction

Money laundering remains one of the most serious economic crimes, causing significant harm to financial systems and undermining public confidence in legal and regulatory institutions. Corporate entities frequently become involved in money laundering schemes because of their organizational complexity and business activities, making the investigation and prosecution of corporate offenders considerably more challenging than those involving individuals. Consequently, ensuring effective corporate criminal enforcement has become an important issue in contemporary criminal justice.

Indonesian law recognizes corporations as subjects of criminal liability in money laundering offenses through Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Nevertheless, corporate money laundering cases continue to be resolved primarily through conventional criminal proceedings. Although criminal prosecution remains an essential instrument of law enforcement, the existing approach may not always encourage corporate cooperation, institutional reform, or long-term compliance measures capable of preventing similar misconduct in the future.

Deferred Prosecution Agreements (DPAs) have emerged as an alternative prosecutorial mechanism designed to resolve corporate criminal cases by suspending criminal prosecution subject to the fulfillment of agreed obligations. Rather than immediately pursuing criminal convictions, DPAs generally require corporations to cooperate with prosecutors, implement effective compliance programs, pay financial penalties, and undertake corrective measures within a specified period [1]. Where these obligations are successfully fulfilled, criminal proceedings may be discontinued; conversely, failure to comply permits prosecutors to resume prosecution. This mechanism seeks to combine effective law enforcement with corporate accountability while promoting institutional reform and future compliance.

Existing studies have discussed Deferred Prosecution Agreements from various perspectives, including their legal framework, prosecutorial discretion, judicial oversight, corporate compliance, and effectiveness in resolving corporate criminal cases. The literature generally suggests that DPAs provide greater opportunities for corporate cooperation, encourage compliance improvements, and support more effective enforcement against corporate misconduct. Nevertheless, scholars also emphasize the importance of ensuring transparency, accountability, and appropriate supervision in their implementation to prevent the misuse of prosecutorial discretion [2].

Despite the growing academic discussion concerning Deferred Prosecution Agreements, limited attention has been devoted to their potential application in addressing corporate money laundering offenses under Indonesian law. There remains insufficient analysis regarding the compatibility of the Indonesian legal system with the DPA mechanism and whether such an approach could effectively strengthen the enforcement of anti-money laundering laws against corporations. This issue warrants further examination considering the continuing development of corporate criminal liability and the need for effective prosecutorial mechanisms capable of balancing law enforcement objectives with corporate accountability.

Accordingly, this study examines the regulation of Deferred Prosecution Agreements for corporations committing money laundering offenses under Indonesian law in comparison with other jurisdictions and evaluates the effectiveness of DPAs in addressing corporate money laundering. Through a normative juridical approach employing statutory, conceptual, and comparative analyses, this research seeks to provide legal recommendations regarding the possible development of Deferred Prosecution Agreements within the Indonesian legal framework.

Problem Formulation

1. How do the provisions of Deferred Prosecution Agreements for corporations that commit money laundering offenses differ in the Indonesian legal system compared to those in other countries?
2. How effective are Deferred Prosecution Agreements in addressing money laundering offenses committed by corporations?

Purpose

The purpose of this study is to finds that jurisdictions implementing Deferred Prosecution Agreements (DPAs) have established specific legal frameworks governing prosecutorial discretion, judicial oversight, corporate compliance, and negotiated settlements, whereas Indonesian law has not yet specifically regulated DPAs for corporate money laundering offenses and continues to rely on conventional criminal prosecution. Nevertheless, the study concludes that DPAs have the potential to effectively address corporate money laundering by promoting corporate cooperation, strengthening compliance programs, facilitating asset recovery, and improving prosecutorial efficiency, provided that their implementation is supported by a comprehensive legal framework ensuring legal certainty, transparency, and judicial oversight.

Discussion

A. Comparative Analysis of Deferred Prosecution Agreements for Corporate Money Laundering Offenses under Indonesian Law and Other Jurisdictions

1. Deferred Prosecution Agreements in the United States

The United States is widely recognized as the jurisdiction in which Deferred Prosecution Agreements (DPAs) first developed as a prominent mechanism for resolving corporate criminal cases. Rather than functioning as an alternative that eliminates criminal liability, a DPA constitutes a negotiated agreement between the public prosecutor and a corporate entity whereby the prosecution is deferred for a specified period subject to the corporation's compliance with a series of legally binding obligations. If the corporation fulfills all agreed conditions within the prescribed period, the prosecution may ultimately be dismissed. Conversely, any breach of the agreement permits the prosecutor to resume criminal proceedings based on the original charges. Accordingly, a DPA represents a conditional suspension of prosecution rather than an exemption from criminal responsibility.

