

In Search of a Deferred Prosecution Agreement Model for Effective Anti-Corruption Framework in Indonesia

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Abstract: To help reduce the corruption in the criminal justice system, Indonesia should consider implementing a Deferred Prosecution Agreement (DPA) mechanism. DPA would not only aiming for punishment to corporations, especially in special and general deterrence, but also could accommodate in returning state assets from perpetrators. Indonesia could learn from the DPA models applied in the U.K. and U.S., as well as the proposed model in Australia. DPA models could be noteworthy in making the criminal justice process more effective, efficient, and less time-consuming, as well as resolving the problems of significant caseloads and ongoing corruption.

Keywords: Corruption; Corporation; Deferred Prosecution Agreement

1. Introduction

In the Indonesian criminal justice system, the problem how to effectively prosecute and punish corporations for corruption has become an oft-debated topic over the past five years. Based on the 1955 Law on Economic Offenses, corporations can be named as perpetrators or subjects of crimes in Indonesia. Several other regulations also consider corporations as perpetrators of crimes. In recent years, Indonesian public prosecutors and the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* or KPK) have increasingly prosecuted corporations before the court. There have been several cases in which Indonesian courts decided that corporations were perpetrators of criminal offenses and punished them, primarily through the imposition of fines.

Deferred Prosecution Agreement (DPA) is not a familiar term in Indonesian law. Nevertheless, DPA schemes are commonly used in the U.K. and in the U.S. to overcome difficulties in enforcing prosecution of criminal acts by corporations, namely inefficiency, effort, and cost. Furthermore, processing corporations in the criminal justice system through prosecution does not assure that the corporation in question will not repeat the same offense in the future. DPAs can accommodate that possibility.¹

This paper discusses the problem of handling corruption in Indonesia, focusing on corruption committed by corporations. More specifically, this paper discusses the possibility of introducing and applying a model known as the Deferred Prosecution

¹ Topo Santoso, Febby Mutiara Nelson, and Anja Ginting "The Idea of Preventing Corporate Corruption Through Deferred Prosecution Agreement (DPA) in Indonesia" (ADVED 2017-3rd International Conferences on Advances in Education and Social Science, Istanbul, Turkey, 2017), <https://scholar.ui.ac.id/en/publications/the-idea-of-preventing-corporate-corruption-through-deferred-pros>.

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