Deferred Prosecution Agreements as an Alternative for Corporate Corruption Cases: A Study on Infrastructure Procurement in Indonesia

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Abstract

Corruption is an extraordinary crime that has severe implications for state finances, undermines social stability, weakens the integrity of state institutions, and hinders national development. In practice, corruption is not only committed by individuals but also by corporations, particularly in strategic national projects such as infrastructure development, which often involve large budgets and systemic impacts. Although Indonesia has established a legal framework to hold corporations accountable for corruption, the effectiveness of conventional criminal prosecution mechanisms remains questionable, especially in terms of recovering lost state assets. Therefore, there is an urgent need to adopt an alternative approach that balances strict law enforcement, optimal recovery of state losses, and economic sustainability. One promising option is the Deferred Prosecution Agreement (DPA) This study employs a normative juridical method by analyzing positive legal norms and international comparative practices, particularly the implementation of DPAs in the United States and the United Kingdom. The main findings reveal that DPA is an alternative legal instrument oriented toward restorative justice, allowing case resolution without full litigation, provided that the offender admits wrongdoing and returns the state's losses. The key argument is that DPA can be integrated into Indonesia's criminal justice reform, as long as it is explicitly regulated in national legislation. Academically, this research contributes to the discourse on the development of corporate criminal law. Practically, the DPA has the potential to expedite the recovery of state losses, prevent further economic harm, and enhance the effectiveness of law enforcement against corporations involved in corruption.

Keywords: Deferred Prosecution Agreement, Corporate Corruption, Infrastructure, Indonesia, Legal Reform

Introduction

Corruption is one of the types of criminal acts considered to potentially threaten the stability and fundamental order of social life and the constitutional system (Tantimin, 2023). The term corruption originates from the English word corrupt, which can be traced back to the Latin word corruptio or corruptus, and it shares similar meanings in Greek. As language evolved, the term came to be known in English and French as corruption, in Dutch as korruptie, and was adapted into Indonesian as *korupsi* (Rasyidi, 2020). In this context, corruption refers to a state of moral deterioration, encompassing elements such as wrongdoing, immorality, dishonesty, bribery, and a departure from principles of purity, truth, and justice, all of which indicate a collapse in an individual's ethical integrity (Hasoloan et al., 2022). Corruption has been recognized and categorized as an extraordinary crime as stipulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption Crimes, emphasizing that corruption requires extraordinary measures in its eradication due to its severely destructive and widespread impact, and its potential to threaten human rights and global order (Al Faridzi et al., 2022). There are four (4) characteristics of corruption as an extraordinary crime: it is organized and conducted systematically; it has a modus operandi that is difficult to prove; it is always associated with power; and it is closely related to the public interest because it harms state finances, which should be used for the people's welfare (Mahfoedz, 2021).

In Indonesia, corruption crimes are no longer limited to being committed by individuals as legal subjects but may also be committed by corporations, as regulated in Article 20 paragraph (1) and (2) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The article states that a corporation and/or its management may be held accountable for corruption crimes committed in the interest of the corporation, whether by individuals acting jointly or individually within the corporate environment. Corrupt acts by

corporations can result in losses to the economy and state finances, ultimately hindering development and public welfare. Therefore, legal enforcement against corporations can be brought to court, where prosecutors have the option to charge the corporation, its executives, or both (Vivi & Siregar, 2023). One clear example of corporate corruption in Indonesia is the 4G Base Transceiver Station (BTS) infrastructure procurement case, which is part of a government initiative to expand internet access to remote 3T (underdeveloped, frontier, and outermost) regions. This case involves PT. Multimedia Berdikasi Sejahtera and several high-ranking officials, with corruption conducted in a systematic and deliberate manner to benefit certain corporate actors. The actions resulted in state losses amounting to trillions of rupiah and highlighting the severe and direct impact corporate corruption can have a direct and significant impact on state financial losses. This is closely tied to one of the primary goals of corruption eradication in Indonesia: to recover state financial losses resulting from corruption and to prevent crises in various sectors as part of fulfilling a sense of justice, while also reflecting the legal and moral responsibility borne by the perpetrator (Rizal, 2023).