The emergence of DPAs in the United States reflects a significant shift in the enforcement of corporate criminal law. Instead of relying exclusively on criminal convictions, federal prosecutors increasingly adopted negotiated resolutions to address complex corporate offenses while simultaneously encouraging institutional reform. As observed by Peter Spivack and Sujit Raman, the number of Deferred Prosecution Agreements and Non-Prosecution Agreements increased substantially during the early twenty-first century, transforming these mechanisms into one of the principal instruments for resolving corporate criminal investigations [3]. This development illustrates a broader policy orientation that seeks to balance effective law

[1] Peter Spivack and Sujit Raman, "Regulating The 'New Regulators Current Trends In Deferred Prosecution Agreements" 159 (2008), https://access.heinonline.com/HOL/Page?handle=hein.journals/amcrimlr45&id=163 Terms,.

[2] David M Uhlmann, "Deferred Prosecution And Non-Prosecution Agreements And The Erosion Of Corporate Criminal Liability" 1295 (2013), https://access.heinonline.com/HOL/Page?handle=hein.journals/mllr72&id=1319 Terms,.

[3] Spivack and Raman, "Regulating The 'New Regulators Current Trends In Deferred Prosecution Agreements."

enforcement with the preservation of economically significant corporations, particularly where criminal prosecution could generate extensive collateral consequences affecting employees, shareholders, creditors, and the broader market.

A defining characteristic of the American DPA regime is the broad prosecutorial discretion exercised by the Department of Justice (DOJ). The authority to negotiate and conclude a DPA derives primarily from the prosecutor's discretionary power to determine whether criminal charges should proceed to trial or be resolved through alternative prosecutorial mechanisms [4]. Consequently, the negotiation process enables prosecutors to impose various obligations upon the corporation in exchange for the temporary suspension of criminal prosecution. These obligations commonly include the payment of substantial monetary penalties, implementation or enhancement of corporate compliance programmes, cooperation with ongoing criminal investigations, internal corporate reforms, and, where necessary, continued disclosure of information relevant to identifying individual offenders or uncovering additional corporate misconduct [5].

Corporate cooperation constitutes one of the central elements of the American DPA framework. A corporation seeking to obtain a deferred prosecution agreement is generally expected to conduct internal investigations, voluntarily disclose relevant information, preserve documentary evidence, facilitate access to corporate records, and cooperate with law enforcement authorities throughout the investigation process. Such cooperation is intended not merely to resolve the corporation's own liability but also to assist prosecutors in identifying individuals who may bear personal criminal responsibility. Consequently, DPAs have evolved beyond simple settlement agreements and now function as instruments designed to strengthen corporate governance and enhance regulatory compliance within business organizations.

Another essential component of American DPAs is the emphasis placed upon corporate compliance programmes. Rather than focusing exclusively on punitive sanctions, prosecutors frequently require corporations to adopt comprehensive compliance reforms aimed at preventing future misconduct. These reforms may include revising internal control systems, strengthening anti-corruption and anti-money laundering policies, improving employee training programmes, establishing effective reporting mechanisms, and enhancing corporate oversight structures. In many cases, prosecutors may also require the appointment of an independent corporate monitor responsible for evaluating the corporation's implementation of the agreed compliance measures throughout the duration of the DPA. This monitoring mechanism demonstrates that the primary objective of a DPA extends beyond the resolution of a particular criminal case and encompasses broader efforts to promote sustainable corporate compliance and institutional reform.

Despite its widespread adoption, the American DPA model has generated considerable academic criticism. David M. Uhlmann argues that the increasing reliance on Deferred Prosecution Agreements and Non-Prosecution Agreements may gradually weaken the effectiveness of corporate criminal liability.[6] According to Uhlmann, extensive use of negotiated resolutions risks diminishing the deterrent effect traditionally associated with criminal prosecution because corporations may avoid criminal convictions despite engaging in serious unlawful conduct. He contends that excessive dependence upon prosecutorial agreements may shift corporate accountability away from judicial adjudication and toward private negotiations conducted between prosecutors and corporate representatives, thereby reducing transparency and limiting public scrutiny of corporate misconduct [7].

Judicial involvement also distinguishes the American DPA regime from several other jurisdictions. Frederick T. Davis explains that although federal courts formally participate in the implementation of Deferred Prosecution Agreements, judicial review generally remains limited in scope [8]. In practice, courts exercise relatively restrained oversight regarding the substantive terms negotiated by prosecutors and corporations, reflecting the longstanding recognition of prosecutorial discretion within the American criminal justice system. Consequently, the principal responsibility for determining the appropriateness of a DPA largely remains with the prosecuting authority rather than the judiciary [9]. This institutional arrangement subsequently became one of the principal points of comparison with jurisdictions such as the United Kingdom, where judicial supervision occupies a significantly more prominent role in the approval and implementation of Deferred Prosecution Agreements.

