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The new Indonesian
Criminal Procedure Code:
Deferred Prosecution
Agreement

The new Indonesian Criminal Procedure Code: Deferred Prosecution Agreement

I. Restorative justice

Upon the enactment of Law No. 20 of 2025 on the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana/new KUHAP*), significant reforms have been introduced in the criminal procedural framework. This is including strengthened rights for suspects, defendants, convicts, witnesses, victims, and persons with disabilities. There are also changes regarding the use of coercive measures and the introduction of new concepts such as restorative justice and deferred prosecution agreements.

The Deferred Prosecution Agreement (**DPA**) is formally translated as *Perjanjian Penundaan Penuntutan* in Article 328. New KUHAP stipulates that the objectives of a DPA are: (i) fostering legal compliance, (ii) facilitating restitution for losses arising from criminal acts, and (iii) improving efficiency within the criminal justice process. It also further confines the use of DPA exclusively to criminal offenses committed by corporations, thereby establishing it as a special mechanism for corporate criminal liability rather than for individuals in general.

From a systemic standpoint, the incorporation of DPA into the new KUHAP signifies a structural transformation in Indonesia's corporate criminal procedure. It reflects a shift from a model centred solely on punitive adjudication toward a hybrid framework that also prioritises restorative recovery and procedural efficiency. At the same time, prosecutorial discretion and judicial oversight remain firmly embedded, as they require that any DPA be subject to mandatory court approval.

II. Definition

Under the new KUHAP, DPA is expressly recognised as a legal mechanism enabling the public prosecutor to defer prosecution against corporation as defendant. In essence, the DPA functions as a conditional suspension. Rather than proceeding directly to trial, the prosecutor may enter into an agreement with the corporation whereby prosecution is deferred, subject to compliance with specific obligations.

III. Key provisions

1. Scope and eligibility

The new KUHAP provides that a DPA is applicable solely to offences committed by corporations. It is designed as a central feature of the corporate criminal procedure framework, particularly oriented toward economic and corporate offences. In this context, restitution of losses and compliance reform are emphasised as key objectives.

2. Application

The new KUHAP provides that a suspect, defendant, or their legal counsel may submit an application for DPA to the public prosecutor prior to case transfer. This positions the prosecutor as the primary gatekeeper in determining access to the DPA mechanism.

The prosecutor retains authority to either accept or reject such applications. The decision must be guided by considerations of justice, the interests of victims, and the defendant's record of regulatory compliance.

Where an application is accepted, the new KUHAP obliges the prosecutor to notify the relevant court that a DPA process will be initiated. This notification must be formally recorded in the court's official minutes. This requirement serves as an early safeguard for transparency, ensuring judicial oversight from the outset of the DPA process.

3. Judicial supervision

Once a DPA is signed, the prosecutor must submit the agreement to the court within seven days, ensuring that the process remains formalised and preventing informal or off-record arrangements. The court is then required to convene a hearing to examine the suitability and validity of the DPA before granting approval. This step establishes judicial supervision as a substantive safeguard rather than a mere procedural formality.

In conducting its review, the judge must assess multiple factors: compliance with law, proportionality of sanctions or obligations, impacts on victims, society, environment, and the state economy, as well as the defendant's ability to meet the agreed conditions. The court may also request further information or clarification from the prosecutor, defendant, or other stakeholders, reinforcing its inquisitorial role in validating DPAs.

If approved, the DPA is formalised through a court order and prosecution is suspended accordingly. If rejected, the case proceeds under ordinary trial procedures. Importantly, the court retains authority to monitor implementation throughout the agreed period, transforming the DPA into a court-supervised compliance regime rather than a purely contractual arrangement.

4. Obligation and enforcement

Permissible DPA obligations include:

- a. Payment of compensation or restitution to victims, reflecting restorative justice principles
- b. Implementation of compliance programmes or governance reforms with an anti-corruption focus, positioning DPAs as forward-looking compliance tools
- c. Reporting and cooperation with law enforcement during the suspension period
- d. Other corrective measures deemed necessary by the prosecutor, provided they remain proportionate

If all obligations are fulfilled within the agreed timeframe, the case may be terminated by court order without further prosecution. Conversely, non-compliance authorises the prosecutor to resume the prosecution and litigation process.

