



The Use of the DPA Concept and the Formulation of Sanctions as a Reform of State Loss Recovery in Cases of Corruption by Corporations

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Article

Keywords:

Corruptions; Corporation;
Deferred Prosecution
Agreement

Article History

Received: Feb 25, 2025;

Reviewed: Mar 25, 2025;

Accepted: Mei 25, 2025;

Published: June 25, 2025;

Abstract

The development of modern judicial systems has given rise to an approach known as the Deferred Prosecution Agreement, or DPA. This approach reflects a paradigm shift in criminal law enforcement involving three principles of justice: corrective justice, rehabilitative justice and restorative justice. This study uses normative juridical and empirical study methods, with a focus on handling corruption and asset recovery. The findings reveal a mechanism (requirement) that corporations must acknowledge their mistakes, allowing for a predetermined way to impose sanctions, such as paying restitution, paying fines, and dismissing the parties involved. Moreover, the proposal in this study regarding sanctions is classified as minor, moderate, and severe. It can restore state financial losses. It does so through a restitution mechanism. This restitution mechanism does not necessarily eliminate the criminal liability of a corporation. This is reinforced by the existence of different fines for each classification and the dismissal of the parties involved. In addition, the existence of a contract that is often implemented in certain jobs can now be used to determine whether a corporation can be charged with corruption or not. This has an impact if there is a difference in the budget ceiling. This difference can be referred to as state financial losses. It can also be referred to as profits. Therefore, ministries must have Indonesian national work competency standards (SKKNI), which are essential for ensuring the quality and effectiveness of their operations. SKKNI is used in the investigation of supposed corruption by companies. This helps to work out which areas can be seen as state financial losses and corporate profits. Also, the BPK/BPKP must make sure that the correct procedures are followed before decisions are made about state losses. This is so that the existence of SKKNI can reduce the subjective way that losses are decided based on what relevant experts say.



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INTRODUCTION

Recently, there has been widespread controversy surrounding Indonesian President Prabowo Subianto's statement that corruptors should be granted amnesty. Of course, the statement delivered at the national Christmas celebration held at Gelora Bung Karno Stadium has caused quite a stir, with many saying that it is an attempt to circumvent the law. Another factor behind the statement is the issue of verdicts for corruptors, which are considered by the public to be unjust because the sanctions imposed are relatively light. President Prabowo Subianto followed up on this statement during a visit to Egypt in mid-2024, saying that corruptors would be given the opportunity to repay the state for their losses and would be given guidance on how to do so. This has created some ambiguity, as the mechanism for resolving criminal acts of corruption has been annulled in the law.

Recently, the House of Representatives and the Government have been drafting a new Criminal Procedure Code, which includes a proposal regarding the concept of Deferred Prosecution Agreements in Article 309 C concerning agreements to defer prosecution for corporations. The draft is certainly aimed at improving legal compliance with the recovery of state losses. Therefore, it is important to know what mechanisms can be used to resolve a criminal corruption case without going through the existing mechanisms, namely through the Corruption Crime Law Number 31 of 1999 and Law -Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes (hereinafter referred to as the TIPIKOR Law). In addition, Articles 18 and 38 of the TIPIKOR Law mandate the recovery of state losses through asset confiscation, which is considered very slow, especially given that corruption can be committed by individuals or corporations (Zakaria et al., 2024).

The resolution of criminal acts of corruption committed by individuals differs from those committed by corporations because it involves the management of the corporation and the main sanction imposed is a criminal fine with a maximum penalty plus 1/3 (Valerian, 2019). Of course, resolving this case if it is handled by a corporation without a complete adjudication process is not easy, as it is not simply a matter of the corruptor returning the state's losses and being forgiven. In addition, resolving this case directly by the president also creates a new problem, as the authority to resolve criminal acts of corruption committed by corporations without going through litigation may lie with the Attorney General's Office. Nevertheless, in the Indonesian criminal justice system, the prosecution process carried out by public prosecutors against corporations that commit criminal offenses is often a matter of debate, especially regarding the prosecution and punishment of corporations that commit serious corporate crimes (Nelson, 2019).

