

**Article History**

Received: 28 Feb 2026

Reviewed: 16 Apr 2026

Accepted: 20 Apr 2026

Published: 30 Apr 2026

Legal Vacuum in Deferred Prosecution Agreements and Its Implications for Law Enforcement Disparity in Indonesia

Siti Adinda Nafirah^{1*}, Nanda Yuniza Eviani²¹ Faculty of Law, Universitas Airlangga, Indonesia² Faculty of Law, Universitas Hasanuddin, Indonesia*correspondence email : sitiadindanafirah@gmail.com**Abstract**

This study aims to analyze various normative and procedural weaknesses within the framework of Deferred Prosecution Agreements (DPAs) in Indonesia, particularly regarding the lack of established sentencing guidelines and proportionality parameters, the lack of clarity regarding methods for calculating state financial losses, limited transparency, and inadequate procedural safeguards.

This study employs a normative legal research methodology with a qualitative approach, utilizing a statutory approach, a conceptual approach, and a comparative approach. The study focuses on relevant legislation, doctrinal constructs, and institutional designs related to the regulation of DPA in Indonesia. Additionally, this research compares regulatory frameworks in the United States, the United Kingdom, and Singapore to identify governance models and procedural safeguards that can be applied in negotiation-based corporate law enforcement.

The novelty of this research lies in the analysis of DPAs, which is not only situated within the context of prosecutorial discretion but also in relation to the corporate insolvency regime, including bankruptcy and debt repayment deferral (PKPU).

The results of the research indicate that DPA regulations in Indonesia have not yet been established through an adequate framework. These issues are evident in the absence of sentencing benchmarks and proportionality, the lack of uniformity in methods for assessing state losses, low transparency, and the fragility of procedural accountability. This situation creates room for unfocused prosecutorial discretion, inconsistent application of the law, and potential disparities in the outcomes of negotiated justice.

The conclusion of this study is that the implementation of DPAs in Indonesia requires an integrated governance framework, emphasizing structured discretion, clear measures of proportionality, judicial oversight, transparency, and interagency coordination. Strengthening these aspects is necessary to ensure legal certainty, maintain public trust, and uphold the legitimacy of negotiated justice in the enforcement of corporate criminal law.

Keywords: Deferral of Prosecution; Criminal Procedure Law; Legal Vacuum

Abstrak

Penelitian ini bertujuan untuk menganalisis berbagai kelemahan normatif dan prosedural dalam kerangka Deferred Prosecution Agreements (DPA) di Indonesia, terutama terkait belum tersusunnya pedoman pemidanaan dan parameter proporsionalitas, belum jelasnya metode penghitungan kerugian keuangan negara, terbatasnya transparansi, serta belum memadainya perlindungan prosedural.

Metode Penelitian ini menggunakan penelitian hukum normatif dengan pendekatan

kualitatif yang menggunakan pendekatan perundang-undangan (statutory approach), pendekatan konseptual (conceptual approach), dan pendekatan komparatif (comparative approach). Kajian diarahkan pada peraturan perundang-undangan yang relevan, konstruksi doktrinal, dan desain kelembagaan yang berkaitan dengan pengaturan DPA di Indonesia. Selain itu, penelitian ini membandingkan kerangka regulasi di Amerika Serikat, Inggris, dan Singapura untuk mengidentifikasi model tata kelola serta perlindungan prosedural yang dapat diterapkan dalam penegakan hukum korporasi berbasis negosiasi.

Kebaruan Penelitian ini terletak pada analisis DPA yang tidak hanya ditempatkan dalam konteks diskresi penuntutan (*prosecutorial discretion*), tetapi juga dalam kaitannya dengan rezim insolvensi korporasi, termasuk kepailitan dan penundaan kewajiban pembayaran utang (PKPU).

Hasil Penelitian menunjukkan bahwa pengaturan DPA di Indonesia masih belum dibangun melalui kerangka yang memadai. Permasalahan tersebut tampak pada belum adanya tolok ukur pidana dan proporsionalitas, belum seragamnya metode penilaian kerugian negara, rendahnya transparansi, serta rapuhnya akuntabilitas prosedural. Keadaan ini membuka ruang bagi diskresi penuntutan yang tidak terarah, penerapan hukum yang tidak konsisten, dan potensi disparitas dalam hasil keadilan negosiasi.

Kesimpulan Penelitian ini bahwa penerapan DPA di Indonesia memerlukan suatu kerangka tata kelola yang terintegrasi, dengan menekankan diskresi yang terstruktur, ukuran proporsionalitas yang jelas, pengawasan yudisial, transparansi, dan koordinasi antarlembaga. Penguatan aspek-aspek tersebut diperlukan untuk mewujudkan kepastian hukum, memelihara kepercayaan publik, dan menjaga legitimasi keadilan negosiasi dalam penegakan hukum pidana korporasi.

Kata Kunci: Penundaan Penuntutan; Hukum Acara Pidana; Kekosongan Hukum

1. INTRODUCTION

The reform of the Indonesian Criminal Procedure Code in 2025 represents one of the most ambitious efforts to modernize the country's criminal justice system since the enactment of the 1981 Code. This reform emerges in response to evolving challenges, particularly the increasing complexity of corporate and transnational crimes, the growing need for efficiency in law enforcement, and the demand for more restorative and flexible mechanisms in criminal justice. In this context, the introduction of Deferred Prosecution Agreements (DPAs) marks a significant departure from traditional adjudicative models toward negotiated forms of criminal accountability. While such a shift reflects global developments in prosecutorial practices, it also raises fundamental questions about the future of due process, equality before the law, and legal certainty in Indonesia.¹

Under the 2025 Indonesian Criminal Procedure Code, the recognition of Deferred Prosecution Agreements reflects a formal shift in criminal procedure from purely adjudicative enforcement toward limited forms of negotiated justice, particularly in relation to corporate crime. This shift is important not only because it expands the range of prosecutorial responses, but also because it introduces a new model of case resolution that depends heavily on

¹ Barda Nawawi Arief, *Pembaharuan Hukum Pidana dalam Perspektif Kajian Perbandingan* (Jakarta: Kencana, 2014), 45.

regulatory clarity, judicial supervision, and institutional accountability. However, while the 2025 reform provides the legal basis for such a mechanism, it does not yet appear to elaborate sufficiently detailed standards on proportionality, valuation of losses, transparency, and procedural consequences of non-compliance. As a result, the introduction of DPAs raises important questions about how this mechanism will operate in practice within Indonesia's criminal justice system.

At a conceptual level, Deferred Prosecution Agreements (DPAs) are designed as negotiated mechanisms that allow prosecutors to suspend or terminate criminal proceedings against corporate offenders subject to the fulfillment of specific obligations, such as restitution, compliance reform, or cooperation. In comparative practice, particularly in the United States and the United Kingdom, DPAs have been used to address complex corporate misconduct more efficiently than full litigation.² Nevertheless, their use remains controversial because negotiated justice may expand prosecutorial discretion and raise concerns regarding accountability, equality before the law, and due process where legal safeguards are insufficient.

In Indonesia, the introduction of DPAs must be understood within a broader context of legal reform and institutional challenges. The criminal justice system has long been criticized for inefficiency, case backlog, and limited capacity in handling sophisticated economic crimes. At the same time, public trust in law enforcement institutions remains fragile due to concerns over corruption, selective enforcement, and lack of transparency. Against this background, the adoption of negotiated mechanisms such as DPAs is often justified as a necessary step toward improving enforcement outcomes. Yet, without adequate safeguards, such reforms may unintentionally legitimize discretionary practices that have historically undermined public confidence in the justice system.³

More importantly, the current regulatory framework governing DPAs under the 2025 Criminal Procedure Code appears to contain significant normative and procedural gaps. One of the most notable concerns is the absence of sentencing guidelines or structured criteria to guide prosecutors and judges in determining proportional sanctions. Unlike jurisdictions that provide detailed benchmarks to ensure consistency and fairness, the Indonesian framework leaves broad discretion to law enforcement authorities. This situation creates the risk of arbitrary outcomes, where similar corporate offenses may result in vastly different settlements. Such disparity not only undermines legal certainty but also threatens the constitutional principle of equality before the law.