Ironically, despite continuous efforts to fight corruption in Indonesia, there are several significant challenges remain in recovering state financial losses from corporate offenders, such as the use of complex and organized methods to cover tracks and conceal assets by related parties, making asset tracing and recovery difficult. In this regard, the implementation of DPA is increasingly seen as a promising alternative to optimize state loss recovery due to corporate corruption, which reflects a transition from the principle of primum remedium (criminal law as a first resort) to ultimum remedium (criminal law as a last resort), emphasizing restorative justice and prioritizing the recovery of state losses over punitive measures (Taniady et al., 2023). The discussion of DPA as an alternative solution for addressing corruption cases has brought new insights into the criminal justice system. DPA offer potential to benefit all parties involved, such as victims, offenders, and the state by enabling the restoration of the original condition, particularly in terms of economic recovery from corporate corruption. Unlike the retributive approach that focuses on punishment, criminal

prosecution does not always benefit the state, as it often fails to fully recover assets and can instead impose losses (Kristen & Wacana, 2024). Therefore, the effectiveness of corporate punishment in creating deterrence and rehabilitation is still widely debated, particularly within the context of law enforcement.

Moreover, the concept of DPA has already been implemented in developed countries such as the United States and the United Kingdom, where it has proven effective in handling criminal cases involving corporate entities. The success of DPA in both countries shows that it not only serves as an alternative to prosecution but also as a flexible and adaptive tool for law enforcement to resolve cases without the need for lengthy and costly judicial processes. This can be seen in several cases in the US and UK, where prosecutors successfully held corporations responsible in ways that were efficient in terms of time, cost, and resources, all while maintaining the core principles of justice. Through DPA, corporations are given the opportunity their wrongdoing by admitting guilt and paying fines or compensation, without facing immediate criminal penalties. In this context, DPA may serve as a viable option for law enforcement in Indonesia when handling criminal acts by corporations that damage the national economy. This mechanism also allows for the deferral of prosecution, provided that the corporation meets certain conditions within a specified period. Although Indonesia currently lacks specific regulations for DPA, but its adoption could address shortcomings in the existing legal framework, which struggles with achieving justice and legal certainty and often faces challenges like conflicts of interest and the imbalance between the cost and benefit of asset confiscation processes, where the costs incurred are often greater than the assets recovered (Iqbal, 2020).

Considering the various advantages of implementing the DPA mechanism, the author is encouraged to conduct a more in-depth study by analyzing previous research that emphasizes the urgency of developing alternative mechanisms in the enforcement of law against corporations involved in criminal acts of corruption. First, a study by Muhammad Ridho Sinaga (2021) emphasizes the need for DPA to fulfill the fundamental goal of corruption eradication: the recovery of state financial losses. Second, research by Lisa Aprilia Gusreyna (2024) highlights the

need for reform in corporate criminal law in Indonesia through DPA implementation to better adapt to corruption punishment. Third, a study by Febby Mutiara Nelson (2020) reviews lessons learned from the development of DPA in the United States and the United Kingdom in recovering financial losses due to corporate corruption. Fourth, Ilham Nur Pratama (2023) compares DPA practices in the US and UK and assesses their relevance for adaptation in the Indonesian legal context. Fifth, research by Metty Murni Wati Ibrahim, Jovita Irawati, Jamin Ginting, and Nelson Pardamean Purba (2024) analyzes DPA as an alternative resolution in corporate crime cases in Indonesia, drawing from experiences in the US and UK to identify the strengths and weaknesses of implementing DPA in Indonesia, including its role in preserving corporate reputation, minimizing bankruptcy risk, and resolving cases efficiently.