2. Deferred Prosecution Agreements in the United Kingdom

Unlike the United States, where Deferred Prosecution Agreements (DPAs) primarily evolved through prosecutorial practice, the United Kingdom established its DPA regime through a statutory framework that provides clear procedural safeguards and judicial supervision. The British model was introduced to address serious corporate crime while ensuring that negotiated resolutions remain subject to judicial scrutiny. Consequently, the implementation of DPAs in the United Kingdom reflects a legal approach that seeks to reconcile prosecutorial efficiency with judicial accountability, thereby strengthening public confidence in negotiated criminal resolutions.

Frederick T. Davis emphasizes that one of the principal distinctions between the British and American models lies in the extent of judicial involvement throughout the DPA

[4] Frederick T Davis, "Judicial Review of Deferred Prosecution Agreements" 751 (2022), https://access.heinonline.com/HOL/Page?handle=hein.journals/cjtl60&id=763.

[5] Ilham Nur Pratama, "Legal Comparison of Deferred Prosecution Agreement (DPA) Methods in the USA, UK and Indonesia for Recovering State Financial Losses Due to Corruption Crimes" 04, no. 2 (2023): 73–80, https://doi.org/https://doi.org/10.25041/corruptio.v4i2.2853.

[6] Uhlmann, "Deferred Prosecution And Non-Prosecution Agreements And The Erosion Of Corporate Criminal Liability."

[7] Ibid.

[8] Davis, "Judicial Review of Deferred Prosecution Agreements."

[9] Ibid.

process. As he observes, "judicial review of deferred prosecution agreements differs considerably across jurisdictions." [10]. This observation illustrates that although both jurisdictions recognize DPAs as negotiated prosecutorial mechanisms, the institutional balance between prosecutors and courts differs substantially. Whereas American prosecutors retain broad discretion over the negotiation and implementation of DPAs, British courts play an active role in determining whether a negotiated agreement satisfies the requirements of justice and public interest.

Under the British model, a Deferred Prosecution Agreement is not merely a contractual arrangement between the prosecutor and a corporate entity. Instead, it constitutes a criminal justice mechanism that requires judicial approval before it becomes legally effective. The court is therefore entrusted with examining both the procedural integrity and substantive fairness of the negotiated agreement. Judicial scrutiny extends beyond verifying procedural compliance and encompasses an assessment of whether the proposed DPA is fair, reasonable, proportionate, and consistent with the interests of justice. Such judicial oversight distinguishes the British framework from jurisdictions where prosecutorial discretion predominates and serves as an institutional safeguard against arbitrary or inappropriate negotiated settlements.

The conditions commonly incorporated into British DPAs closely resemble those found in the United States, although their implementation occurs within a more structured judicial framework. Corporations are generally required to acknowledge the underlying facts of the alleged misconduct, cooperate fully with law enforcement authorities, implement comprehensive compliance reforms, strengthen internal governance mechanisms, and fulfill financial obligations, including the payment of penalties or compensation where appropriate [11]. These obligations demonstrate that a DPA is designed not simply to suspend criminal proceedings but to encourage meaningful institutional reform capable of preventing future corporate misconduct.

The emphasis on corporate reform constitutes one of the defining characteristics of the British DPA regime. Rather than focusing exclusively on punishment, the mechanism seeks to transform corporate behaviour by requiring improvements in governance, compliance programmes, internal controls, and risk management systems. Such obligations recognize that corporate criminality frequently arises from systemic organisational failures rather than isolated misconduct by individual employees. Consequently, negotiated resolutions are expected to address these structural deficiencies while preserving the corporation's legitimate economic activities.

Ilham Nur Pratama explains that the British DPA framework operates through a sequence of negotiations, judicial approval, and supervised implementation. During the period in which prosecution is deferred, the corporation must comply with every obligation stipulated in the agreement. Successful completion of these obligations enables prosecution to be discontinued, whereas any material breach permits criminal proceedings to resume [12]. This conditional nature distinguishes DPAs from mechanisms that permanently terminate criminal liability, as the possibility of renewed prosecution remains throughout the duration of the agreement.