Another critical issue concerns the assessment of financial harm or state losses, which forms the core basis of most DPA negotiations. The current legal framework does not clearly determine the institutional authority responsible for calculating these losses, nor does it establish transparent and standardized methodologies. In practice, multiple institutions,

² Brandon L. Garrett, *Too Big to Jail: How Prosecutors Compromise with Corporations* (Cambridge, MA: Harvard University Press, 2014), 8–12. DOI: <https://doi.org/10.2307/j.ctt9qdskg>

³ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 15–18.

including the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), and independent forensic auditors, may produce divergent assessments. This ambiguity opens the door to forum shopping, manipulation, and strategic bargaining, thereby transforming criminal accountability into a negotiable economic calculation rather than a principled legal process.

Transparency also emerges as a central challenge. Negotiations underlying DPAs typically occur behind closed doors, often justified by the need to protect corporate stability and market confidence. However, excessive secrecy risks fostering corruption, selective enforcement, and transactional justice. In legal systems where institutional oversight remains limited, confidential settlements may reinforce perceptions that economic actors can avoid prosecution through negotiation. Consequently, the adoption of DPAs may deepen structural inequalities by creating a dual-track system in which corporate offenders benefit from flexibility while ordinary defendants remain subject to rigid procedures.

The absence of clear procedural safeguards, such as rules governing amendments, extensions, or addenda of DPA agreements, further exacerbates legal uncertainty. In situations where corporations partially comply with negotiated obligations, it remains unclear whether prosecution should proceed, be renegotiated, or be terminated. This ambiguity not only reduces predictability but also increases the potential for repeated negotiations that weaken deterrence and accountability.

Given these challenges, this study argues that the current design of DPAs in Indonesia reflects a significant legal vacuum that may generate structural disparities in criminal enforcement. Rather than merely enhancing efficiency, the absence of sentencing guidelines, transparent valuation standards, judicial safeguards, and coordination with insolvency regimes risks transforming the criminal justice system into a discretionary and negotiated arena. Therefore, the urgency of this research lies in examining the normative and institutional deficiencies in the Indonesian DPA framework and proposing regulatory safeguards to ensure legal certainty, transparency, and equality before the law. Without such reforms, the implementation of DPAs may not only undermine due process but also erode public trust in the legitimacy of Indonesia's criminal justice system.

Despite increasing scholarly attention to negotiated forms of corporate criminal enforcement, the existing literature remains fragmented in both scope and focus. In the Indonesian context, most studies on corporate criminal law continue to concentrate on doctrinal issues such as corporate liability, attribution of fault, evidentiary standards, and sanctions. Other studies have examined restorative justice and prosecutorial discretion in economic crime enforcement, but they do not specifically address Deferred Prosecution Agreements as a distinct regulatory mechanism within criminal procedure. In comparative scholarship, DPAs are more commonly discussed in terms of their effectiveness in promoting compliance, restitution, and enforcement efficiency. However, such studies generally pay limited attention to the structural risks that arise when negotiated justice is introduced into legal systems with underdeveloped procedural safeguards.

This limitation is particularly important in the Indonesian setting. Existing scholarship has not yet adequately examined DPAs as a structural legal issue involving the interaction between prosecutorial discretion, sentencing proportionality, valuation of state financial losses, judicial oversight, transparency, and corporate insolvency regimes. Thus, the analytical gap in the literature lies not merely in the limited discussion of DPAs as a concept, but in the absence of a systematic evaluation of the normative and institutional conditions required for their accountable implementation in Indonesia. This omission is significant because the legitimacy of negotiated justice depends not only on procedural efficiency, but also on the availability of clear safeguards capable of preventing legal uncertainty and unequal enforcement outcomes.

The novelty of this study lies in its analysis of Deferred Prosecution Agreements not merely as a mechanism of prosecutorial discretion, but as a structural regulatory framework whose legitimacy depends on sentencing standards, valuation methodology, procedural safeguards, judicial oversight, transparency, and coordination with corporate insolvency regimes, including bankruptcy and suspension of debt payment obligations (PKPU). Unlike previous studies that primarily discuss corporate criminal liability in doctrinal terms or emphasize the practical usefulness of negotiated enforcement, this article offers an integrated assessment of the legal vacuum surrounding the Indonesian DPA framework. Through this approach, the study provides a more comprehensive basis for evaluating the risks, limits, and institutional legitimacy of negotiated corporate criminal enforcement in Indonesia.

In light of these limitations, this study addresses two main questions: (1) how is the regulatory framework of Deferred Prosecution Agreements structured within the Indonesian criminal justice system following the 2025 Criminal Procedure Code reform; and (2) to what extent does the absence of clear procedural safeguards create risks of legal disparity and uncertainty in corporate criminal enforcement. Based on these questions, this study aims to critically examine the design of DPA regulation in Indonesia and to formulate safeguards capable of ensuring transparency, proportionality, legal certainty, and equality before the law in negotiated prosecution mechanisms.

2. METHOD

This study employs a normative qualitative legal research methodology, focusing on doctrinal and comparative legal analysis to examine the regulatory framework of Deferred Prosecution Agreements (DPAs) under the 2025 Indonesian Criminal Procedure Code. The research aims to identify normative gaps, assess their implications for legal certainty and equality before the law, and evaluate the adequacy of existing safeguards in preventing arbitrary and selective enforcement. A statutory approach is used as the primary method, through a systematic examination of relevant legal instruments, including the 2025 Indonesian Criminal Procedure Code and related regulations on corporate criminal liability and prosecutorial authority. In addition, this study applies a conceptual approach by analyzing fundamental legal principles such as the rule of law, proportionality, transparency, due process, and equality before the law, which serve as the analytical framework to evaluate the

legitimacy and coherence of the current DPA framework.⁴ Furthermore, this research adopts a comparative legal approach by examining the regulatory and institutional practices of DPAs in selected jurisdictions, particularly the United Kingdom and the United States, as these systems provide structured sentencing guidelines, judicial oversight, and transparency mechanisms. The primary legal materials consist of statutory provisions, policy documents, and judicial decisions, while secondary materials are drawn from academic journals, books, government reports, and legal commentaries.⁵ The data are analyzed qualitatively to identify regulatory ambiguities, institutional weaknesses, and risks of legal disparity, particularly in relation to sentencing standards, valuation of state losses, judicial supervision, transparency, and the interaction between DPA mechanisms and corporate insolvency regimes such as bankruptcy and suspension of debt payment obligations (PKPU). Through this method, the study seeks to develop normative and policy recommendations to strengthen accountability, consistency, and legal certainty in the implementation of DPAs in Indonesia.

3. DISCUSSION

3.1. Normative Design of Deferred Prosecution Agreements and Prosecutorial Discretion in Indonesia

The emergence of Deferred Prosecution Agreements (DPAs) reflects a broader global transformation in criminal justice, particularly in addressing complex corporate and transnational crimes. Over the past three decades, traditional adjudicative processes have increasingly been supplemented, and in some jurisdictions partially replaced, by negotiated forms of accountability. This shift has been driven by structural pressures, including the globalization of markets, the growing sophistication of financial crimes, and the limited institutional capacity of courts to manage large-scale corporate litigation. As a result, prosecutors in several jurisdictions have adopted pragmatic tools that prioritize efficiency, restitution, and corporate compliance over full prosecution. However, this transition also raises fundamental concerns about whether negotiated justice may undermine due process, transparency, and the principle of equality before the law.⁶

From a doctrinal perspective, DPAs represent a hybrid legal mechanism that combines elements of criminal procedure, contractual arrangements, and regulatory governance. Unlike conventional plea bargaining, DPAs do not necessarily involve an admission of guilt, but rather the suspension of prosecution conditional upon the fulfillment of specific obligations, such as restitution, corporate reforms, or compliance monitoring. This hybrid nature raises complex legal questions regarding the role of the state in criminal punishment and the boundaries between public and private forms of accountability. Scholars have debated whether DPAs signal a gradual privatization of criminal enforcement, in which corporate actors negotiate

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed. (Jakarta: Kencana, 2017), 35–36.

⁵ Irwansyah and Ahsan Yunus, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, rev. ed. (Yogyakarta: Mirra Buana Media, 2021), 95–118.