When examining and observing criminal justice practices in Indonesia to date, issues regarding the prosecution and sentencing of corporations involved in criminal acts such as bribery or corruption that result in losses to the state are often still hampered by various obstacles, one of which is related to imperfect regulations, high costs, long timeframes, and a lack of resources (Nelson, 2019). Even if there are any, they only take the form of regulations according to the provisions of each agency, for example: Regulation of the Attorney General of the Republic of Indonesia Number: Per - 028 / A/Ja/10/2014 concerning Guidelines for Handling Criminal Cases Involving Corporate Legal Entities and Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases Involving Corporations. Therefore, there is a need for a new reformulation considering the increasing number of criminal acts committed by corporations due to the enactment of Law Number 1 of 2023 concerning Criminal Law, which annuls the recognition of criminal acts committed by corporations (Butt, 2023).

In its current development, corporate criminalization has evolved and begun to be implemented in several European countries (Gottschalk, 2024). However, acts that constitute criminal offenses against corporations that commit corruption have long been recognized by Latin American countries, where the prosecution of corporations that commit criminal acts of corruption is approached through the concept of Deferred Prosecution Agreements (DPA) (Januarsyah, Pratama, dan Gultom, 2021). The concept of DPA can be understood as a form of deliberation between public prosecutors and corporations to agree on a settlement for criminal acts committed by corporations. Simply put, DPAs are well known and commonly used in a number of countries that adhere to the common law system, where the concept of a DPA is an authority possessed by public prosecutors, who then work with the police to offer agreements or negotiations to corporations that are involved in or have committed serious corporate crimes to admit their guilt (Topo Santoso, Febby Mutiara Nelson, 2017).

In practice, the concept of DPA, which is often used by a public prosecutor against a corporation suspected of corporate crime, varies greatly. One of them is in the form of a full liability agreement through the payment of fines or compensation for the corporation, with the nominal amount adjusted to the punishment demanded (Taniady et al., 2023). In addition, other forms of agreement may also be made in the form of behavioral changes for corporations in ongoing investigation or prosecution processes. When an agreement is reached, criminal charges may be suspended or not filed at all (Nelson, 2022). When looking at criminal justice practices in Indonesia, the imposition of criminal penalties on corporations is not actually a new phenomenon. In recent years, through first-instance court decisions, corporations have often been subject to criminal penalties in the form of fines. For example, the form of criminal prosecution against corporations can be seen from the prosecution carried out by the Corruption Eradication Commission (KPK) through its crackdown in 2019, which successfully prosecuted PT Nusa Konstruksi Engineering (NKE), formerly known as PT Duta Graha Indah, for committing corruption as per Decision Number 81/Pid.Sus-TPK/2018/PN.Jkt.Pst.

The model for using the DPA concept is not actually a new concept; rather, the US Attorney's Office has been using the DPA concept for more than decades. (Uhlmann, 2015). Although initially the DPA concept was only used by individual prosecutors to handle cases such as child abuse or minor crimes, the actual purpose of implementing the DPA concept is to provide offenders with the opportunity to free themselves from the stigma of being ex-convicts (Mulayana, 2019). In addition, DPA is a form of implementation or application of the principles of simplicity, speed, and low cost that can be accepted and applied with a number of legal adjustments in Indonesia, particularly in relation to corporate corruption, so that it is oriented towards recovery from the losses incurred (Kristanto, 2022). This concept has also been applied in many other civil law countries as a result of legal system convergence (Bisgrove & Weekes, 2014).

DPA has many similarities with the concept of RJ as currently used in Indonesia. Both DPA and RJ aim to rehabilitate offenders rather than simply punish them. (Januarsyah et al., 2022). DPA often include requirements that require offenders to change their behavior and cooperate with ongoing investigations (Parker & Dodge, 2023). Similarly, RJ emphasizes recovery from losses and helps offenders readjust and be accepted back into society. RJ is oriented toward restoration, thereby rebuilding the relationship between the offender and the victim, rather than punishing the offender (Arief & Ambarsari, 2018). The RJ concept approach as it currently exists in Indonesia is also the result of the adoption of criminal law taken from legal practices in common law countries (Cao & Van Vu, 2024). Due to the similarities and parallels between the two concepts, especially since the DPA concept does not require specific regulations, it is only natural that in terms of law enforcement to eradicate corruption committed by

corporations, this concept can be immediately applied so that it can optimize the recovery of state losses resulting from criminal acts of corruption committed by corporations through an agreement process between the public prosecutor and the corporation before prosecution and then the court can oversee the agreement between the public prosecutor and the corporation (McStravick, 2020).

