



DEFERRED PROSECUTION AGREEMENT: CONCEPT AND ITS REGULATORY FORM IN THE BILL ON THE CRIMINAL PROCEDURE CODE

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Abstract

Deferred Prosecution Agreement (DPA), also known as a prosecution deferral agreement, has begun to be introduced through the Bill on the Criminal Procedure Code (RUU KUHAP) as one of the mechanisms for criminal law enforcement against corporations. This article specifically discusses DPA as a concept and its regulatory form in the Bill on the Criminal Procedure Code. Conceptually, a DPA is a mechanism for deferring criminal cases through an agreement between a corporate defendant and the public prosecutor, aimed at more efficient case resolution and prioritizing restoration of conditions/losses. The Bill on the Criminal Procedure Code provides that a DPA must be approved by a court judge so that fulfillment of the agreement's terms can be supervised by the court. The court will issue a stipulation to terminate prosecution if the corporate defendant fulfills the agreement. Conversely, failure to fulfill the obligations means the case will proceed under ordinary procedures. The Working Committee (Panja) for the Bill on the Criminal Procedure Code (Commission III of the DPR RI and the Government) can further refine the regulation by setting a time limit for deferral to be agreed upon with the suspect/defendant. This would provide greater legal certainty and align with the objective of efficient case resolution.

Introduction

The Legislature agreed to regulate the mechanism of Deferred Prosecution Agreement (DPA), also known as a prosecution deferral agreement, during deliberations on the Bill on the Criminal Procedure Code (RUU KUHAP). In this regard, Deputy Minister of Law Edward Omar Sharif Hiariej explained that a DPA is applied specifically to criminal offenses committed by corporations, for example in environmental pollution cases. Prosecutors may postpone prosecution and conclude a remediation agreement within a specified period, with the final decision resting with the judge ("DPR-Pemerintah Atur Mekanisme Penundaan Penuntutan," 2025).

This authority is an important instrument for the Attorney General's Office of the Republic of Indonesia to enforce the law against corporations in the future.

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The Chief Prosecutor of Central Java, Hendro Dewanto, in a scholarly seminar titled “Optimalisasi Pendekatan Follow the Asset melalui Deferred Prosecution Agreement” at the Faculty of Law, Diponegoro University, essentially stated that regulating DPAs is a historic moment, as Indonesia will officially adopt a mechanism proven effective in various developed countries (“Perjanjian Penundaan Penuntutan,” 2025).

DPA is considered an alternative model for resolving criminal cases against corporations. Essentially, through the DPA method, large companies can avoid significant harm to innocent third parties and shareholders. DPA is seen as a solution to address legal challenges and resource constraints in handling economic crimes (Melva, 2024). This article discusses the concept and regulatory mechanism of DPA in the Bill on the Criminal Procedure Code. It is expected to inform the public while serving as input for the Government and Commission III of the DPR RI in finalizing the Bill on the Criminal Procedure Code.

Deferred Prosecution Agreement as a Concept

A DPA is an agreement to discontinue prosecution for certain offenses, provided the defendant complies with a set of negotiated terms and conditions agreed upon with the public prosecutor. Once a DPA is negotiated, agreed, and legally approved, the deferral of prosecution continues until the term expires or a breach occurs; when the DPA is breached, the deferral is revoked and prosecution on the original charges resumes (Bronitt, 2024).

In the United States, DPAs are provided for in the Speedy Trial Act of 1974 and statutes defining the general powers and duties of federal prosecutors. However, these regulations do not concretely define DPAs, so their objectives, principles, and limits are not expressly stipulated and fall within prosecutorial discretion. Compared with the DPA scheme applied in the United Kingdom—namely the Crimes and Courts Act 2013 (UK)—a DPA is defined as an agreement between a designated prosecutor and a corporation that the prosecutor is considering prosecuting for certain offenses, particularly specified economic crimes. Negotiation, implementation, and enforcement of DPA breaches require judicial involvement (Bronitt, 2024).

DPAs are considered to have punitive, deterrent, and rehabilitative effects equivalent to a guilty plea. From this perspective, DPAs make it possible to: (1) resolve cases against large companies more quickly, at lower cost, and more efficiently; (2) secure cooperation from corporate defendants in related cases against officers, employees, agents, and co-conspirators; and (3) implement compliance enhancement plans and other assistance for the defendant (Melva, 2024).

The DPA concept is similar to the Non-Prosecution Agreement (NPA), which is essentially a way to impose a probationary period before a verdict is entered. Both are classified as Pretrial Diversion Agreements (PDA). All agreements classified as PDAs are negotiated resolutions between the offending party and the party that would otherwise prosecute. The difference is that NPAs do not in-

volve the court. This leads to minimal transparency and is viewed as somewhat controversial compared with DPAs. In practice in the United States, the Department of Justice (DOJ) uses DPAs more often than NPAs (Melva, 2024).