This research contributes theoretically to the development of criminal law science, particularly within the context of corporate criminal law and the application of alternative approaches in case resolution, namely DPA. By examining DPA implementation in the United States and the United Kingdom, this study expands the academic horizon on the possibility of integrating restorative justice principles into the Indonesian legal system, especially in addressing corruption committed by corporate entities. It also enriches legal literature by offering a new approach to the efficient and equitable recovery of state financial losses. Practically, this study provides tangible benefits for policymakers, law enforcement agencies, and other stakeholders by offering recommendations on the urgency of establishing specific regulations that explicitly govern DPA mechanisms and procedures. The research also emphasizes the importance of clear boundaries regarding prosecutors' authority, the supervisory role of judges, and the protection of public interests in the DPA process to enhance transparency, accountability, and effectiveness in enforcing corporate crime laws.

However, this study has specific limitations in its scope that focusing solely on the 4G BTS infrastructure procurement case as a tangible example of corporate corruption that could potentially be addressed using the DPA mechanism, along with the challenges that might emerge if this mechanism were

applied in Indonesia. Furthermore, the discussion is also limited to comparing the DPA systems of two countries, such as the United States and the United Kingdom as a references for international practices where DPA has been systematically regulated and implemented to tackle corporate crime. Based on the background outlined above, the author finds it necessary to narrow the scope of discussion to maintain focus and depth in this research. Therefore, the study will focus on two primary research questions, such as: 1) How is DPA applied as an alternative in handling corporate corruption in Indonesia, particularly in the case study of the 4G BTS infrastructure procurement? 2) What are the obstacles to implementing DPA in corporate corruption cases in Indonesia, compared to practices in developed countries like the United States and the United Kingdom?

Research Method

The type of research used in this study is normative legal research, which, according to Soerjono Soekanto's opinion, is conducted by examining library materials or secondary data as the basic foundation for tracing regulations and literature related to the issues being studied (Suganda, 2022). In this case, this method allows the research to be carried out by reviewing primary legal materials, such as laws and relevant regulations, as well as secondary legal materials, including journals, literature, and relevant court decisions. The research approaches used in this study are the case approach, which examines corporate corruption cases, specifically the procurement of 4G BTS infrastructure, and the statute approach, which reviews various regulations related to the research topic, namely Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, and international laws regarding DPA such as the Foreign Corrupt Practices Act (FCPA) in the United States and the United Kingdom Bribery Act 2010.

Furthermore, the types and sources of data used include primary legal materials, such as Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, the United Nations Convention Against Corruption (UNCAC) ratified through Law Number 7 of 2006, the Foreign Corrupt

Practices Act (FCPA), and the United Kingdom Bribery Act 2010. The secondary legal materials used include research results, academic articles, and theses relevant to the research topic. These relevant data will then be collected and studied using a literature review method, followed by qualitative analysis techniques by linking the obtained data with applicable legal provisions. The results of this analysis will be presented descriptively and systematically, including the application of DPA as a new alternative in handling corruption crimes, particularly in the case study of PT. Multimedia Berdikasi Sejahtera, as well as various obstacles encountered in its implementation.

Results and Discussions

The Implementation of DPA as an Alternative Approach to Handling Corporate Corruption in the 4G BTS Infrastructure Procurement Case

Nowadays, corruption has become a serious issue due to its potential to cause significant harm to a nation's economy and public finances (Alhakim & Chai, 2023), as well as to hinder development and public welfare (Rahma Yani, 2023). In many corruption cases, the perpetrators are not individuals but corporate entities (Faturachman et al., 2024).These corporations often abuse their power or position for personal gain, ultimately harming the broader public interest (Alfianda et al., 2024). Therefore, the various forms of losses incurred must be recovered promptly to avoid disrupting state operations, as public finances play a vital role in government functions and public services (Sulantoro, 2021). However, uncovering corruption cases is often challenging because of their complex nature, the involvement of multiple parties, and the significant resources required. Additionally, the proceeds of corruption are frequently enjoyed by third parties who are not prosecuted, making recovery of state losses even more difficult. On the other hand, existing anti-corruption regulations allow corporate executives to appoint representatives in legal proceedings, which can obstruct efforts to hold the actual perpetrators accountable. Moreover, the primary sanction for corporations is limited to fines, with an additional penalty capped at

one-third of the maximum fine, as stipulated in Article 20 paragraphs (6) and (7) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption Crimes (Sitepu & Hermawan, 2019).