5. Procedural safeguards

Every DPA must be formally recorded and entered into the court minutes, ensuring an official documentary trail. Violations of procedural requirements may render the agreement null and void by operation of law and provide grounds for objection or resistance by the defendant.

IV. Implications for stakeholders

1. Corporations

For corporations, DPAs are confined to corporate offences, offering companies a procedural alternative to trial if they commit to reparative and compliance obligations. To secure approval, corporations must demonstrate credible compliance practices and willingness to remediate harm, convincing both prosecutors and judges that the agreement serves justice and public interest. Fulfilment of obligations leads to formal case termination, reducing litigation and reputational risk, while non-compliance triggers automatic resumption of prosecution.

2. Public prosecutors

For public prosecutors, DPAs provide a structured negotiation tool to balance enforcement, victim compensation, and resource efficiency. DPAs are expected to be used selectively in cases where corporate cooperation can deliver stronger compliance outcomes than immediate trial. Strict adherence to notification, submission, and recording duties is critical, as procedural violations may nullify the agreement.

3. Courts and judges

For courts and judges, the reform introduces an active oversight role. Judges must hold hearings to assess suitability, apply proportionality and impact criteria, and request clarifications where necessary. Their orders determine whether prosecution is suspended, terminated upon compliance, or restored to trial. Beyond approval, courts are tasked with monitoring implementation throughout the DPA period, a responsibility that will likely require new practices and capacity within the judiciary.

4. Victims and public interest

For victims and the broader public interest, the framework embeds their concerns directly into prosecutorial and judicial decision-making. Prosecutors must consider victim interests, while judges must weigh impacts on victims, society, the environment, and the state economy. Compensation or restitution obligations are prioritised, offering faster and more certain redress than lengthy trials. Systemically, mandatory recording in court minutes and the nullity sanction for procedural violations reinforce transparency and accountability, strengthening public confidence in the integrity of the DPA regime.

V. Conclusion

The DPA under the new KUHP emerges as a court-supervised mechanism designed to suspend, and upon successful completion, terminate prosecution of corporate crime. Its purpose is to promote compliance, secure loss recovery, and enhance procedural efficiency.

The regime places initial discretion in the hands of the public prosecutor, who must weigh considerations of justice, victim interests, and corporate compliance culture before granting access to the process. Any agreement reached is then subject to mandatory judicial review, approval, and ongoing monitoring, ensuring that DPAs serve as formal instruments embedded within the criminal justice system.

Robust procedural safeguards, such as mandatory recording in court minutes and the sanction of nullity for violations, reinforce transparency and accountability. Taken together, these provisions establish DPA as a rights respecting, public-interest instrument within Indonesia's reformed corporate criminal procedure framework, signalling a significant step toward modernising enforcement while balancing deterrence, remediation, and efficiency.

PwC Indonesia contacts

Please feel free to contact our Legal Specialists.

Indra Allen

Partner
PwC Legal Indonesia
indra.allen@pwc.com

Danar Sunartoputra

Partner
PwC Legal Indonesia
danar.sunartoputra@pwc.com

Puji Atma

Junior Partner
PwC Legal Indonesia
puji.atma@pwc.com

Dimas Bimo

Junior Partner
PwC Legal Indonesia
dimas.bimo@pwc.com

Narindra Krisnamurti

Senior Manager
PwC Legal Indonesia
narindra.krisnamurti@pwc.com

Adi Pratikto

Partner
PwC Legal Indonesia
adi.pratikto@pwc.com

Fifiek Mulyana

Junior Partner
PwC Legal Indonesia
fifiek.mulyana@pwc.com

Indra Natakusuma

Junior Partner
PwC Legal Indonesia
indra.natakusuma@pwc.com

Agnes Wardhana

Junior Partner
PwC Legal Indonesia
agnes.wardhana@pwc.com

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