Deferred Prosecution Agreement in the Bill on the Criminal Procedure Code

The definition of a DPA appears in the General Provisions of the Bill on the Criminal Procedure Code: a Prosecution Deferral Agreement (Deferred Prosecution Agreement) is a legal mechanism for a public prosecutor to defer prosecution of a defendant whose perpetrator is a corporation. The DPA mechanism is specifically regulated in Chapter XVIII, Part Three, Article 230 of the Bill on the Criminal Procedure Code, which provides that a prosecution deferral agreement aims at legal compliance, recovery of losses resulting from criminal offenses, and efficiency in criminal justice. This indicates three important objectives: legal compliance—encouraging corporate legal awareness to obey the law; recovery of losses—promoting case resolution that prioritizes restorative justice; and efficiency—aligning with the principles of swift, simple, and low-cost justice.

The Bill on the Criminal Procedure Code stipulates that a DPA application may be submitted only by a suspect, defendant, or counsel to the public prosecutor before the case is filed in court. This means initiation of a DPA lies entirely with the suspect, defendant, or legal counsel and may occur during the prosecution stage, i.e., when the indictment is being prepared while the perpetrator's status remains that of a suspect.

In essence, the Bill also provides that the public prosecutor may accept or reject the application based on considerations of justice, the victim, and the suspect's compliance with statutory provisions. If the prosecutor accepts the application, the prosecutor must notify the court that a DPA process will be conducted, which is then recorded in the minutes. The results of the DPA agreement must then be submitted by the prosecutor to the court no later than 7 (seven) days after the agreement is signed by the parties.

Afterward, the court must hold a hearing to assess the feasibility and validity of the prosecution deferral agreement before ratification. In that hearing, the judge must consider:

- (1) the conformity of the terms in the prosecution deferral agreement with statutory provisions;
- (2) the proportionality of administrative sanctions or other obligations imposed on the Suspect or Defendant;
- (3) the impact on the Victim, society, the environment, the national economy, and the criminal justice system; and
- (4) the ability of the Suspect or Defendant to fulfill the stipulated terms.

The Bill on the Criminal Procedure Code provides that if the judge approves the DPA, ratification is set forth in a court stipulation and the case is deferred in accordance with the agreement. However, if the judge rejects the DPA, the case

proceeds to trial under ordinary procedures. The conditions for implementing a DPA under the Bill may include:

- (1) payment of compensation or restitution to the victim;
- (2) implementation of legal compliance programs or improvements to anti-corruption corporate governance;
- (3) obligations to report and cooperate with law enforcement during the deferral process; or
- (4) other corrective measures deemed necessary by the public prosecutor.

The Bill also provides that if the suspect or defendant fulfills all obligations in the prosecution deferral agreement within the specified period, the case may be terminated without further prosecution by court stipulation. Based on this, it can be understood that a DPA will culminate in termination of prosecution, which becomes legally effective only upon issuance of a “court stipulation on termination of prosecution.”

However, while awaiting fulfillment of the agreement, the court is authorized to monitor its implementation within the time period set in the agreement. If the suspect or defendant fails to meet the obligations under the DPA, the public prosecutor is authorized to resume prosecution without needing additional approval.

Broadly speaking, the DPA mechanism in the Bill on the Criminal Procedure Code has been regulated in sufficient detail. Even so, the Legislature—here the Panja for the Bill on the Criminal Procedure Code (Commission III of the DPR RI and the Government)—can further refine it by authorizing prosecutors to set a time limit or period of deferral that may be offered for agreement with the suspect/defendant. Such regulation would provide legal certainty and clarify fulfillment of the agreement. This is also consistent with the initial purpose of regulating DPAs, namely to increase efficiency in case resolution. Failure by the defendant to meet the agreement’s time limit should be deemed a breach that results in the case proceeding under ordinary procedures.

Conclusion

Conceptually, a DPA is a mechanism for deferring criminal cases through an agreement between the (corporate) defendant and the public prosecutor, aimed at efficient case resolution and prioritizing restoration of conditions/losses. This concept aligns with the modern criminal law principles embraced by the Bill on the Criminal Procedure Code. A DPA must be approved by a court to facilitate judicial oversight, particularly of fulfillment of the agreement’s terms. The court will issue a stipulation to terminate prosecution if the corporate defendant fulfills the agreement. Conversely, if the corporate defendant fails to comply, the case will proceed to trial under ordinary criminal procedure.

The Panja for the Bill on the Criminal Procedure Code (Commission III of the DPR RI and the Government) can still refine the regulation by setting a time limit for case deferral to be agreed upon with the suspect/defendant. This would provide greater legal certainty and align with the objective of efficient case resolution.

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