The significance of judicial supervision within the British model is further reflected in the objective of preserving transparency and legitimacy in corporate criminal enforcement. By requiring judicial approval, the legal system ensures that negotiated resolutions are not solely determined by prosecutorial discretion but are independently evaluated by the courts. Such oversight enhances public accountability while simultaneously protecting corporations from arbitrary prosecutorial practices. In this respect, judicial participation serves as an essential mechanism for balancing the interests of effective law enforcement, corporate accountability, and procedural fairness.

The British approach also demonstrates that Deferred Prosecution Agreements should not be understood as instruments for avoiding criminal responsibility. Instead, they function as conditional prosecutorial mechanisms through which corporations remain legally accountable while being afforded an opportunity to undertake meaningful institutional reforms. As Davis explains, judicial oversight represents a fundamental element distinguishing various DPA regimes and contributes significantly to the legitimacy of negotiated criminal resolutions [13]. Accordingly, the British model has frequently been regarded in comparative legal scholarship as offering a more balanced framework by integrating prosecutorial discretion with effective judicial control, thereby ensuring that negotiated settlements continue to serve the broader objectives of criminal justice rather than merely facilitating procedural efficiency.

3. Deferred Prosecution Agreements under Indonesian Law

Unlike the United States and the United Kingdom, Indonesia has not yet incorporated Deferred Prosecution Agreements (DPAs) into its positive legal framework. Consequently, corporate criminal cases, including those involving money laundering offenses, continue to be resolved through the conventional criminal justice process. The absence of an explicit legal framework governing DPAs means that Indonesian prosecutors currently lack statutory authority to suspend criminal prosecution based on a negotiated agreement with a corporate offender. Accordingly, the existing literature consistently characterizes the adoption of DPAs in Indonesia as a matter of legal reform (ius constituendum) rather than an established component of the country's criminal justice system [14].

The growing academic discourse concerning the possible adoption of DPAs in Indonesia is primarily driven by the increasing complexity of corporate crime and the limitations of conventional criminal proceedings in responding effectively to corporate misconduct. Rather than proposing

[10] Ibid.

[11] Rebecca Mitchell, Edward Imwinkelried, and Michael Stockdale, "Deferred Prosecution Agreements And Legal Professional Privilege/Attorney- Client Privilege: English And Us Experience Compared," 2021, https://access.heinonline.com/HOL/Page?handle=hein.journals/jintcl8&id=285 Terms,.

[12] Pratama, "Legal Comparison of Deferred Prosecution Agreement (DPA) Methods in the USA, UK and Indonesia for Recovering State Financial Losses Due to Corruption Crimes."

[13] Davis, "Judicial Review of Deferred Prosecution Agreements."

[14] Kynan Raffael Daud and Mardian Putra Frans, "Deferred Prosecution Agreement (Dpa): Model Keadilan Bagi Korporasi Dan Negara Dalam Tindak Pidana Pajak" 5, no. 7 (2024): 1–19, https://jhlg.rewangrencang.com/.

the elimination of corporate criminal liability, Indonesian scholars generally advocate the introduction of a prosecutorial mechanism that would enable corporations to undertake meaningful remedial measures while remaining legally accountable. Such proposals seek to balance criminal law enforcement with broader objectives, including corporate reform, recovery of financial losses, institutional compliance, and judicial efficiency.

Kynan Raffael Daud and Mardian Putra Frans argue that the conventional prosecution of corporate crime often fails to achieve optimal legal and economic outcomes because criminal proceedings are frequently lengthy, costly, and less effective in securing the restoration of financial losses [15]. In this regard, they propose the introduction of DPAs as a mechanism capable of reconciling the interests of the State with those of corporate entities without undermining criminal accountability. As the authors state, "Deferred Prosecution Agreement merupakan model keadilan yang dapat memberikan keuntungan bagi negara sekaligus korporasi "[16]. This proposition reflects the view that negotiated prosecution should not merely serve corporate interests but should also facilitate more effective recovery of state losses while encouraging corporations to undertake structural reforms capable of preventing future violations.

A similar position is advanced by Ilham Nur Pratama, who explains that although Indonesian legislation does not expressly regulate DPAs, several legal mechanisms demonstrate functional characteristics comparable to deferred prosecution [17]. His comparative analysis identifies diversion, restorative justice, the principle of opportunity (asas oportunitas) [18], as well as the settlement mechanisms employed in the Master Settlement and Acquisition Agreement (MSAA) and the Master Refinancing and Note Issuance Agreement (MRNIA) during the resolution of the Bank Indonesia Liquidity Assistance (BLBI) cases as examples illustrating Indonesia's familiarity with negotiated legal settlements [19]. Nevertheless, these mechanisms cannot be equated with DPAs because none establishes a formal system permitting prosecutors to suspend criminal prosecution through judicially supervised agreements with corporate offenders.