Consequently, efforts to safeguard public finances through a legal framework based on retributive justice still face many obstacles. Retributive justice emphasizes punishment proportionate to the severity of the offense (Yuli et al., 2025), but its implementation is often hampered by procedural hurdles and on-the-ground challenges. Victims frequently feel dissatisfied with the sanctions imposed, as they fail to meet their needs or restore their losses (Richie Sanjaya Putra, 2024). In this context, retributive justice is seen as misaligned with the primary goal of corruption eradication in Indonesia, which is to protect public assets and wealth. This has led to the emergence of the idea of adopting DPA as an alternative approach to combating corruption in the future. DPA is a deal made between prosecutors and a corporation as a defendant to settle an issue that might otherwise lead to formal charges. Under this agreement, the prosecution is put on hold for a set period, as long as the company complies with certain agreed-upon conditions (Gottschalk, 2024). The provisions that may be applied to offenders under this agreement are diverse, including admission of wrongdoing, payment of compensation or restitution, fines, and the implementation of internal reforms, such as dismissing individuals involved in the corporate crime. If all conditions are fulfilled within the specified time frame, prosecution will be deferred. Conversely, if the conditions are not met, prosecution may proceed through formal legal channels (Ferdian, 2021).

In this context, the DPA emphasizes a negotiation process between the public prosecutor, as the authority handling the case, and the defendant, focusing on recovery procedures based on specific terms and conditions. This concept shifts the traditional suspect-oriented approach ("follow the suspect") toward a financial-tracing approach ("follow the money"). It serves as a practical application of the ultimum remedium principle and restorative justice that offers a win-win solution for both victims and offenders, allowing the state to pursue restitution, especially in terms of economic recovery following corporate corruption offenses. Furthermore, the DPA reflects an adaptation to a new

paradigm in modern criminal law enforcement, as described by Eddy O.S. Hiariej, which encompasses three forms of justice: corrective, restorative, and rehabilitative. Corrective justice aims to prevent repeat offenses by the perpetrator; restorative justice focuses on restoring the victim's rights and condition; and rehabilitative justice is concerned with reforming the offender's behavior and mindset (Taniady et al., 2023). Therefore, the DPA helps the criminal justice system address corporate misconduct more effectively, offering an alternative to full prosecution while still holding corporations accountable for their wrongdoing (Parker & Dodge, 2023).

In this regard, the DPA approach can serve as an alternative method for legal resolution, especially in certain corporate corruption cases like that of Windi Purnama, the Director of PT. Multimedia Berdikasi Sejahtera, a construction industry company. The case concerns alleged corruption in the procurement of 4G Base Transceiver Station (BTS) projects, which are part of the national strategic infrastructure in the telecommunications sector aimed at expanding 4G network coverage across regions to facilitate wireless communication between mobile devices and telecommunications networks. In this criminal act, Windi Purnama played a significant role as a financial courier distributing illicit funds from the BTS 4G procurement project. He operated under the guidance of two key individuals, such as Irwan Hermawan, the Commissioner of PT. Solitech Media Sinergy, and Anang Achmad Latif, the President Director of the Telecommunications Accessibility and Information Agency within the Ministry of Communication and Informatics (Kominfo). In his role as Director of PT. Multimedia Berdikasi Sejahtera, Windi acknowledged receiving a total of IDR 240.5 billion from multiple contractors and subcontractors as a commitment fee related to securing the BTS 4G project.