⁶ Máximo Langer, "From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis," *Harvard International Law Journal* 45, no. 1 (2004): 1–64.

outcomes that were traditionally determined through judicial processes.⁷ In this sense, DPAs challenge the classical understanding of criminal law as a public and coercive instrument rooted in the monopoly of the state over punishment.

In Indonesia, the normative design of DPAs under the 2025 Criminal Procedure Code represents a significant departure from the traditional prosecutorial model. Historically, Indonesian criminal procedure has emphasized legality, formal adjudication, and judicial determination of guilt. The introduction of DPAs reflects a shift toward prosecutorial flexibility and managerial approaches to criminal enforcement. Under this framework, prosecutors are empowered to negotiate agreements with corporate defendants, subject to judicial approval. This development positions prosecutors not merely as litigators but as strategic regulators who shape enforcement priorities, determine compliance standards, and manage corporate accountability. Such a transformation indicates the increasing convergence between criminal law and regulatory governance.⁸

The centrality of prosecutorial discretion in the DPA framework underscores the need to critically examine its scope and limits. Prosecutors now possess substantial authority in deciding whether a case is suitable for negotiation, determining the content of agreements, and assessing compliance outcomes. This expanded role effectively transforms prosecutors into gatekeepers of the criminal justice system. While such discretion may enhance efficiency and responsiveness, it also introduces risks of arbitrariness, selective enforcement, and unequal treatment. The absence of structured criteria may allow similar cases to be treated differently, depending on institutional priorities, political considerations, or economic interests. Consequently, prosecutorial discretion becomes both a functional necessity and a potential source of structural inequality.⁹

The tension between discretion and accountability has long been a central theme in criminal law theory. On the one hand, discretion allows flexibility in responding to diverse and complex cases. On the other hand, unregulated discretion risks undermining legality, proportionality, and predictability. Legal scholars emphasize that discretion must be guided by transparent standards, institutional oversight, and procedural safeguards. Without such constraints, discretionary power may lead to arbitrary outcomes and weaken the legitimacy of law enforcement. In the context of DPAs, the lack of clear sentencing guidelines and valuation standards further intensifies this concern. The Indonesian framework currently relies heavily on the integrity and judgment of prosecutors, raising questions about whether sufficient institutional controls exist to prevent abuse.¹⁰

Judicial approval is often presented as a key safeguard in DPA mechanisms. In theory,

⁷ Jennifer Arlen, "Corporate Criminal Enforcement in the United States: Using Negotiated Settlements to Turn Corporate Criminals into Corporate Cops," *New York University Law Review* 93, no. 6 (2018): 1435–1492.

⁸ Rachel Barkow, "Prosecutorial Administration: Prosecutor Bias and the Department of Justice," *Virginia Law Review* 99, no. 2 (2013): 271–334. <https://www.virginialawreview.org/wp-content/uploads/2020/12/271.pdf>

⁹ Stephanos Bibas, "Plea Bargaining Outside the Shadow of Trial," *Harvard Law Review* 117, no. 8 (2004): 2463–2547. DOI: <http://dx.doi.org/10.2139/ssrn.464880>

¹⁰ William J. Stuntz, "The Pathological Politics of Criminal Law," *Michigan Law Review* 100, no. 3 (2001): 505–600. DOI: <https://doi.org/10.2307/1290411>

judges ensure proportionality, fairness, and compliance with legal principles. However, comparative experiences indicate that judicial oversight may vary significantly in depth and effectiveness. In some jurisdictions, courts conduct rigorous reviews of negotiated agreements, while in others, judicial involvement remains largely formalistic. The risk that courts may function merely as “rubber stamps” has been widely discussed in the literature. In the Indonesian context, where judicial review of prosecutorial decisions has historically been limited, the effectiveness of judicial control over DPAs remains uncertain. This uncertainty raises concerns about whether the introduction of DPAs may strengthen or weaken institutional accountability.¹¹

Another critical dimension concerns the role of legal culture in shaping the operation of prosecutorial discretion. The effectiveness of regulatory safeguards depends not only on legal rules but also on institutional practices, professional ethics, and public expectations. In Indonesia, discretionary decision-making has often been associated with opacity and informal negotiation. While the formalization of DPAs aims to regulate and standardize such practices, there is a risk that existing informal dynamics may persist under a new legal framework. As such, the success of DPAs will depend on broader institutional reforms, including transparency, professional accountability, and public oversight. Without these elements, negotiated justice may reinforce rather than reduce existing inequalities.¹²



Figure 1. Three Pillars of Deferred Prosecutions Agreement

This conceptual relationship can be illustrated through the triangular interaction between efficiency, equality before the law, and accountability in the design of DPA. As shown in Figure 1, these three normative pillars are interdependent and mutually reinforcing, yet often exist in tension. The pursuit of efficiency in negotiated justice may enhance institutional responsiveness and reduce procedural burdens, but it risks weakening accountability when prosecutorial discretion is insufficiently regulated. At the same time, the absence of accountability mechanisms may undermine equality before the law, particularly where negotiated outcomes are influenced by bargaining power or economic capacity. Conversely,

¹¹ David M. Uhlmann, “Deferred Prosecution and Non-Prosecution Agreements and the Erosion of Corporate Criminal Liability,” *Maryland Law Review* 72, no. 5 (2013): 1295–1353.
¹² Lawrence M. Friedman, “The Concept of Legal Culture,” in *Law and Society Review* 4, no. 1 (1969): 29–44.

rigid adherence to formal equality without procedural flexibility may reduce efficiency and hinder effective enforcement against complex corporate misconduct. Therefore, the legitimacy of the Indonesian DPA framework depends on achieving a balanced configuration among these three dimensions. An imbalance, especially one that prioritizes efficiency at the expense of accountability and equality may lead to selective enforcement and structural disparity within the criminal justice system.

Ultimately, the normative design of DPAs in Indonesia reflects a broader tension between efficiency and due process in contemporary criminal justice reform. While the adoption of negotiated mechanisms may improve enforcement capacity and corporate compliance, it also raises fundamental constitutional and doctrinal concerns. The shift from adjudication to negotiation redefines the balance of power among prosecutors, courts, and defendants. If not supported by clear legal standards and institutional safeguards, this transformation may generate legal uncertainty and structural disparity. Therefore, understanding the normative foundations and limits of prosecutorial discretion is essential for evaluating whether DPAs can function as a legitimate and accountable instrument within Indonesia's legal system.

3.2. Normative Deficiencies in Sentencing Standards, Loss Assessment, and Procedural Safeguards under Indonesia's DPA Framework

The effectiveness and legitimacy of DPAs do not depend solely on their conceptual justification or normative design, but rather on the presence of structured regulatory safeguards that ensure consistency, transparency, and accountability. In the Indonesian context, the 2025 Criminal Procedure Code introduces DPAs as a progressive instrument to address complex corporate crime. However, the regulatory framework remains underdeveloped in several key aspects. These deficiencies create a legal vacuum that risks transforming prosecutorial flexibility into unstructured discretion. Rather than merely enhancing efficiency, such a framework may generate systemic uncertainty and institutional inequality. Therefore, it is necessary to critically examine how the absence of sentencing benchmarks, valuation standards, and procedural safeguards may undermine the fundamental principles of legal certainty and equality before the law.¹³

One of the most significant regulatory gaps concerns the absence of sentencing guidelines governing the determination of sanctions, restitution, and compliance obligations in DPA settlements. In jurisdictions such as the United Kingdom and the United States, structured guidelines serve as a central mechanism to ensure proportionality, predictability, and consistency. These frameworks provide benchmarks that limit arbitrary prosecutorial discretion and facilitate judicial oversight. In contrast, the Indonesian framework currently lacks clear parameters regarding the calculation of penalties, duration of agreements, and compliance expectations. As a result, similar corporate offenses may produce vastly different negotiated outcomes. Such disparity undermines the principle of equality before the law and

¹³ John Braithwaite, "Restorative Justice and Responsive Regulation," *Oxford Journal of Legal Studies* 20, no. 1 (2000): 37–55.