In order for the DPA concept to function optimally in the process of recovering state losses resulting from corporate corruption, the implementation of this DPA concept can be achieved by changing the principle of combating corruption that has been used so far, namely by changing the principle of applying criminal sanctions from *primum remedium* to *ultimum remedium* (Pratama, 2023). Therefore, the DPA settlement model has the potential to produce mutually beneficial results for both parties. Based on the above background, in this study, the author formulates the following problems: 1. How does the concept of Deferred Prosecution Agreement serve as a reform for the recovery of state losses in cases of corruption committed by corporations? 2. How does the mechanism for implementing a Deferred Prosecution Agreement as a reform for recovering state losses in cases of corruption committed by corporations work?

METHOD

In this study, the researcher used a normative legal approach. This study investigates important aspects in optimizing the use of the DPA concept as a reform for recovering state losses in criminal corruption cases involving corporations. This was done by using critical analysis of relevant primary and secondary data. The researchers first identified various regulations, policies, and practices in the enforcement of laws related to corporate corruption.

The regulations and policies that serve as binding primary data are: Law Number 31 of 1999 on Corruption Crimes and Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 on Eradication of Corruption Crimes, Law No. 40 of 2007 on Limited Liability Companies, Law No. 6 of 2023 on Job Creation, Sema No. 3 of 2018 on Amendments to SEMA No. 7 of 2012 related to the value of state financial losses, Regulation of the Attorney General of the Republic of Indonesia Number: Per - 028 / A/Ja/10/2014 regarding guidelines for handling criminal cases committed by legal entities in the form of corporations, Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, Staatsblad Number 23 of 1847 (Civil Code), and Law Number 1 of 1946 concerning the Criminal Code. The legal materials used as secondary data are: Decision Number 81/Pid.Sus-TPK/2018/PN.Jkt.Pst, as well as relevant books and journals.

Then, an in-depth review was conducted on the Deferred Prosecution Agreement (DPA) as a legal settlement mechanism. Furthermore, this study aims to formulate an effective corruption prevention mechanism model through the application of DPA. The focus of this study is to explore how DPA can function as a legal instrument that not only suspends the prosecution process but also encourages the recovery of state losses resulting from corporate crimes. Thus, the researchers synthesized various existing theories and practices to formulate recommendations that are applicable and in line with the needs of law enforcement in Indonesia, particularly in reforming the criminal justice system for corruption cases involving corporations.

RESULTS AND DISCUSSION

The Concept of Deferred Prosecution Agreements as a Reform for Recovering State Losses in Corruption Crimes Committed by Corporations

The concept of a DPA, which presents an agreement to delay prosecution, has already been used by several countries, namely the United States, the United Kingdom, and Australia. This concept began with reviewing the various options available and then adopting a DPA model that was appropriate for the context of each country. Although they use the same term, DPA, each country has a different model. For example, in the United States, the DPA is similar to the concept of an NPA (non-prosecution agreement), although they are not entirely identical. The basic idea behind the introduction of the DPA is to improve the effectiveness and efficiency of criminal case handling (Wibowo, 2021). In the United States, investigations have developed methods whereby investigators can access assistance from external parties to aid in an investigation. The author has not found any explanation in the law regarding who has the authority to request assistance from external parties, but the author believes that these external parties can be equated with experts in Indonesia (Nadeem, 2021). In contrast, in the UK, investigation rules are more closed and investigators are not allowed to receive assistance from outside parties (Marder, 2020). The author understands the reason for this prohibition, which is to avoid external interference in investigations conducted by specially appointed investigators. In the United States, prosecutors follow the locus delicti, with prosecutions being conducted by federal prosecutors if they fall under federal law or by state prosecutors if they fall under state law (Suhariyanto et al., 2021). Meanwhile, in the UK, there is an anti-corruption commission (the Serious Fraud Office) and a prosecutor (the Director of Public Prosecutions), so that special prosecutions are carried out by these two institutions (Jones, 2021).