Out of the total amount received, IDR 9.4 billion was first distributed to two companies, such as PT. JIG Nusantara Persada, which received IDR 5 billion, and PT. Sarana Global Indonesia, which was allocated IDR 4.4 billion. Afterwards, Windi allocated around IDR 10 billion to cover operational costs for Kominfo, and redirected IDR 1.5 billion on behalf of Kominfo Minister Johnny G. Plate to educational foundations and diocesan organizations in Kupang. He

also transferred IDR 4 billion through Walbertus Natalius Wisang, an expert under Kominfo Minister, in four installments. During investigations, the name Dito Ariotedjo emerged as a recipient of IDR 27 billion from Windi. Beyond his courier role, Windi used part of the funds for personal purposes, including mortgage payments and living expenses in the Philippines totaling over IDR 750 million. This case illustrates the complex corruption network within a national strategic project, involving multiple actors from diverse backgrounds exploiting it for personal or group gain, thereby worsening state losses and harming the public's right to equitable infrastructure development.

In this context, the application of DPA can be considered as an alternative legal resolution focusing on recovering state losses, rather than merely imposing retributive or punitive sanctions. Compared to conventional criminal justice mechanisms, litigation requires lengthy, multi-layered, and complex legal procedures. All parties involved, including law enforcement and offenders, must undergo various stages from investigation to court verdict, often continuing through appeals and cassation for years. This process demands substantial resource allocation, both in handling costs and the increasing workload of judicial institutions. Therefore, implementing DPA in corporate corruption cases is deemed capable of establishing a justice system that is faster, simpler, and more cost-effective than conventional litigation. DPA enables more effective recovery of state losses, especially in high-value cases like national strategic projects. This approach allows law enforcement to focus on asset recovery, a major challenge in combating corruption. Through mechanisms like direct restitution of corrupt proceeds, DPA also imposes financial pressure on offenders and encourages their cooperation in legal processes. Hence, DPA is not only a practical solution but also a strategic tool supporting state loss recovery from corporate corruption.

Moreover, implementing DPA in corporate corruption cases is not unattainable in Indonesia. Support can be seen in the ratification of the United Nations Convention Against Corruption (UNCAC) through Law No. 7 of 2006 on UNCAC ratification. Article 26 paragraph (4) of the convention requires each party state to make efforts to ensure that corporations involved in corruption are subject to sanctions that are effective, proportional, and deterrent, either in the

form of criminal or non-criminal measures, and financial penalties (Sinaga, 2020). The term "shall endeavor" provides a legal and political foundation encouraging Indonesia to reform its corporate criminal sanction system. Moreover, the use of the conjunction "or" in the sanction options signals a paradigm shift from primum remedium (primary effort) to ultimum remedium (last resort), opening space for alternatives like DPA in addressing corporate corruption cases. If non-criminal sanctions prove more effective and proportional, criminal sanctions may no longer be prioritized. Starting with non-criminal sanctions could also lead to foregoing criminal accountability.

Further considerations for DPA as an alternative in Indonesia's corporate criminal law include the dominus litis principle, granting prosecutors full authority over criminal cases, aligning with the opportunity principle in Article 35 paragraph (1) letter c of the Indonesian Prosecutor Law, which empowers the Attorney General to dismiss cases for public interest. Given the significant losses caused by corruption, the government's primary focus should be recovering state assets to protect wider public interests (Rosdiana et al., 2020). Corporate criminal sanctions can have severe negative impacts on national economic stability and growth, including job losses due to corporate shutdowns and damage to corporate reputation, affecting business partnerships and operational continuity. DPA offers a strategic choice that promotes legal process efficiency and facilitates preemptive improvements before crimes occur, benefiting society and maintaining economic stability (Burrohim, 2022).