risks eroding public confidence in the fairness of negotiated justice.¹⁴

The absence of sentencing standards also creates incentives for forum shopping and strategic bargaining. Corporate actors may seek jurisdictions, prosecutors, or negotiation contexts perceived as more lenient or flexible. This dynamic has been widely observed in comparative studies of negotiated settlements, where powerful corporate defendants leverage legal and financial resources to influence enforcement outcomes. Without transparent and standardized benchmarks, the Indonesian DPA framework may unintentionally reinforce asymmetrical bargaining power, thereby privileging well-resourced actors over smaller firms or individual defendants. Consequently, negotiated justice may become a mechanism of selective leniency rather than structured accountability.¹⁵

Another critical dimension concerns the valuation of financial harm or state losses, which forms the substantive basis of most corporate settlements. The current framework does not clearly determine which authority is responsible for calculating losses or which methodology should be applied. In Indonesia, institutional overlaps between the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), and independent forensic auditors create significant ambiguity. Divergent valuation methods may produce inconsistent assessments, thereby affecting the outcome of negotiations. This uncertainty not only increases the risk of institutional conflict but also undermines the legitimacy of settlement outcomes.¹⁶

Moreover, the absence of standardized valuation methodologies risks transforming harm into a negotiable and manipulable variable. Corporate misconduct often involves complex financial and economic consequences, including indirect losses, market distortions, and long-term governance failures. Without clear criteria for determining the scope and magnitude of harm, negotiated settlements may underestimate actual losses. This problem has been highlighted in global scholarship, which emphasizes that weak valuation frameworks may reduce deterrence and allow corporations to internalize misconduct as a cost of doing business. In such circumstances, DPAs risk becoming instruments of economic management rather than mechanisms of criminal accountability.¹⁷

Procedural certainty represents another unresolved issue. The Indonesian framework does not clearly regulate amendment, extension, or addendum of DPA agreements. Questions remain regarding whether partial compliance allows renegotiation, whether deadlines may be extended, and how enforcement should proceed in cases of non-compliance. This ambiguity

¹⁴ Jennifer Arlen and Marcel Kahan, "Corporate Governance Regulation through Non-Prosecution," *University of Chicago Law Review* 84, no. 1 (2017): 323–387. <https://chicagounbound.uchicago.edu/uclrev/vol84/iss1/15>

¹⁵ Homer, E. M., & Maume, M. O. (2024). The Deterrent Effect of Federal Corporate Prosecution Agreements: An Exploratory Analysis. *Journal of White Collar and Corporate Crime*, 5(1), 15-27. DOI: <https://doi.org/10.1177/2631309X221120003>

¹⁶ Mark Findlay and Ralph Henham, "Transforming International Criminal Justice," *Journal of International Criminal Justice* 5, no. 3 (2007): 441–466.

¹⁷ Mihailis Diamantis, "Clockwork Corporations," *Iowa Law Review* 103, no. 2 (2018): 507–572. <https://ilr.law.uiowa.edu/print/volume-103-issue-2/clockwork-corporations-a-character-theory-of-corporate-punishment>

generates legal uncertainty for both prosecutors and corporate defendants. More importantly, it may encourage strategic delay, where corporations enter agreements without genuine commitment to reform. Such practices undermine deterrence and weaken the credibility of negotiated enforcement.¹⁸

The lack of procedural clarity also raises concerns regarding monitoring and compliance verification. In comparative jurisdictions, independent monitors, structured reporting obligations, and judicial supervision are often employed to ensure accountability. In Indonesia, however, the institutional framework for compliance monitoring remains unclear. Without credible oversight, negotiated agreements may become symbolic rather than substantive. This risk is particularly significant in cases involving systemic corporate misconduct, where effective governance reforms require long-term monitoring and institutional coordination.¹⁹

Taken together, these deficiencies demonstrate that the Indonesian DPA framework faces not merely isolated regulatory challenges but a broader structural problem. The absence of sentencing benchmarks, valuation standards, and procedural safeguards collectively creates a system characterized by unstructured discretion and limited accountability. This environment may facilitate opaque negotiations, selective enforcement, and institutional fragmentation. In the long term, such dynamics risk undermining public trust and eroding the legitimacy of criminal law as an instrument of justice.

To conceptualize this systemic dynamic, this study proposes the DPA Risk Cascade Model, which illustrates how regulatory gaps may generate a chain of institutional and normative consequences.

Figure 2. The DPA Risk Cascade Model



As illustrated in Figure 2, the cascade begins with regulatory gaps that allow broad and unstructured discretion in determining sanctions, valuation, and procedural standards. This discretion, when exercised without transparent benchmarks, produces opaque negotiation processes that reduce accountability and public scrutiny. Over time, opacity increases the risk of selective enforcement, where outcomes may depend on bargaining power rather than legal principles. Ultimately, this dynamic may lead to declining public trust and a legitimacy crisis in

¹⁸ David M. Uhlmann, "Deferred Prosecution and Non-Prosecution Agreements," *Maryland Law Review* 72, no. 5 (2013): 1295–1353.

¹⁹ Veronica Root Martinez, "Modern-Day Monitorships," *Fordham Law Review* 84, no. 5 (2016): 2053–2102. DOI: 10.2139/ssrn.2581700

the criminal justice system. In the Indonesian context, where institutional oversight and legal culture continue to evolve, this cascade underscores the urgency of developing structured safeguards to ensure proportionality, transparency, and equality before the law.

3.3. Transparency and Judicial Oversight in Preventing Selective Enforcement in Deferred Prosecution Agreements

Transparency constitutes a foundational requirement in modern criminal justice and is closely connected to the principles of the rule of law, procedural fairness, and democratic accountability. The exercise of coercive state power, particularly in criminal enforcement, must remain visible and subject to scrutiny to preserve legitimacy. In this regard, the principle of open justice has long been regarded as a safeguard against arbitrariness, ensuring that legal processes remain accessible to public evaluation. However, the growing reliance on negotiated enforcement mechanisms, including DPAs, challenges this foundational paradigm. By shifting significant decision-making authority from public adjudication to private negotiation, DPAs introduce a structural tension between efficiency and transparency that must be critically examined.²⁰

In the context of corporate criminal enforcement, transparency serves not only as a procedural value but also as a mechanism to sustain public trust and reinforce deterrence. When enforcement outcomes are visible and justified, they contribute to legal predictability and normative stability. Conversely, opaque decision-making processes may weaken confidence in the fairness and impartiality of legal institutions. The Indonesian adoption of DPAs therefore raises a central normative question: whether negotiated justice can remain legitimate in the absence of structured transparency and institutional accountability. This question becomes particularly urgent in jurisdictions where the credibility of law enforcement institutions remains contested and evolving.²¹

Advocates of confidentiality in DPA negotiations frequently emphasize the pragmatic advantages of closed proceedings. Confidentiality is often justified as necessary to protect sensitive commercial information, stabilize financial markets, and encourage corporate cooperation. Early disclosure of investigations or negotiation processes may trigger reputational damage, investor withdrawal, and systemic economic risks. These concerns are particularly relevant in cases involving large corporations or strategic industries. Nonetheless, such justifications must be balanced against the broader public interest in accountability, deterrence, and equality before the law. Without such balance, confidentiality may shift from a protective mechanism to a shield against scrutiny.²²

Comparative experiences demonstrate that transparency and confidentiality are not

²⁰ Perez, Michel A. "The rise and globalization of negotiated settlements: How an American procedure, the Deferred Prosecution Agreement (DPA), became a transnational key tool to fight transnational corporate crimes." *Rule of Law and Anti-Corruption Center Journal* 2020, no. 1 (2020): 4. DOI: <https://doi.org/10.5339/rolacc.2020.4>

²¹ Tom R. Tyler and Jonathan Jackson, "Legitimacy and Procedural Justice," *Annual Review of Law and Social Science* 16 (2020): 1–21. <https://researchonline.lse.ac.uk/id/eprint/29676>

²² Fox-Decent, Evan, and Evan J. Criddle. "Interest-Balancing vs. Fiduciary Duty: Two Models for National Security Law." *German Law Journal* 13, no. 5 (2012): 542–59. <https://doi.org/10.1017/S2071832200020642>.