The discussion concerning DPAs in Indonesia is also closely associated with the constitutional position of the Public Prosecution Service as the institution exercising prosecutorial authority. Ilham Nur Pratama observes that the Indonesian prosecution system recognizes the doctrine of dominus litis, under which prosecutors possess exclusive authority to determine whether criminal charges should proceed before the courts [20]. This institutional position has encouraged several scholars to argue that prosecutors could potentially negotiate deferred prosecution agreements, provided that an adequate statutory framework clearly regulates their authority, establishes procedural safeguards, and subjects negotiated agreements to judicial supervision. Consequently, the doctrine of dominus litis is frequently regarded as one of the principal conceptual foundations supporting future legislative recognition of DPAs in Indonesia.

Another aspect frequently emphasized in Indonesian scholarship concerns the relationship between DPAs and corporate compliance. Rather than perceiving criminal sanctions solely as punitive instruments, several authors propose that negotiated prosecution should require corporations to implement comprehensive compliance programmes, strengthen internal governance, cooperate with law enforcement authorities, and undertake institutional reforms as conditions for suspending criminal prosecution. Such obligations would ensure that deferred prosecution functions not merely as a procedural alternative but also as a mechanism capable of improving corporate governance and reducing the likelihood of future corporate crime. Accordingly, the proposed Indonesian DPA model is consistently presented as combining criminal accountability with preventive corporate reform rather than replacing one objective with the other [21].

Despite these academic proposals, the available literature consistently acknowledges that Indonesia presently lacks comprehensive legislation governing the essential elements of Deferred Prosecution Agreements. No statutory provisions specifically regulate the categories of offenses eligible for DPAs, the procedural requirements for negotiation, the legal consequences of compliance or non-compliance, judicial approval procedures, or the respective rights and obligations of prosecutors and corporate offenders. Consequently, the implementation of DPAs within Indonesian criminal law remains a legislative proposal rather than a legally recognized prosecutorial mechanism. This conclusion is consistently reflected across the Indonesian literature examining the feasibility of adopting Deferred Prosecution Agreements as part of future reforms to corporate criminal enforcement.

From the perspective of corporate money laundering offenses, the absence of a statutory DPA framework signifies that Indonesian law continues to rely upon ordinary criminal prosecution even were corporate cooperation, institutional reform, or asset recovery might arguably be achieved more efficiently through negotiated resolutions. Nevertheless, the materials examined in this study do not indicate that Indonesia has enacted any legislation specifically authorizing Deferred Prosecution Agreements for corporations involved in money laundering offenses. Accordingly, within the current legal framework, the discussion concerning DPAs remains confined to academic proposals advocating future legal reform rather than existing positive law.

4. Comparative Analysis of Deferred Prosecution Agreements between Indonesia and Other Jurisdictions

The preceding discussion demonstrates that although the United States, the United Kingdom, and Indonesia share the common objective of ensuring corporate accountability, their approaches to Deferred Prosecution Agreements (DPAs) differ significantly in terms of legal foundation, prosecutorial

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[15] Ibid.
[16] Ibid.
[17] Pratama, "Legal Comparison of Deferred Prosecution Agreement (DPA) Methods in the USA, UK and Indonesia for Recovering State Financial Losses Due to Corruption Crimes."
[18] Ibid.
[19] Amanda Fritz, "Prosecution Agreements: The Effectiveness Of Deferred And Non- Deferred Prosecution Agreements Within Banking Institutions," no. August (2021), https://www.proquest.com/openview/be5fd358f70e64b988fc923b4757c38f/1?pq-origsite=gscholar&cbl=18750&diss=y.
[20] Ibid.
[21] Hussein Alaydrus, "Penerapan Deferred Prosecution Agreement (DPA) Sebagai Alternatif Penegakan Hukum Pada Tindak Pidana Korporasi Di Indonesia," 2025, 8035–50, https://doi.org/https://doi.org/10.61104/alz.v3i5.2472 Penerapan.

authority, judicial involvement, and institutional implementation. These differences reflect the distinct evolution of each jurisdiction's criminal justice system and its respective approach to balancing effective law enforcement with the broader public interest.