In the United States, prosecutors handle case settlements using DPAs without directly involving the court. The court only has a supervisory function to monitor the development of the case. In the United Kingdom, the decision on whether a case can be resolved through a DPA is made by a jury in court. Furthermore, the requirements that must be met by the defendant are determined based on the jury's request in court. In the United Kingdom, a "jury trial" is a law enforcement process in which the jury is tasked with making decisions and finding facts, which are then annulled by the judge (Lord, 2023).

The DPA is based on the principles of simplicity, speed, and low cost, which can be applied in Indonesia with various adjustments, especially in cases of corporate corruption focused on recovering state losses. This concept has been applied in other countries as part of legal system convergence, resulting in a blend of common law and civil law systems, rather than just differences (Zhang, 2023). These two legal systems borrow from and use each other's legal concepts. Although DPA is essentially a form of criminal avoidance, prosecutors still cannot ignore the possibility of criminal punishment for corporations, so the philosophy of punishment can also be applied to corporations. In addition, another equally important objective is to reduce stigmatization and the accumulation of cases and to simplify the judicial process. Regarding out-of-court settlements, there are legal bases both within and outside the Criminal Code that can be used. When linked to DPAs, there are several principles with similar characteristics, namely as follows:

a. **Diversi dan Keadilan Restoratif**

Diversion is implemented through the RJ approach as stipulated in the SPPA Law (Juvenile Criminal Justice System). This RJ approach emphasizes restoring justice to its original form and does not focus on punishment (Gunawan et al., 2024).

b. Prinsip Kesempatan Jaksa

The authority of prosecutors in the investigation and prosecution of corruption cases allows for prosecutorial discretion in prosecution, prosecution with probation, dismissal of cases, and even sentencing without trial (Barton, 1999).

c. MSAA and MRNIA models

The enormous losses incurred by the state as a result of the “national banking situation” (BLBI) have been sought to be resolved through non-criminal means via the Master Settlement and Acquisition Agreement (MSAA) and the Master Refinancing and Note Issuance Agreement (MRNIA). Although the MSAA/MRNIA are included in government decisions that are considered civil instruments, specifically Article 1338 of the Civil Code, the investigation of the BLBI case has been terminated as part of the government’s efforts to recover state financial losses.

Table 1. Principles and Characteristics Similar to DPA

Model / Mechanism	Substance & Legal Basis	Advantages	Shortcomings
Diversion & Restorative Justice	Law No. 11 of 2012 on SPPA. Settlement of children’s cases outside formal channels with an emphasis on rehabilitation rather than punishment.	- Protecting the best interests of the child. - Avoiding the effects of early criminalization. - Encouraging reconciliation between victims and perpetrators.	- Potential to disregard legal certainty if there are no standard norms. - Dependent on the quality of the RJ facilitator. - Victims may feel they have not received justice if the focus is only on recovery.
Principle of Opportunity for Prosecutors The principle of opportunity in criminal procedure law. Giving prosecutors discretion not to prosecute in the public interest.		- Flexibility in law enforcement. - Efficiency in court caseloads. - Ability to prioritize substantive justice over formalities.	- Vulnerable to abuse of authority (corruption, bribery, political interference). - Reduces legal certainty for the public. - Potential for discrimination in implementation.
MSAA & MRNIA Models (BLBI Case)	Civil instruments (Article 1338 of the Civil Code) in handling the banking crisis. The BLBI investigation was halted in order to recover state losses.	- Quick recovery of state assets. - Prevention of national economic instability. - More practical than criminal proceedings.	- Creates an impression of impunity for perpetrators of corruption/economic crimes. - Does not reflect justice for the people. - Obscures criminal accountability.