mutually exclusive. Jurisdictions such as the United Kingdom have adopted hybrid models, where sensitive negotiations remain confidential during early stages but final agreements, factual statements, and judicial reasoning are publicly disclosed. This approach seeks to protect legitimate corporate interests while maintaining public oversight. By contrast, systems that rely excessively on secrecy risk weakening the normative force of criminal law. The Indonesian regulatory framework has not yet articulated a clear model of disclosure, leaving significant uncertainty regarding the scope, timing, and institutional control of transparency in DPA implementation.²³

Judicial oversight is commonly presented as the central safeguard in negotiated justice. In theory, courts function as independent arbiters that ensure proportionality, legality, and fairness in settlements. However, the effectiveness of judicial review depends on its substantive depth. If courts merely approve agreements without rigorous evaluation, judicial oversight becomes symbolic rather than meaningful. This concern is particularly relevant in the DPA context, where negotiations occur outside adversarial proceedings. Judges may face structural constraints, including limited time, incomplete information, and reliance on prosecutorial representations. These limitations raise questions about whether courts can meaningfully scrutinize complex corporate settlements.²⁴

The problem of information asymmetry further complicates judicial oversight. Corporate defendants often possess superior access to financial data, legal expertise, and technical resources. Prosecutors, while empowered, may also prioritize efficiency and institutional outcomes²⁵. In contrast, judges lack investigative tools and depend largely on the materials presented by negotiating parties. This asymmetry creates a risk that courts may endorse negotiated outcomes without fully assessing their proportionality or long-term implications. In such circumstances, judicial review risks becoming procedural validation rather than substantive control.

The concentration of discretion in negotiated justice frameworks also raises concerns about selective enforcement. When prosecutorial flexibility is combined with limited transparency, enforcement priorities may become influenced by political, economic, or institutional considerations. Access to negotiation may depend on corporate size, bargaining capacity, or strategic importance. This dynamic risks creating a dual-track criminal justice system, where corporate actors benefit from flexibility while ordinary defendants remain subject to rigid procedures. Such disparities challenge the constitutional principle of equality before the law and may undermine the normative coherence of criminal enforcement.²⁶

²³ Prabowo, Sidik, Maman Abdurohman, Hilal Hudan Nuha, and Sarwono Sutikno. "Identifying and Validating Critical Factors in Designing a Comprehensive Data Protection Impact Assessment (DPIA) Framework for Indonesia." *International Journal of Safety & Security Engineering* 15, no. 1 (2025). 10.18280/ijss.150113

²⁴ Brandon L. Garrett, "Judicial Review in Corporate Settlements," *Columbia Law Review* 122, no. 6 (2022): 1651–1698. https://scholarship.law.duke.edu/faculty_scholarship/3839 accessed 26 February 2026

²⁵ Li, Pan, Yun Zhong, and Han Yan. "The constructive interaction between executive and judicial powers: government-court coordination and corporate investment efficiency." *Journal of Contemporary Accounting & Economics* (2026): <https://doi.org/10.1016/j.jcae.2026.100539>.

²⁶ Huq, Aziz Z. "Racial Equity In Algorithmic Criminal Justice." *Duke Law Journal* 68, no. 6 (2019): 1043–1134.

Recent scholarship suggests that negotiated settlements may reproduce broader socio-economic inequalities within legal systems. Corporate offenders with greater financial and legal resources are better positioned to negotiate favorable outcomes, manage reputational risks, and implement compliance reforms. Smaller firms and individual defendants, by contrast, may lack similar capacity. Without clear criteria governing access to DPAs, negotiated justice risks reinforcing structural privilege. In Indonesia, where economic concentration and institutional asymmetry remain significant, these risks require careful regulatory attention.²⁷ Legal culture also plays a decisive role in shaping the effectiveness of transparency and oversight mechanisms. The success of negotiated enforcement depends not only on formal legal provisions but also on institutional integrity, professional ethics, and accountability traditions. In Indonesia, discretionary decision-making has historically been associated with opacity and informal negotiation. Although the formalization of DPAs aims to standardize such practices, institutional behavior may evolve more slowly than legal reform. Consequently, transparency must be understood not only as a legal requirement but also as a governance challenge.²⁸

The implications of opacity extend beyond individual cases to the broader legitimacy of the criminal justice system. Empirical research in procedural justice demonstrates that citizens evaluate legal systems based on fairness, transparency, and respect, rather than merely outcomes. If negotiated justice is perceived as benefiting powerful actors or concealing accountability, public trust may decline. In the long term, declining legitimacy may reduce compliance, cooperation, and deterrence. Thus, transparency is not only a normative ideal but also a functional necessity for effective enforcement. To address these concerns, a transparency-oriented governance framework is essential. Such a framework should include structured disclosure obligations, publication of agreements, independent monitoring, and meaningful judicial reasoning. These measures can reduce information asymmetry, enhance predictability, and strengthen institutional accountability.

Comparative experience indicates that transparency does not necessarily undermine efficiency; rather, it can improve compliance and long-term governance. The Indonesian DPA framework should therefore integrate transparency as a core design principle rather than a supplementary safeguard. The absence of transparency and effective judicial oversight may generate a cascading institutional dynamic. Regulatory opacity enables broad prosecutorial discretion exercised without structured accountability. Such discretion, combined with limited public scrutiny, produces opaque negotiation processes that obscure the rationale behind enforcement decisions. Over time, these conditions increase the likelihood of selective enforcement, where outcomes depend on bargaining power rather than legal principles.

<https://www.jstor.org/stable/48563105>.

²⁷ Meitasari, Intan, Suratno Suratno, and Yuniwati Yuniwati. "Normative Approach to Law and Economics in Developing Countries: Challenges in Establishing Efficient and Just Market Regulations." *Journal of Law and Economics* 4, no. 2 (2025): 237-249. <https://doi.org/10.56347/jle.v4i2.373>

²⁸ Mariana Mota Prado and Michael J. Trebilcock, "Institutional Culture and Anti-Corruption Reform," *Journal of Law and Society* 48, no. 4 (2021): 532–560. DOI:10.1017/9781108563116

Ultimately, this dynamic risks eroding public trust and undermining the legitimacy of the criminal justice system. In the Indonesian context, where institutional reform remains ongoing, addressing this transparency–accountability gap is essential to ensure that the adoption of DPAs strengthens rather than weakens the rule of law.

3.4. Conflict between Deferred Prosecution Agreements and Corporate Insolvency Frameworks in Indonesia

The integration of DPAs into the Indonesian criminal procedure framework introduces a complex interaction between criminal enforcement and corporate insolvency regimes. While DPAs are primarily designed to enhance corporate accountability, promote restitution, and improve enforcement efficiency, insolvency and restructuring mechanisms such as bankruptcy and suspension of debt payment obligations (PKPU) aim to preserve corporate value, protect creditor interests, and facilitate economic recovery. These objectives, although both grounded in public policy, are normatively distinct and may conflict in practice. The absence of clear regulatory coordination between these two regimes in the Indonesian legal framework therefore creates a structural legal gap with significant implications for both accountability and financial stability.²⁹

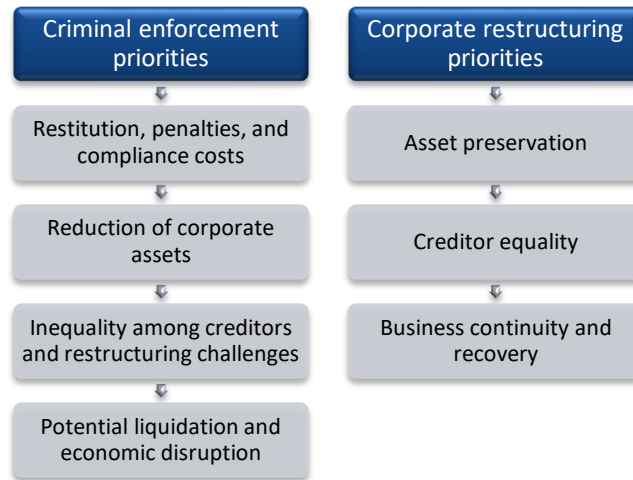
At a conceptual level, the conflict between DPA and insolvency law reflects a broader tension between punitive and rehabilitative approaches in corporate governance. Criminal law emphasizes deterrence, retribution, and public accountability, while insolvency law prioritizes collective enforcement, equitable creditor treatment, and business continuity. When corporations facing criminal liability are simultaneously undergoing financial distress or restructuring, these competing priorities create institutional and normative dilemmas. Should criminal sanctions take precedence over restructuring efforts, or should corporate rescue be prioritized in order to preserve economic value? The Indonesian framework does not yet provide clear answers to these questions, leaving significant uncertainty for regulators, courts, and corporate actors.³⁰

The interaction between Deferred Prosecution Agreements and corporate insolvency regimes should therefore be understood not merely as a procedural overlap, but as a structural and normative conflict between two governance frameworks. Criminal enforcement prioritizes restitution, penalties, and compliance reforms, while insolvency law focuses on asset preservation and creditor equality. Enforcement decisions may directly influence restructuring outcomes, particularly where financial penalties or compliance costs reduce the debtor's estate. To conceptualize this structural tension, this study proposes the DPA–Insolvency Conflict Framework.