If DPA is applied, many complexities can be significantly reduced, allowing more efficient case resolution through negotiation stages between prosecutors and offenders who have acknowledged their wrongdoing via factual statements. The resulting commitments, such as restitution, fines, cooperation in investigations, and anti-corruption programs, are formalized and overseen by a judge. If the offender fulfills these obligations, prosecution is postponed; if not, the case proceeds to trial. This approach shortens resolution timelines, lowers legal costs, and expedites the recovery of state losses (Taniady et al., 2023). Therefore, DPA emphasizes recovery as the primary goal in handling corporate corruption, recognizing the substantial financial, social, and economic impact of

such crimes. It fosters corporate responsibility to return state losses as a tangible form of redress. Moreover, the use of DPA demonstrates corporate goodwill to rectify wrongdoing, including admitting fault, compensating losses, and cooperating with law enforcement to resolve cases and prevent future corruption.

Obstacles to the Implementation of DPA in Corporate Corruption Cases in Indonesia Compared to the United States and the United Kingdom

Crime control through a criminal justice system that prioritizes the imposition of physical penalties on offenders is a traditional method that remains widely practiced to this day (Sriwidodo & Sulastri Dewi, 2023), including in the handling of corporate corruption in Indonesia, which still relies on the paradigm of retributive justice. However, this approach is increasingly seen as ineffective in the context of recovering state financial losses due to corruption, as it focuses more on punishment than on creating space for restitution efforts (Hestaria et al., 2022). In practice, the retributive approach often provokes resistance from corporations, which tend to be uncooperative, conceal illicit gains, or even destroy evidence, driven by the belief that returning stolen assets will not exempt them from criminal liability. This defensive posture undermines the effectiveness of asset recovery and may, in fact, lead to new criminal behavior, particularly with the application of Article 4 of the Law on the Eradication of Corruption. Moreover, such an approach impedes efforts to uncover broader corruption networks and results in the loss of critical momentum to trace assets that have been transferred to third parties or hidden abroad. When the legal system is excessively rigid and primarily focused on punishment, it fails to create a conducive environment for productive cooperation, thereby diminishing the judiciary's capacity to foster sustained accountability. Instead of motivating corporate offenders to acknowledge their wrongdoing, this punitive approach tends to encourage them to pursue aggressive legal defenses to avoid penalties, which in turn undermines anti-corruption initiatives by overlooking the essential goal of recovering state assets.

In this context, the discussion of implementing the DPAsystem in handling corporate corruption crimes has begun to gain attention as an alternative to the traditionally dominant retributive justice approach. This idea has emerged alongside growing awareness that resolving cases through DPA not only facilitates the effective recovery of state financial losses but also fosters opportunities for dialogue, accountability, and mutual agreements between the perpetrators and the victims (the state). Moreover, corruption often involves corporations with the financial and structural capacity to contribute to the restitution of state assets. Therefore, it is possible that corruption crimes can be addressed through a DPA approach that focuses more on recovery rather than punishment. Looking at the long-standing application of DPAs in the United States and the United Kingdom, this mechanism has proven effective as a balanced tool between law enforcement and state asset recovery. DPAs allow corporations involved in corruption to expedite the return of losses without lengthy court proceedings, reducing judicial burdens and costs, while encouraging corporations to admit wrongdoing and cooperate with law enforcement during investigations. Additionally, DPAs assist corporations in avoiding severe criminal penalties that might cause asset freezes, financial collapse, or reputational damage, thereby allowing the company to continue operations and maintain employment.

In the United States, DPA are regulated under the Justice Manual § 9.28.200, which provides an alternative to formal indictment or guilty plea in resolving corporate criminal cases. DPAs offer a middle ground, allowing prosecutors, mainly from the Department of Justice (DOJ), to defer charges against corporations or individuals in exchange for fulfilling specific obligations. These may include admitting wrongdoing, paying fines, reforming compliance programs, and cooperating in investigations (Perez, 2020). Though commonly applied to corporations, DPAs can also involve individuals and asset forfeiture to recover state losses. In cross-border crime, especially under the Foreign Corrupt Practices Act (FCPA), DPAs help expose complex bribery schemes. They are approved by federal courts and often require companies to appoint independent

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compliance monitors. Overall, DPAs aim to balance legal accountability with economic stability and promote corporate reform.