The three models above demonstrate the existence of non-punitive policy patterns in Indonesian criminal law. Diversion and the restorative justice approach are ideally oriented toward human recovery and protection (Riyadi, 2024). The principle of prosecutorial discretion lies in a gray area: it can be a progressive legal instrument when used for substantive purposes, but it has the potential to deviate into

an instrument of power. Meanwhile, the MSAA/MRNIA model leans more towards a technocratic and utilitarian approach, which, although useful for the country's economic recovery, ignores the dimension of substantive justice for the people. This is especially true considering that progressive legal teachings demand that all legal mechanisms always return to a focus on humanity, human rights, and social justice, rather than merely formal certainty or technocratic efficiency.

Efforts to recover assets derived from criminal acts in Indonesia are usually carried out through court decisions, whereas in the United States, the DPA mechanism allows for the seizure of assets without a court decision. In Indonesia, assets are recognized as subjects of corporate law. Therefore, in accordance with the DPA mechanism, efforts to seize assets related to corruption, either as proceeds or as a means of committing a criminal act of corruption, can be positioned as legal subjects or parties. This party is named by the state or investigator as the applicant for assets suspected of originating from corruption. The return of assets resulting from corruption in accordance with Article 4 of the Anti-Corruption Law states that the return of state financial losses or the state economy cannot solely reduce the punishment of the perpetrator of the corruption.

The concept of DPA is the result of significant developments within the scope of the Criminal Justice System and is also rooted in the philosophical foundations of criminal procedure law. Basically, criminal procedure law is not only intended to prosecute perpetrators of criminal acts, but also to control and minimize the power of law enforcement officials so that there is no abuse of authority. The DPA concept signifies a paradigm shift in the enforcement of criminal law in the modern era, which includes the principles of corrective justice, which focuses on the perpetrator; rehabilitative justice, which emphasizes the victim; and RJ. This paradigm certainly has its own consequences for the enforcement of criminal law, especially in the context of special criminal cases. The DPA concept is expected to have a significant impact on the function of the criminal justice system in Indonesia as a means of implementing RJ principles.

Implementation Mechanism of Deferred Prosecution Agreements as a Reform for Recovering State Losses in Corporate Criminal Cases

Regulations concerning the recovery of state economic losses and state financial losses in cases of corporate crime are currently regulated in several regulations, both legislation and internal regulations of each law enforcement agency. For example, in the Attorney General's Office, Regulation of the Attorney General of the Republic of Indonesia Number: Per-028/A/Ja/10/2014 relates to guidelines for handling criminal cases committed by legal entities in the form of corporations. This regulation serves as a reference in handling cases at the investigation, prosecution, and court decision stages against corporate organs such as management, corporations, and/or management and corporations. It aims to provide guidance in handling criminal cases, facilitate the settlement of criminal cases, and optimize additional criminal charges against corporate subjects. Efforts to recover state financial losses and economic losses are carried out at every level of examination and the execution of decisions is based on cooperation and coordination with the Indonesian Attorney General's Office Asset Recovery Center. In addition, Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 relates to how to handle criminal cases committed by corporations. This regulation governs asset recovery efforts, namely in Articles 7 and 8, which concern the liability of corporations undergoing merger or consolidation, which is limited to the wealth/assets of the corporations undergoing merger or consolidation (PTPK Law, etc.).

However, the recovery of state assets in cases of corruption committed by corporations does not result in a strategic mechanism for recovering state losses (Suhariyanto, 2018). For example, handling corruption cases in law enforcement also incurs significant costs. Other similar regulations still do not guarantee flexibility, especially in relation to working relationships and other relationships. This fact has led to confusion in interpretation (Manuain, 2005). In addition, there are issues related to criminal acts of corruption committed through malicious conspiracy, as well as when to repeat the formulation of the basic criminal law.

As stated in Law No. 17 of 2003 concerning State Finances, this refers to all rights and obligations owned by the state that can be valued in monetary terms, as well as everything in the form of money or goods. Furthermore, the meaning of state financial loss as defined in Article 1 point 22 of Law No. 1 of 2004 concerning State Treasury is that state/regional loss is an event involving a decrease in money, securities, and goods, which is real and certain in amount as a result of unlawful acts, whether intentional or due to negligence. Meanwhile, the state economy is defined as economic life that is structured on joint efforts and based on the principle of kinship, or it can also be understood as independent community efforts based on government policies, both at the central and regional levels, in accordance with applicable regulations and with the aim of providing prosperity to all people.