²⁹ Doing, Muhammad, Darma Kartian, and Muhammad Irsyadul Ibad. "Strengthening the Constitutional Law System (Legal Challenges and Strategies in Handling the Social, Economic and Political Crisis in Indonesia)." *Journal Equity of Law and Governance* 5, no. 1 (2024): 113-122. <https://doi.org/10.22225/elg.5.1.10260.113-122>

³⁰ Vanessa Finch and David Milman, "Insolvency Law and Corporate Governance," *Journal of Corporate Law Studies* 22, no. 1 (2022): 1–25. 10.1017/9781139626811

Figure 3. The DPA-Insolvency Framework



As illustrated in Figure 3, the obligations imposed under DPA settlements may directly affect the financial capacity of corporations undergoing restructuring. Monetary penalties, restitution, and compliance investments reduce the debtor’s asset pool and may distort the distribution framework established under insolvency law. This dynamic creates the risk that criminal enforcement unintentionally undermines restructuring objectives, resulting in liquidation rather than recovery. Such an outcome not only affects creditors but may also generate broader economic consequences, including job losses, supply chain disruption, and reduced market confidence.³¹

A related concern arises from the practical feasibility of DPA obligations in distressed corporations. Many DPA frameworks assume that corporations possess sufficient financial and operational capacity to implement compliance reforms, corporate governance restructuring, and monitoring programs. However, financially distressed firms often lack liquidity and institutional stability. In such contexts, negotiated settlements may become symbolic or unrealistic, undermining both deterrence and governance reform. This mismatch between regulatory expectations and corporate capacity raises important questions regarding proportionality and effectiveness in negotiated enforcement.³²

The potential for strategic use of DPAs by distressed corporations also warrants attention. Firms facing insolvency may use negotiated settlements as a delay strategy to stabilize their reputation, secure investor confidence, or restructure debt obligations. By entering into DPA negotiations, corporations may signal cooperation while transferring assets or reorganizing liabilities. Without structured safeguards, such practices may weaken accountability and reduce deterrence. This dynamic reflects a broader concern in corporate enforcement literature, where negotiated justice may be incorporated into corporate crisis

³¹ Irit Mevorach, "The Future of Corporate Insolvency," *International and Comparative Law Quarterly* 70, no. 2 (2021): 363–392. 10.1093/oso/9780198782896.001.0001

³² Stewart, Richard B. "Remedying disregard in global regulatory governance: accountability, participation, and responsiveness+." *American Journal of International Law* 108, no. 2 (2014): 211-270. <https://doi.org/10.5305/amerjintelaw.108.2.0211>

management rather than serving as an instrument of compliance.

The impact on creditors is particularly significant. Insolvency law is built upon principles of collective enforcement and *pari passu* distribution. However, DPA obligations may prioritize restitution to the state or specific victims, effectively placing public claims above private creditor interests without explicit statutory authorization. This raises concerns regarding legal certainty and fairness in insolvency proceedings. The potential transformation of the state into a *de facto* "super-priority creditor" challenges established insolvency doctrines and may discourage creditor participation in restructuring processes.

Institutional fragmentation further intensifies these challenges. Corporate insolvency proceedings in Indonesia involve commercial courts, restructuring administrators, and creditor committees, while DPA negotiations are conducted by prosecutors and criminal courts³³. The absence of coordination mechanisms between these institutions may lead to conflicting obligations, duplicated monitoring, and inconsistent judicial decisions. For example, a restructuring plan approved in a PKPU proceeding may conflict with compliance obligations imposed under a DPA. Such fragmentation undermines legal coherence and increases enforcement uncertainty.

Comparative experiences suggest that coordination between criminal and insolvency regimes is essential. In the United Kingdom and the United States, enforcement agencies increasingly consider restructuring contexts when designing settlements, emphasizing proportionality and corporate viability. These jurisdictions have developed institutional practices that balance accountability with economic recovery, including deferred enforcement strategies and judicial review mechanisms. Such approaches demonstrate that criminal enforcement and corporate rescue need not be mutually exclusive, but require integrated regulatory design.³⁴

In the Indonesian context, the risks associated with this conflict are particularly acute. Corporate restructuring through PKPU is widely used as a mechanism to address financial distress. At the same time, corporate misconduct often emerges during periods of financial crisis, increasing the likelihood of overlapping proceedings. Without clear legal guidance, enforcement outcomes may become unpredictable, potentially undermining both creditor protection and criminal accountability. This uncertainty may also discourage investment and weaken market confidence.³⁵

From a broader governance perspective, the interaction between DPA and insolvency regimes highlights the evolving role of criminal law as a regulatory tool. Negotiated

³³ Ibrahim, Metty Murni Wati, Jovita Irawati, Jamin Ginting, and Nelson Pardamean Purba. "Implementation of the Deferred Prosecution Agreement (DPA) Concept in Handling Corporate Crime in the Laws of Indonesia and Other Countries." *Edunity Kajian Ilmu Sosial dan Pendidikan* 3, no. 5 (2024): 353-361. 10.57096/edunity.v3i6.252

³⁴ Tuliakov, Viacheslav. "Transnational Criminal Law, Sovereignty and International Justice: Harmonization Challenges and Policy Evolution." *International Annals of Criminology* 63, no. 2 (2025): 383-405. <https://doi.org/10.1017/cr.2025.10076>.

³⁵ Mota Prado, Mariana. "Redundancy as a Legal Strategy to Combat Corruption: Exploring the Potential of Institutional Multiplicity to Create Fail-Safe Systems." *Current Legal Problems* 77, no. 1 (2024): 335-376. <https://doi.org/10.1093/clp/cuae010>

enforcement increasingly seeks to shape corporate behavior and prevent future misconduct, while insolvency law focuses on economic allocation and recovery. The challenge for Indonesia is to integrate these objectives within a coherent institutional framework that ensures proportionality, accountability, and economic sustainability. Without such integration, regulatory mechanisms may operate at cross purposes.³⁶

In light of these challenges, the Indonesian legal system must develop a coordinated framework that clarifies the priority of claims, establishes institutional communication between prosecutors and insolvency authorities, and incorporates proportionality standards in settlements involving distressed corporations. Such reforms are essential to preserve both the legitimacy of criminal enforcement and the effectiveness of corporate restructuring. Without these safeguards, the implementation of DPAs risks generating legal uncertainty, weakening creditor protection, and undermining both economic stability and public trust in the rule of law.

3.5. Institutional Design and International Practices in Deferred Prosecution Agreements

The globalization of corporate criminal enforcement has fundamentally transformed the landscape of criminal justice, particularly in addressing complex economic and transnational misconduct. DPAs have emerged as a central instrument within this transformation, reflecting a shift from traditional adjudicative models toward negotiated and governance-oriented approaches. However, the adoption of DPAs across jurisdictions demonstrates that flexibility alone does not guarantee legitimacy. Instead, the effectiveness of negotiated justice depends on institutional safeguards, structured discretion, and regulatory coordination. For Indonesia, comparative analysis therefore serves not only as a descriptive exercise but as a strategic tool for designing a context-sensitive and sustainable reform agenda.