Enforcement records from the U.S. Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) reveal the significant financial impact of corporate corruption under the Foreign Corrupt Practices Act (FCPA). In 2021, corporate penalties in FCPA-related cases totaled just under $360 million, a 94 percent drop from 2020 and the third-lowest in a decade. This includes fines imposed by U.S. authorities but paid to foreign regulators through global settlements. That year, 18 enforcement actions were recorded 6 corporate and 12 individual. Although the number of cases remained stable, the financial scale declined sharply. The average global sanction on each corporate entity was $120 million, significantly lower than the ten-year average of $176 million (StandfordLawSchool, 2021). These figures reflect both the scale of state losses and the need for efficient recovery mechanisms. The 2020 Goldman Sachs case highlights this, with $4.5 billion misappropriated and $2.9 billion paid to U.S. authorities through a DPA (Reuters, 2023). The use of DPAs offers clear advantage, they ensure timely asset recovery, reduce the burden of lengthy court proceedings, promote corporate reform, and preserve economic and institutional stability.

Furthermore, the implementation of DPAs in the UK is regulated under the Crime and Courts Act 2013, which has been aligned with the fundamental principles of the UK Constitution, including the rule of law, accountability, and judicial independence. This DPA scheme allows law enforcement authorities, particularly the Serious Fraud Office (SFO) and the Crown Prosecution Service (CPS), to defer prosecution of a corporate entity suspected of criminal offenses on the condition that the company agrees to fulfill certain obligations, such as paying fines, improving internal compliance systems, and cooperating with the investigation process. However, it is important to note that DPA implementation in the UK is exclusively targeted at corporations, not individuals. The types of offenses eligible for DPAs are limited to certain serious and complex economic crimes. Some of these include conspiracy to commit fraud, tax evasion, theft, financial statement fraud, bribery, and other crimes related to economic

and financial law violations. A key regulation referenced in this context is the Bribery Act 2010 (Rosdiana et al., 2020), which sets high standards for combating bribery practices both domestically and across international jurisdictions.

In this regard, there are examples of major corruption cases in the UK between 2020 and 2025 that were resolved through DPAs. For instance, in 2021, Bluu Solutions Limited and Tetris Projects Limited agreed to DPAs with the SFO to pay a combined total of £2.5 million, consisting of seized profits and financial penalties related to bribery practices to secure renovation contracts (Crown Prosecusion Service, 2023). Meanwhile, in 2023, a global company in the online sports betting and digital gaming sector, Entain plc, signed a DPA with the CPS and agreed to pay a total of £615 million, including fines, seized profits, enforcement costs, and charitable donations due to alleged bribery (Jacobson, 2023). These cases illustrate how corruption can significantly harm state revenue by reducing tax receipts, triggering financial statement manipulation, and encouraging bribery to avoid fiscal obligations, which in turn enlarges budget deficits, diminishes critical public expenditures, and undermines economic stability. Through the DPA settlement mechanism as seen in these cases, state losses can be recovered more quickly because prosecution is deferred on the condition of restitution and payment of fines. Although criminal sanctions are not immediately imposed, the deferral does not mean the offenders are free from legal consequences; rather, it provides the state with an opportunity to obtain restitution efficiently. If the obligations are not fulfilled or if the terms of the DPA are violated, prosecution will resume, and the offenders will face criminal penalties according to the law.

Although the DPA approach offers various advantages in addressing corporate corruption, its implementation in Indonesia faces several serious challenges. One of the main issues is that Indonesia currently lacks explicit and specific regulations governing the DPAs mechanism within its national criminal justice system. The absence of clear and detailed legal provisions generates uncertainty and skepticism regarding the legitimacy and legal certainty of implementing DPAs. This becomes a major obstacle, as without a clear legal framework, the implementation of DPA may be considered to lack a strong

normative foundation, and could potentially lead to inconsistency and abuse of power by law enforcement authorities. Furthermore, the lack of specific regulations creates ambiguity around the parameters for implementation, the limits of prosecutorial authority regarding the scope of DPAs application, effective and transparent oversight mechanisms, and insufficient clarity on protecting public or victim interests, making these aspects difficult to define and enforce effectively. Therefore, even though DPA offers many advantages in resolving corporate corruption cases, its application in Indonesia must first be preceded by the enactment of specific and comprehensive legislation that governs the concept, mechanism, and procedural implementation of DPAs. Such regulation would not only serve as a legal umbrella providing legitimacy and legal certainty but also act as a tool to ensure that DPA implementation adheres to principles of transparency and accountability.