State losses in the form of money and losses in the form of the state economy are further explained in the Compilation of the Results of the Plenary Meeting of the Supreme Court of the Republic of Indonesia, which was formulated through the criminal chamber in 2018, namely SEMA Number 3 of 2018 concerning Amendments to SEMA Number 7 of 2012 related to the value of state financial losses, namely the use of Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law as amended by Law Number 20 of 2001, when viewed through SEMA Number 7 of 2012, the method of determining whether the value of state financial losses is Rp100,000,000.00 (one hundred million rupiah) is that Article 2 Paragraph (1) can be used; however, if the value of state financial losses is less than Rp100,000,000.00 (one hundred million rupiah), then Article 3 can be used. In addition, if there is a change in the currency value that does not override the elements of the article used as the indictment, the amount of state financial loss in the form of money is changed as follows:

- a. State losses amounting to more than Rp200,000,000.00 (two hundred million rupiah) may be subject to Article 2 Paragraph (1) of the Anti-Corruption Law;
- b. State losses amounting to up to Rp200,000,000.00 (two hundred million rupiah) may be subject to Article 3 of the Anti-Corruption Law.

The existence of Sema Number 07 of 2012 provides that if the elements of enriching oneself, others, or corporations contained in Article 2 cannot be proven, then Article 3 can be applied, with a minimum limit of Rp. 100,000,000.00. This is unfair if imposed on a defendant who has only caused losses to the state of less than IDR 100,000,000, as they would be subject to the minimum penalty under Article 2, which is 4 years' imprisonment and a fine of IDR 200,000,000. This policy can serve as a guideline for the Attorney General's Office and the Corruption Eradication Commission, even though it is intended for judges.

The phenomenon of imposing criminal sanctions for corruption on corporations often causes problems because it results in the destruction of the corporation. The destruction of a corporation causes a large number of employees to lose their livelihoods, especially considering the economic factor theory in criminology, which states that crime is caused by unemployment and poverty (Ferdian, 2021).

This DPA concept can be part of efforts to minimize such impacts through deferred prosecution. There is a mechanism (requirements) for imposing sanctions, such as admitting guilt, paying restitution,

paying fines, and dismissing the parties involved. Of course, this requires a classification system to regulate these sanctions so that they can be included in the DPA, considering the equal distribution of sanctions and limiting the scope of negotiations to avoid inconsistencies between actions that harm the state and minimal sanctions, as well as ensuring the principle of legal certainty. The author has classified sanctions into three categories, namely:

Table 1.2 Classification of Sanctions

State Losses	Clasification
Under Rp 100.000.000,00	Light
Reachingd Rp 200.000.000,00	Moderate
Above Rp 200.000.000,00	Heavy

This classification is crucial in determining the sanctions to be imposed in order to ensure legal certainty and the limits of measurement related to the amount of sanctions that the author has set, as follows:

Table 1.3 Amount of Penalties

Clasification	Sanction
Light	a. Admitting mistake; b. Paying restitution; c. Paying the Minimum Fine Rp 50.000.000,00 up to Rp 100.000.000,00
Moderate	a. Admitting mistake; b. Paying restitution; c. Paying the Minimum Fine Rp 100.000.000,00 up to Rp 200.000.000,00
Heavy	a. Admitting mistake; b. Paying restitution; c. Paying the Minimum Fine Rp 200.000.000,00 up to Rp 1.000.000.000,00 d. Dismissal of related parties

The sanctions imposed on these classifications, namely the recovery of state financial losses through a restitution mechanism, do not necessarily preclude the criminal prosecution of a corporation. This is reinforced by the imposition of different fines for each classification and the dismissal of the parties involved.

In addition, other sanctions may also be imposed, one of which is stipulated in Article 114 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Limited Liability Company Law), namely that the Board of Commissioners has the responsibility to supervise the company and has the authority to provide advice to the board of directors, except in circumstances where it is found that they cannot be held liable in accordance with Article 114 paragraph (5), namely that

they have exercised supervision based on good faith and prudence in accordance with the objectives of the company, there are no apparent or hidden personal interests in the actions of the board of directors that have caused losses, and advice has been given to the board of directors beforehand.