The most fundamental distinction concerns the legal basis governing Deferred Prosecution Agreements. In the United States, DPAs developed primarily through prosecutorial practice and the broad discretionary authority exercised by the Department of Justice rather than through a comprehensive statutory framework. Prosecutorial discretion therefore constitutes the principal legal foundation for negotiating and implementing DPAs. By contrast, the United Kingdom introduced DPAs through specific legislation that establishes detailed procedural requirements, judicial approval mechanisms, and statutory safeguards governing negotiated resolutions. Indonesia, however, has not yet enacted legislation expressly recognizing Deferred Prosecution Agreements within its criminal justice system. Consequently, Indonesian scholars consistently discuss DPAs as a prospective legal reform rather than an existing prosecutorial mechanism.

The different legal foundations inevitably influence the distribution of institutional authority within each jurisdiction. In the United States, prosecutors possess extensive discretion in determining whether a corporation should receive a Deferred Prosecution Agreement and in negotiating the substantive obligations imposed upon the corporation. Judicial involvement generally remains limited, reflecting the traditional deference accorded to prosecutorial decision-making within the American criminal justice system. Conversely, the United Kingdom assigns a substantially greater role to the judiciary. Judicial approval is not merely procedural but constitutes an essential legal requirement that determines whether a negotiated agreement is fair, reasonable, proportionate, and consistent with the interests of justice. Frederick T. Davis emphasizes this institutional distinction by observing that "judicial review of deferred prosecution agreements differs considerably across jurisdictions [22]. This observation highlights judicial oversight as one of the principal features distinguishing the British model from the American approach.

Indonesia occupies a markedly different position because no statutory framework presently authorizes prosecutors to negotiate Deferred Prosecution Agreements with corporate offenders. Although the doctrine of dominus litis grants prosecutors exclusive authority over criminal prosecutions, the available literature consistently acknowledges that such authority has not been expanded to include negotiated deferred prosecution. Consequently, the prosecutorial discretion recognized under Indonesian law cannot presently serve as the legal basis for implementing DPAs without legislative intervention.

Another important distinction concerns the role of judicial oversight. Comparative scholarship consistently identifies judicial review as one of the defining characteristics separating national DPA regimes. The United States adopts a relatively restrained model of judicial participation, leaving primary responsibility for negotiating and supervising DPAs to prosecutors. In contrast, the United Kingdom incorporates judicial review throughout the approval process to ensure that negotiated settlements satisfy the requirements of legality, fairness, proportionality, and public interest. Indonesia, meanwhile, has not established any judicial mechanism specifically designed to supervise Deferred Prosecution Agreements because no such prosecutorial mechanism currently exists within the positive legal framework. Accordingly, discussions concerning judicial supervision in Indonesia remain theoretical and form part of broader proposals for future legal reform.

Despite these institutional differences, the literature reveals substantial similarities regarding the objectives pursued through Deferred Prosecution Agreements. Both the American and British models seek not only to resolve corporate criminal investigations more efficiently but also to promote corporate compliance, institutional reform, cooperation with law enforcement authorities, and the prevention of future misconduct. Rather than functioning solely as alternatives to criminal prosecution, DPAs are designed to encourage corporations to improve governance structures, strengthen compliance programmes, enhance internal controls, and cooperate during criminal investigations. These objectives explain why DPAs have become particularly significant in the enforcement of corporate crime, where institutional reform frequently constitutes a more sustainable response than criminal conviction alone.

Indonesian scholarship similarly recognizes these objectives when advocating the future adoption of Deferred Prosecution Agreements. Studies examining the feasibility of DPAs consistently argue that negotiated prosecution could facilitate the recovery of state losses, encourage corporate cooperation, improve corporate governance, and enhance compliance while simultaneously preserving criminal accountability. Nevertheless, unlike the American and British jurisdictions, these objectives remain normative proposals rather than legally enforceable obligations because Indonesia has yet to establish a statutory DPA regime.

From the perspective of corporate money laundering offenses, the comparative analysis indicates that both the United States and the United Kingdom possess legal mechanisms capable of accommodating negotiated resolutions for corporate misconduct through Deferred Prosecution Agreements, subject to the institutional characteristics of each jurisdiction. Indonesia, however, has not developed a comparable legal mechanism. Consequently, corporations implicated in money laundering offenses remain subject to ordinary criminal prosecution under the existing legal framework. The materials examined in this study do not identify any Indonesian legislation specifically authorizing Deferred Prosecution Agreements for money laundering offenses. Therefore, the implementation of DPAs within the Indonesian anti-money laundering regime remains a matter of future legal reform (IUS constituendum) rather than positive law.