The existence of a legal framework for the implementation of DPA in Indonesia would represent a progressive step within the criminal justice system, particularly in handling corporate crime, and would also reflect the practical application of Hans Kelsen's theory of legal certainty. In the context of DPAs, legal certainty is crucial, given that the scheme deviates from the traditional criminal justice approach. When the state provides a firm and written legal basis for DPAs implementation, such as through statutory regulation, this aligns with Kelsen's demand for a formally valid and legitimate legal system. This means that the norms governing DPAs must be established in accordance with procedures defined by the existing legal system to gain normative legitimacy. Moreover, under Kelsen's view, legal certainty also implies that the law must apply generally and non-discriminatorily, and must provide predictability regarding legal actions. Through legal rules concerning DPAs, law enforcement, businesses, and the general public can understand when, how, and under what conditions a DPA may be applied. This offers both procedural and substantive clarity, thereby preventing arbitrary or inconsistent application of the law.

Additionally, having a legal framework for DPA implementation in Indonesia not only signifies progress in the national criminal justice system but also emphasizes the crucial role of legal certainty within a cohesive interaction

between national and international legal systems. The presence of such regulations is closely linked to international instruments like the UNCAC, which Indonesia ratified through Law Number 7 of 2006. UNCAC offers a international framework that allows state parties to adopt various approaches in combating corruption, including alternative or non-litigation methods like DPA and out-of-court settlements. In this regard, DPAs are consistent with the spirit of UNCAC, which emphasizes cooperation, asset recovery, and the mitigation of criminal acts through flexible and adaptive approaches. The regulation of DPAs within the Indonesian legal context can also be analyzed through the legal principle of lex generalis derogat legi specialis, whereby general provisions in national or international law can complement gaps or limitations in the Anti-Corruption Law. Furthermore, such regulation may serve as a supporting instrument for implementing Indonesia's commitments under the ratified UNCAC.

Conclusion

Corporate corruption represents a form of economic crime that significantly harms the state, as exemplified by the BTS 4G infrastructure procurement case, which reveals the complexity of actors and systems involved, as well as the limitations of conventional retributive approaches in effectively recovering state losses. In this context, a DPA offers an alternative approach focused on restoration and prevention, offering corporations the opportunity to take responsibility through admission of wrongdoing, payment of compensation, and internal reform, while avoiding lengthy and costly litigation processes. Nevertheless, the implementation of DPAs in Indonesia still faces significant structural challenges, including the absence of an explicit legal framework, limited technical capacity among law enforcement officials, and a legal culture that has yet to fully embrace restorative justice approaches. In contrast to the United States and the United Kingdom, where comprehensive legal frameworks and clear procedures for implementing DPAs are already in place, Indonesia must undergo extensive legal reform to prevent the misuse of DPAs as a tool for impunity. Therefore, it is essential to establish a clear legal

foundation, strengthen the capacity of law enforcement institutions, and ensure public participation to guarantee accountability and transparency in the application of DPAs. In BTS 4G case, a properly implemented DPA could serve as a strategic solution for recovering state assets and protecting the public interest, improving governance in strategic sectors, and combating corporate corruption more effectively. With a strong legal and institutional foundation, the DPA has the potential to become a modern criminal justice instrument that is not only efficient and adaptive but also aligned with the principles of justice and the long-term public interest.

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Competing Interest

The authors declare that there are no competing interests.

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