In addition, as a result of the imposition of sanctions from this DPA mechanism on a corporation for criminal acts of corruption, efforts other than criminal law mechanisms can still be made, namely bankruptcy, State Administration, and so on. The author believes that the DPA concept does not change the concept of accountability mechanisms within corporations, given the many regulations involved, such as the Limited Liability Company Law and Law Number 6 of 2023 concerning Job Creation, which, if changed, would cause considerable chaos.

Mechanism for Classifying Prosecution Against Corporations (Intentionality/Negligence of The Subject of The Agreement)

The mechanism of prosecuting corporations through the author's existing classification is important to ensure justice. The discussion of corporate intent/negligence provides an understanding of the limits to which corporations can be charged with criminal corruption. Corruption cases involving corporations are more or less inseparable from the realms of administration, agreements/contracts, and other documents that are considered important. A well-known adage in the field of criminal law, *geen straf zonder schuld*/no punishment without guilt, suggests that anyone who is to be punished must be guilty. That guilt has the following conditions:

- a. There is the ability to take responsibility;
- b. There is an intrinsic connection with intentional good deeds or mistakes;
- c. No exculpatory grounds were found that could eliminate the element of fault.

However, how can these things be applied to corporations? This is not easy because determining whether or not a corporation has committed a crime cannot be viewed from a conventional perspective (Hieariej, 2014). The mechanism of criminal liability for corporations can be based on several doctrines and theories, namely:

- a. Strict Liability, Corporate Liability is based solely on what is stated in the Law, regardless of who committed the error / there is no need to prove the element of fault;
- b. Vicarious Liability, this doctrine places greater emphasis on corporate bodies and excludes individual liability, commonly referred to as substitute liability and indirect liability. Liability here is defined as responsibility for the actions of others, for example, the liability of an employer towards their employees and/or the liability of a particular party towards the actions of an agent in a contract (Ali, 2022);
- c. identification Theory, this theory means that a company can commit a direct offense if the act can occur because there are several people who are closely related to a company;
- d. Aggregation Theory, liability can be imposed on a corporation if the act can occur because several people fulfill the elements of the offense, where each person is connected in fulfilling the elements, rather than each standing alone..

In relation to the above theories and doctrines, the DPA concept emphasizes the doctrine of vicarious liability because it focuses more on corporate bodies and excludes individual liability, commonly referred to as substitute liability and indirect liability. Liability here is defined as liability for the actions of others, for example, the liability of an employer towards their employees and/or the liability of a

certain party towards the actions of an agent in a contract. There are two important conditions that must be met in order to apply this vicarious liability theory, namely (Mahmud, 2020):

- a. There must be an employment relationship between the employer and the employee;
- b. The actions taken by the employee were limited to his work duties.

In addition, the existence of a contract that is often implemented in certain jobs can be an object of limitation as to whether a corporation can be charged with corruption or not. Even though the mechanism of intent or negligence is carried out with a test stone through the contract. However, this has led to a number of corruption cases committed by corporations that have overlooked what actually happened or the cause-and-effect relationship as to why a particular job did not comply with the agreement stated in the contract. For example, there is a state-owned company that will collaborate with a private company with the aim of constructing a building. The contract for this collaboration also contains specifications for high-quality bricks from Australia. However, qualitative research on climate and temperature conditions reveals that bricks from Australia are not suitable for use, so bricks produced domestically are used instead. The private company maneuvers the specifications and reports to the state-owned company, obtaining permission from the committing official. This fact can easily be considered a criminal act of corruption due to the limitations of the tests carried out through the contract. On the other hand, there was a finding of state financial losses due to the difference in funds carried out by the private company. Can these facts be categorized as intentional corporate crime due to the actions of the corporation? To address this issue, this study also provides recommendations to ministries to create Indonesian National Work Competency Standards (SKKNI). The SKKNI serves as a development tool through consultations with industries related to setting standards for specific projects.