B. Conflicting Norms between Indonesian Laws and Regulations Relating to Forest and Land Burning.

The increasing adoption of Deferred Prosecution Agreements (DPAs) in addressing corporate crime has generated extensive academic discussion regarding their effectiveness in achieving the objectives of criminal law. Rather than focusing solely on punishment, DPAs are intended to encourage corporate accountability through negotiated

[22] Davis, "Judicial Review of Deferred Prosecution Agreements."

compliance obligations, institutional reform, cooperation with law enforcement authorities, and financial remediation.
The literature examined in this study consistently indicates that the effectiveness of DPAs cannot be measured merely by the number of criminal prosecutions avoided but must also be evaluated according to their ability to prevent future misconduct, improve corporate governance, facilitate asset recovery, and preserve broader public interests. Accordingly, scholarly debate concerning DPAs has evolved beyond the question of whether negotiated prosecution should be permitted toward a broader assessment of whether such agreements produce outcomes superior to conventional criminal litigation.

One of the principal advantages consistently identified in the literature is the capacity of DPAs to promote corporate compliance and institutional reform. Unlike ordinary criminal convictions, which generally conclude with the imposition of criminal sanctions, Deferred Prosecution Agreements require corporations to implement comprehensive compliance measures as continuing obligations throughout the deferred prosecution period. These measures commonly include strengthening internal controls, improving corporate governance structures, enhancing anti-corruption and anti-money laundering compliance programmes, conducting employee training, cooperating with regulators, and establishing more effective reporting mechanisms. Consequently, the DPA model seeks not only to address past misconduct but also to reduce the likelihood of future corporate offending through structural organizational reform.

This preventive orientation is reflected in the observation of Peter Spivack and Sujit Raman that Deferred Prosecution Agreements have evolved into one of the principal enforcement mechanisms employed by the United States Department of Justice in responding to corporate crime. As they explain, "Deferred prosecution agreements have become one of the Department of Justice's principal tools for combating corporate crime [23]. This statement illustrates that prosecutors increasingly regard institutional reform and corporate compliance as integral components of criminal enforcement rather than merely supplementary measures following criminal conviction. Accordingly, the effectiveness of DPAs derives not solely from resolving individual cases but from their capacity to transform corporate behaviour and strengthen long-term legal compliance.

Another significant benefit identified throughout the literature concerns the encouragement of corporate self-reporting and cooperation. Deferred Prosecution Agreements provide corporations with meaningful incentives to voluntarily disclose misconduct, cooperate during criminal investigations, preserve relevant evidence, and facilitate the identification of individuals responsible for unlawful conduct [24]. Such cooperation substantially improves investigative efficiency while reducing the financial and administrative burdens associated with prolonged criminal litigation. Moreover, voluntary cooperation enables prosecutors to obtain evidence that may otherwise remain inaccessible, thereby strengthening the overall enforcement of corporate criminal law.

The literature further emphasizes the effectiveness of DPAs in facilitating financial recovery and mitigating broader economic disruption. Corporate criminal convictions frequently generate collateral consequences extending beyond the offending corporation itself, including adverse effects upon employees, shareholders, creditors, customers, and financial markets. Deferred Prosecution Agreements seek to minimize these unintended consequences by allowing corporations to continue legitimate business operations while simultaneously satisfying extensive legal obligations. Kynan Raffael Daud and Mardian Putra Frans therefore argue that negotiated prosecution may provide reciprocal benefits for both the State and corporate entities because financial recovery and institutional reform can often be achieved without producing unnecessary economic disruption. As the authors observe, "Deferred Prosecution Agreement merupakan model keadilan yang dapat memberikan keuntungan bagi negara sekaligus korporasi [25]. Within the context of money laundering offenses, this characteristic is particularly relevant because effective asset recovery frequently constitutes one of the principal objectives of criminal enforcement.

The effectiveness of DPAs has also been associated with greater judicial and prosecutorial efficiency. Corporate criminal litigation frequently involves extensive documentary evidence, multiple jurisdictions, sophisticated financial transactions, and prolonged investigative processes. By resolving cases through negotiated agreements, prosecutors and courts may allocate institutional resources more efficiently while ensuring that corporations remain subject to substantial compliance obligations. The exploratory study of Deferred Prosecution Agreements similarly concludes that negotiated resolutions may provide a pragmatic response to increasingly complex corporate criminal investigations, particularly where conventional criminal trials require considerable time and public resources).

Despite these advantages, the literature consistently identifies several important criticisms concerning the effectiveness of Deferred Prosecution Agreements. One of the most influential critiques is advanced by David M. Uhlmann, who argues that excessive reliance upon Deferred Prosecution Agreements and Non-Prosecution Agreements risks undermining the deterrent function traditionally associated with corporate criminal liability. As Uhlmann explains, "the increasing use of deferred and non-prosecution agreements threatens to erode corporate criminal liability [26]. This criticism reflects concerns that negotiated settlements may permit corporations to avoid criminal convictions despite engaging in serious unlawful conduct, thereby reducing public confidence in the fairness and legitimacy of corporate criminal enforcement.