The comparative experience reveals that DPA systems evolve in response to institutional crises and public demand for accountability. Early models, particularly in the United States, emphasized prosecutorial flexibility as a pragmatic solution to enforcement constraints. Over time, however, concerns regarding opacity, inconsistency, and selective enforcement led to reforms that strengthened transparency, monitoring, and judicial oversight.³⁷ This evolution highlights a critical lesson: negotiated justice must continuously adapt to maintain public trust and institutional legitimacy. Indonesia currently stands at an early stage of this trajectory, and the absence of structured safeguards creates an opportunity to design a more balanced and integrated framework from the outset.

The United States model illustrates both the potential and risks of prosecutorially driven enforcement.³⁸ Its flexibility allows for rapid resolution and extensive corporate cooperation,

³⁶ Cristie Ford, "Corporate Compliance and Regulatory Governance," *Law & Contemporary Problems* 83, no. 4 (2020): 27–52. <https://doi.org/10.1111/j.1744-1714.2008.00050.x>

³⁷ O'Sullivan, Ryan. "Balancing accountability and independence: Prosecutorial discretion in the United States and Italy." (2023) <http://dx.doi.org/10.2139/ssrn.4783527>

³⁸ Pratama, Ilham Nur. "Legal Comparison of Deferred Prosecution Agreement (DPA) Methods in the USA, UK and Indonesia for Recovering State Financial Losses Due to Corruption Crimes." *Corruptio* 4, no. 2 (2023): 73-80. <https://doi.org/10.25041/corruptio.v4i2.2853>

yet its reliance on discretion has generated persistent debate regarding fairness and equality. Reform discussions increasingly focus on structured guidelines, monitoring standards, and improved transparency. These developments underscore that flexibility must be complemented by accountability to sustain legitimacy.

The United Kingdom on the other hand provides an alternative model characterized by judicialization and transparency. By embedding proportionality review and public disclosure into the DPA process, the UK system enhances legal certainty and democratic oversight. This model demonstrates that negotiated justice can coexist with rule-of-law principles when supported by institutional safeguards. However, it also highlights the importance of procedural efficiency and the need to avoid excessive formalism.³⁹

Lastly, Singapore and other emerging jurisdictions offer an adaptive approach that integrates criminal enforcement with financial governance and economic resilience. These systems recognize that corporate misconduct often arises in contexts of financial distress and systemic risk. Consequently, regulatory coordination and economic sensitivity form central components of enforcement design. This adaptive governance model is particularly relevant for Indonesia, where corporate restructuring and financial instability are recurring features of the economic landscape.

Table 1. Comparative Governance Dimensions of Deferred Prosecution Agreements

Governance Dimension	United States	United Kingdom	Singapore	Indonesia
Prosecutorial discretion	High and flexible	Structured and moderated	Adaptive	High and largely unstructured
Judicial oversight	Limited	Strong and substantive	Moderate	Unclear
Transparency	Partial	Strong	Moderate	Limited
Sentencing standards	Flexible	Structured	Emerging	Absent
Compliance monitoring	Extensive	Structured	Coordinated	Undefined
Valuation of harm	Negotiated	Judicially supervised	Hybrid	Unclear
Insolvency coordination	Emerging	Limited	Adaptive	Absent
Institutional integration	Fragmented	Judicialized	Coordinated	Fragmented

Source: Secondary Data, 2026 (Processed)

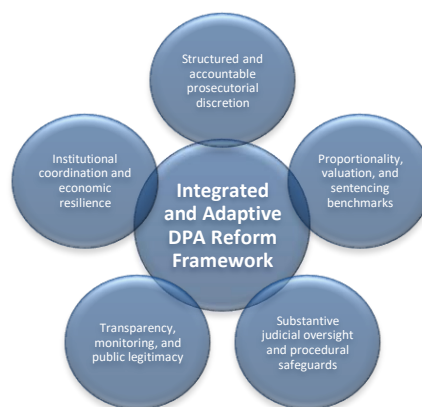
The comparative framework demonstrates that the core challenge for Indonesia is not the adoption of DPAs per se, but the institutional design required to prevent discretion from

³⁹ *Ibid.*

evolving into opacity and disparity. The experience of other jurisdictions suggests that the legitimacy of negotiated justice depends on a structured balance between flexibility and accountability. More importantly, the integration of enforcement with financial governance and corporate restructuring is increasingly recognized as a central component of modern regulatory design.

In light of these insights, Indonesia should adopt a phased and adaptive reform strategy rather than a wholesale transplantation of foreign models. Such a strategy must consider domestic institutional capacity, legal culture, and economic priorities. Reform should therefore be viewed as a process rather than a single legislative intervention. The following framework proposes a structured pathway for institutional development and governance integration.

Figure 4. Integrated and Adaptive DPA Reform Framework for Indonesia



The first pillar emphasizes structured prosecutorial discretion. Rather than limiting flexibility, the objective is to guide decision-making through clear criteria, internal guidelines, and external accountability. This includes developing eligibility standards, decision matrices, and review mechanisms to ensure consistency across cases. Institutional transparency in prosecutorial reasoning can significantly reduce the risk of selective enforcement while preserving operational efficiency.⁴⁰

The second pillar focuses on proportionality and valuation. Indonesia should develop sentencing benchmarks, restitution frameworks, and valuation methodologies in collaboration with audit institutions such as BPK and BPKP. Clear standards will reduce uncertainty and enhance both judicial review and public confidence. This reform should also incorporate principles of corporate financial capacity and restructuring viability, ensuring that enforcement remains realistic and economically sustainable.

The third pillar concerns substantive judicial oversight. Courts must move beyond formal approval and engage in meaningful evaluation of fairness, proportionality, and long-term compliance. Judicial training, specialized chambers, and structured review procedures can strengthen this role. Importantly, judicial oversight should remain efficient and focused to

⁴⁰ Yong, Gao. "A Comparative Study on Procedural Adjudication." In *Criminal Procedural Trial in China: Procedure of Excluding Illegal Evidence as an Example*, pp. 63-123. Singapore: Springer Nature Singapore, 2024. https://doi.org/10.1007/978-981-97-4935-5_3

avoid undermining the pragmatic advantages of negotiated enforcement.

The fourth pillar highlights transparency and public legitimacy. Structured disclosure of agreements, monitoring outcomes, and judicial reasoning can enhance deterrence and institutional trust. Public reporting mechanisms and independent monitoring can reduce information asymmetry and strengthen accountability. At the same time, confidentiality may be preserved during early investigative stages to protect legitimate commercial and systemic interests.

The fifth pillar finally addresses institutional coordination and economic resilience. Indonesia must establish structured communication between prosecutors, financial regulators, insolvency authorities, and commercial courts. This coordination is essential to mitigate conflict between criminal enforcement and corporate restructuring. The development of inter-agency task forces or specialized corporate enforcement units may enhance institutional coherence and reduce regulatory fragmentation.

Beyond these core pillars, reform must also consider implementation sequencing. Institutional capacity should be strengthened through professional training, digital monitoring systems, and inter-agency cooperation. Pilot programs and regulatory sandbox approaches may allow gradual adaptation while minimizing systemic risk. Such strategies can enhance learning and reduce resistance to reform. Another critical dimension is the integration of DPA governance with broader anti-corruption and financial supervision frameworks. Corporate misconduct often intersects with procurement, banking, and financial regulation. Coordinated enforcement across these domains can improve deterrence and systemic integrity. Indonesia's ongoing institutional reforms provide an opportunity to embed negotiated enforcement within a broader governance architecture.

The framework also recognizes the importance of legal culture. Sustainable reform requires professional ethics, accountability norms, and public participation. Transparency and legitimacy cannot be achieved solely through formal rules; they depend on institutional behavior and societal expectations. Strengthening these dimensions will be essential for the long-term success of negotiated justice. Finally, the adaptive framework positions Indonesia as a potential regional leader in corporate enforcement. By integrating flexibility, accountability, and economic resilience, Indonesia can develop a distinctive model tailored to emerging economies. Such a model would contribute not only to domestic reform but also to global debates on negotiated justice and regulatory governance.