Examples of cases related to corporations and specific projects that have an impact on determining losses, whether financial or economic, include the following. First, PT Asabri: in the PT Asabri case, there were difficulties in calculating the financial losses to the state. This was due to the large number of parties involved in the incident, resulting in a large number of financial reports that had to be analyzed. In addition, there were difficulties in calculating the losses correctly, and there were many external and internal factors that influenced the corporation's financial position. Second, PLN, a case that occurred due to the procurement of steam power plants, where it was found that there was mark-up and collusion between PLN officials and contractors. The problem that arose in determining the state's financial losses was the complex nature of the project. Projects that are large in scale and involve many parties have an impact on the analysis of state financial losses, making it even more complicated, especially since the calculation method is subjective (this is very common). These weaknesses ultimately have long-term consequences, in that the method of calculating losses is not only based on financial reports, but also has an impact on the economy and energy sector. Third, Bank Century. The Bank Century corruption case is similar in that the calculation of state losses is complicated. The most complicated aspects are the valuation of assets and liabilities. Fourth, the E-KTP case, which became complicated because it involved many corporations and government officials. Determining the losses was a major problem in this case because it involved very large amounts based on complex transactions to trace the flow of funds. Finally, the Covid-19 Social Assistance Case. In this case, it is very difficult to accurately determine the state losses because there is overlapping and non-transparent procurement of goods and services related to beneficiary data.

Furthermore, in simple terms, in practice, if a project is found to use different specifications in its contract, there will be confusion regarding the budget ceiling difference. This budget ceiling difference

can be referred to as a financial loss to the state or a profit. The use of SKKNI in the investigation of alleged corruption committed by corporations serves to identify which areas can be referred to as state financial losses and gains. This is very important considering that the Supreme Audit Agency (BPK), which has the legal duty to determine state financial losses, still has weaknesses in carrying out this duty. The weaknesses of the BPK are as follows:

- a. The Financial Audit Agency is a state institution within the legislative branch that has a supervisory function. However, due process is still necessary in investigating corporations that commit criminal acts of corruption through the relevant parties directly to the relevant ministries through SKKNI;
- b. The presence of relevant experts in determining the financial losses to the state and the national economy by the BPK is subjective. This will inevitably lead to some deviation in that the experts used can become a reference, even though there is not necessarily a consensus of opinion;
- c. Calculation of state financial losses and state economic losses conducted by the BPK using experts and methods. The use of these methods is insufficient if there is no evaluation or if the emphasis is placed on implementation rather than results.

The flowchart showing the classification mechanism for Corporate Prosecution (Intentional / Negligence of the Subject Matter of the Agreement) is as follows:

CONCLUSION

Based on a study conducted by the author entitled “The Use of the DPA Concept and Sanction Formulation as a Reform for State Loss Recovery in Cases of Corruption by Corporations,” the following conclusions were reached:

Regarding the first problem statement, “How can the concept of Deferred Prosecution Agreements be used as a reform to recover state losses in cases of corruption committed by corporations?” it can be concluded that the DPA concept can be part of efforts to minimize such impacts through deferred prosecution. As analyzed by the author, there is a mechanism (requirement) whereby corporations must admit their guilt so that there is a predetermined way to impose sanctions, such as paying restitution, paying fines, and dismissing the parties involved. Moreover, the proposal in this study regarding sanctions classified as minor, moderate, and severe can restore state financial losses through a restitution mechanism that does not necessarily eliminate the criminal liability of a corporation. This is reinforced by the presence of different fines for each classification and the dismissal of the parties involved.

Regarding the second issue, “How does the Deferred Prosecution Agreement mechanism work as a reform for recovering state losses in cases of corruption committed by corporations? It can be concluded that the existence of a contract that is often implemented in certain jobs can now become an object of limitation as to whether a corporation can be charged with corruption or not. This has an impact if there is a budget ceiling difference that can be referred to as state financial losses and can also be referred to as profits. Therefore, ministries must have Indonesian national work competency standards (SKKNI). The use of SKKNI in the investigation of alleged corruption committed by corporations serves to determine which areas can be referred to as state financial losses and corporate profits. In addition, the BPK/BPKP needs to ensure due process in pre-adjudication in determining state losses so that the existence of SKKNI can reduce the practice of determining state losses that are relatively subjective based on relevant experts.

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