A further concern relates to the concentration of authority within prosecutorial institutions. Several comparative studies emphasize that where judicial oversight remains limited, negotiated prosecution may become overly dependent upon prosecutorial discretion. Frederick T. Davis therefore argues that meaningful judicial review constitutes an essential

[23] Spivack and Raman, "Regulating The 'New Regulators Current Trends In Deferred Prosecution Agreements."
[24] Megan Jean Parker and Mary Dodge, "An Exploratory Study of Deferred Prosecution Agreements and the Adjudication of Corporate Crime," 2023, https://doi.org/10.1108/JFC-06-2022-0122.
[25] Daud and Frans, "Deferred Prosecution Agreement (Dpa): Model Keadilan Bagi Korporasi Dan Negara Dalam Tindak Pidana Pajak."
[26] Uhlmann, "Deferred Prosecution And Non-Prosecution Agreements And The Erosion Of Corporate Criminal Liability."

safeguard capable of ensuring transparency, proportionality, and fairness in the implementation of Deferred Prosecution Agreements. The British experience demonstrates that stronger judicial supervision may mitigate concerns regarding excessive prosecutorial discretion while simultaneously enhancing public confidence in negotiated criminal resolutions [27].

From the perspective of corporate money laundering offenses under Indonesian law, the available materials do not provide empirical evidence demonstrating the effectiveness of Deferred Prosecution Agreements because Indonesia has not yet adopted such a mechanism within its positive legal framework. Consequently, any assessment concerning the practical effectiveness of DPAs in Indonesia remains prospective rather than empirical. Nevertheless, the comparative literature consistently suggests that, if accompanied by an adequate statutory framework, judicial oversight, clearly defined prosecutorial authority, and enforceable corporate compliance obligations, Deferred Prosecution Agreements possess considerable potential to enhance the enforcement of corporate money laundering offenses by promoting institutional reform, facilitating financial recovery, encouraging corporate cooperation, and reducing the procedural burdens associated with complex corporate criminal litigation. At the same time, the literature equally cautions that the effectiveness of such a mechanism depends upon maintaining an appropriate balance between prosecutorial flexibility, judicial supervision, and meaningful corporate accountability, thereby ensuring that negotiated prosecution strengthens rather than weakens the enforcement of corporate criminal law [28].

Closing

Conclusion

From the results of the analysis conducted by the author on the problems described above, it can be concluded that:

1. Indonesia has not yet established a legal framework governing Deferred Prosecution Agreements (DPAs). Unlike the United States and the United Kingdom, Indonesian positive law does not specifically authorize the use of DPAs in resolving corporate criminal cases, including corporate money laundering offenses. Consequently, the adoption of DPAs remains a proposal for future legal reform (IUS Constituendum).
2. The United States and the United Kingdom adopt different approaches to implementing DPAs. In the United States, DPAs primarily rely on prosecutorial discretion exercised by the Department of Justice, whereas the United Kingdom regulates DPAs through a statutory framework that requires judicial approval to ensure fairness, proportionality, and consistency with the interests of justice.
3. Despite institutional differences, both jurisdictions pursue similar objectives through DPAs. These objectives include promoting corporate compliance, encouraging self-reporting and cooperation with law enforcement authorities, strengthening corporate governance, facilitating financial recovery, and resolving complex corporate criminal cases more efficiently while minimizing unnecessary collateral consequences.
4. The literature indicates that DPAs have the potential to enhance the enforcement of corporate money laundering offenses. Their effectiveness is reflected in their ability to promote institutional reform, improve corporate compliance, encourage cooperation during criminal investigations, facilitate asset recovery, and reduce the procedural burden associated with complex corporate prosecutions.
5. The effectiveness of DPAs depends on appropriate legal safeguards. Comparative studies consistently emphasize that prosecutorial discretion should be balanced by adequate judicial oversight, transparent procedures, clearly defined corporate obligations, and effective monitoring mechanisms to ensure that negotiated resolutions strengthen rather than weaken corporate criminal accountability.
6. For Indonesia, the implementation of DPAs requires comprehensive legislative reform. Any future adoption of DPAs should establish a clear legal framework governing prosecutorial authority, judicial supervision, eligibility criteria, corporate obligations, compliance requirements, and the legal consequences of fulfilling or breaching the agreement, thereby ensuring legal certainty and maintaining effective enforcement of corporate money laundering offenses.

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