4. CONCLUSION

The reform of the Indonesian Criminal Procedure Code in 2025, particularly through the introduction of Deferred Prosecution Agreements (DPAs), represents a significant institutional shift toward negotiated mechanisms in addressing complex corporate and economic crimes. However, this study finds that the current regulatory framework governing DPAs still contains substantial normative and procedural gaps that may affect the consistency and fairness of criminal enforcement. First, the absence of clear sentencing benchmarks and proportionality guidelines creates broad discretion in determining sanctions, potentially leading to

inconsistent outcomes across similar cases. Second, the legal framework does not clearly define the institutional authority and standardized methodology for calculating state losses, which may result in differing valuations and uncertainty in the negotiation process. Third, the limited level of transparency and the lack of clearly structured procedural safeguards may reduce public oversight and increase the risk of unequal application of negotiated justice. In addition, the interaction between DPAs and corporate insolvency regimes presents further regulatory challenges. Financial obligations arising from DPA settlements, including restitution and compliance commitments, may conflict with restructuring processes in PKPU or bankruptcy proceedings, thereby creating legal uncertainty for both enforcement authorities and creditors. Based on these findings, this study emphasizes the need for a more coherent regulatory framework governing DPAs in Indonesia. Strengthening sentencing guidelines, establishing standardized valuation mechanisms for state losses, ensuring adequate judicial oversight, improving transparency, and coordinating DPA mechanisms with corporate insolvency regimes are essential steps to ensure that negotiated prosecution operates within the principles of legal certainty, equality before the law, and accountable corporate criminal enforcement.

REFERENCE

- Arief, Barda Nawawi. *Pembaharuan Hukum Pidana dalam Perspektif Kajian Perbandingan*. Jakarta: Kencana, 2014.
- Arlen, Jennifer, and Marcel Kahan. "Corporate Governance Regulation through Non-Prosecution." *University of Chicago Law Review* 84, no. 1 (2017). <https://chicagounbound.uchicago.edu/uclrev/vol84/iss1/15>
- Barkow, Rachel. "Prosecutorial Administration: Prosecutor Bias and the Department of Justice." *Virginia Law Review* 99, no. 2 (2013). <https://www.virginialawreview.org/wp-content/uploads/2020/12/271.pdf>
- Bibas, Stephanos. "Plea Bargaining Outside the Shadow of Trial." *Harvard Law Review* 117, no. 8 (2004). <http://dx.doi.org/10.2139/ssrn.464880>
- Diamantis, Mihailis. "Clockwork Corporations." *Iowa Law Review* 103, no. 2 (2018). <https://ilr.law.uiowa.edu/print/volume-103-issue-2/clockwork-corporations-a-character-theory-of-corporate-punishment>
- Doing, Muhammad, Darma Kartian, and Muhammad Irsyadul Ibad. "Strengthening the Constitutional Law System: Legal Challenges and Strategies in Handling the Social, Economic and Political Crisis in Indonesia." *Journal Equity of Law and Governance* 5, no. 1 (2024). <https://doi.org/10.22225/elg.5.1.10260.113-122>
- Finch, Vanessa, and David Milman. "Insolvency Law and Corporate Governance." *Journal of Corporate Law Studies* 22, no. 1 (2022). <https://doi.org/10.1017/9781139626811>
- Ford, Cristie. "Corporate Compliance and Regulatory Governance." *Law & Contemporary Problems* 83, no. 4 (2020). <https://doi.org/10.1111/j.1744-1714.2008.00050.x>

- Fox-Decent, Evan, and Evan J. Criddle. "Interest-Balancing vs. Fiduciary Duty: Two Models for National Security Law." *German Law Journal* 13, no. 5 (2012). <https://doi.org/10.1017/S2071832200020642>
- Garrett, Brandon L. *Too Big to Jail: How Prosecutors Compromise with Corporations*. Cambridge, MA: Harvard University Press, 2014. <https://doi.org/10.2307/j.ctt9qdskg>
- Garrett, Brandon L. "Judicial Review in Corporate Settlements." *Columbia Law Review* 122, no. 6 (2022). https://scholarship.law.duke.edu/faculty_scholarship/3839
- Homer, E. M., and M. O. Maume. "The Deterrent Effect of Federal Corporate Prosecution Agreements: An Exploratory Analysis." *Journal of White Collar and Corporate Crime* 5, no. 1 (2024). <https://doi.org/10.1177/2631309X221120003>
- Huq, Aziz Z. "Racial Equity in Algorithmic Criminal Justice." *Duke Law Journal* 68, no. 6 (2019). <https://www.jstor.org/stable/48563105>
- Ibrahim, Metty Murni Wati, Jovita Irawati, Jamin Ginting, and Nelson Pardamean Purba. "Implementation of the Deferred Prosecution Agreement (DPA) Concept in Handling Corporate Crime in the Laws of Indonesia and Other Countries." *Edunity Kajian Ilmu Sosial dan Pendidikan* 3, no. 5 (2024). <https://doi.org/10.57096/edunity.v3i6.252>
- Li, Pan, Yun Zhong, and Han Yan. "The Constructive Interaction between Executive and Judicial Powers: Government-Court Coordination and Corporate Investment Efficiency." *Journal of Contemporary Accounting & Economics* (2026). <https://doi.org/10.1016/j.jcae.2026.100539>
- Martinez, Veronica Root. "Modern-Day Monitorships." *Fordham Law Review* 84, no. 5 (2016). <https://doi.org/10.2139/ssrn.2581700>
- Meitasari, Intan, Suratno Suratno, and Yuniwati Yuniwati. "Normative Approach to Law and Economics in Developing Countries: Challenges in Establishing Efficient and Just Market Regulations." *Journal of Law and Economics* 4, no. 2 (2025). <https://doi.org/10.56347/jle.v4i2.373>
- Mevorach, Irit. "The Future of Corporate Insolvency." *International and Comparative Law Quarterly* 70, no. 2 (2021). <https://doi.org/10.1093/oso/9780198782896.001.0001>
- Mota Prado, Mariana. "Redundancy as a Legal Strategy to Combat Corruption: Exploring the Potential of Institutional Multiplicity to Create Fail-Safe Systems." *Current Legal Problems* 77, no. 1 (2024). <https://doi.org/10.1093/clp/cuae010>
- Prabowo, Sidik, Maman Abdurrohman, Hilal Hudan Nuha, and Sarwono Sutikno. "Identifying and Validating Critical Factors in Designing a Comprehensive Data Protection Impact Assessment Framework for Indonesia." *International Journal of Safety & Security Engineering* 15, no. 1 (2025). <https://doi.org/10.18280/ijssse.150113>

- Prado, Mariana Mota, and Michael J. Trebilcock. "Institutional Culture and Anti-Corruption Reform." *Journal of Law and Society* 48, no. 4 (2021). <https://doi.org/10.1017/9781108563116>
- Perez, Michel A. "The Rise and Globalization of Negotiated Settlements: How an American Procedure, the Deferred Prosecution Agreement (DPA), Became a Transnational Key Tool to Fight Transnational Corporate Crimes." *Rule of Law and Anti-Corruption Center Journal* 2020, no. 1 (2020). <https://doi.org/10.5339/rolacc.2020.4>
- Pratama, Ilham Nur. "Legal Comparison of Deferred Prosecution Agreement (DPA) Methods in the USA, UK and Indonesia for Recovering State Financial Losses Due to Corruption Crimes." *Corruptio* 4, no. 2 (2023). <https://doi.org/10.25041/corruptio.v4i2.2853>
- Stewart, Richard B. "Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness." *American Journal of International Law* 108, no. 2 (2014). <https://doi.org/10.5305/amerjintelaw.108.2.0211>
- Stuntz, William J. "The Pathological Politics of Criminal Law." *Michigan Law Review* 100, no. 3 (2011). <https://doi.org/10.2307/1290411>
- Tuliakov, Viacheslav. "Transnational Criminal Law, Sovereignty and International Justice: Harmonization Challenges and Policy Evolution." *International Annals of Criminology* 63, no. 2 (2025). <https://doi.org/10.1017/cri.2025.10076>
- Tyler, Tom R., and Jonathan Jackson. "Legitimacy and Procedural Justice." *Annual Review of Law and Social Science* 16 (2020). <https://researchonline.lse.ac.uk/id/eprint/29676>
- Yong, Gao. "A Comparative Study on Procedural Adjudication." In *Criminal Procedural Trial in China: Procedure of Excluding Illegal Evidence as an Example*. Singapore: Springer Nature Singapore, 2024. https://doi.org/10.1007/978-981-97-4935-5_3