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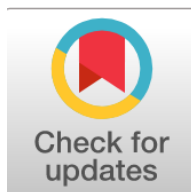
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Simple, Swift, and Low Cost Judiciary in Handling Environmental Crimes by Corporations through Deferred Prosecution Agreement

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Abstract

General Background: Indonesia's criminal justice system aspires to uphold the principles of simplicity, swiftness, and cost-efficiency. **Specific Background:** However, these ideals remain inadequately realized, particularly in addressing environmental crimes perpetrated by corporations—cases often burdened by protracted processes and limited effectiveness in restoring state losses. **Knowledge Gap:** Conventional legal approaches have failed to achieve significant restitution, signaling a need for alternative mechanisms. **Aims:** This study examines the potential application of the **Deferred Prosecution Agreement (DPA)** framework as a tool to actualize a more efficient judiciary in prosecuting corporate environmental offenses. **Results:** Using a normative juridical method with statutory and comparative approaches, the study finds that the DPA offers a concrete, legally feasible means of pursuing compensation while streamlining judicial procedures. **Novelty:** The research introduces the concept of DPA into Indonesia's legal discourse as an innovative, non-traditional solution for environmental crime cases involving corporate actors. **Implications:** The adoption of DPA mechanisms, accompanied by normative and institutional adjustments, could significantly enhance Indonesia's judicial efficiency and environmental accountability frameworks.

Highlights:

- Promotes judicial principles of simplicity, speed, and cost-efficiency.
- Offers innovative restitution for environmental damage by corporations.
- Requires legal and institutional adaptation for implementation in Indonesia.

Keywords: Expedited Justice, Simplicity, Low-Cost Proceedings, Environmental Pollution, Deferred Prosecution Agreement

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Introduction

Corporations play a vital role in improving a country's economy, given their contributions to state revenue (such as taxes) and their ability to reduce unemployment by providing job opportunities. However, their role in economic development is not solely positive; it also has negative impacts. One such negative impact is environmental pollution caused by industrial activities. A notable case of corporate environmental crime is the pollution incident in Rancaekek. This case began with the alleged disposal of hazardous and toxic (B3) liquid waste by three textile factories located near the Cikijing River in Rancaekek Subdistrict—namely, PT Kahatex, PT Insan Sandang, and PT Five Star. Four villages were affected by the waste discharge: Jelegong, Linggar, Bojongloa, and Sukamulya. According to the West Java Provincial Environmental Management Agency, approximately 24,000 cubic meters of wastewater from one factory were discharged into the river daily. The environmental NGO Greenpeace estimated the economic losses caused by the pollution to reach IDR 11.4 trillion, covering damage to agriculture, plantations, livestock, fisheries, public health, water service loss, air quality degradation, loss of income, and remediation costs for the contaminated land. The widespread and complex negative impacts of corporate environmental crimes necessitate holding corporations accountable for such offenses. Environmental pollution often occurs in the context of business activities and is frequently the result of negligence or failure by business actors or authorities to fulfill their obligations in environmental management. As industrial activities increase, so does pollution, making legal protection for the environment essential.[1]

Previous studies have examined the concept of simple, fast, and low-cost justice in criminal proceedings involving corporations, particularly through the concept of the Deferred Prosecution Agreement (DPA). The first study focused on the principle of plea bargaining as a means of achieving speedy, simple, and low-cost resolution of criminal cases within criminal procedural reform. It emphasized that the plea bargaining principle could be applied within Indonesia's criminal justice system, aligning with its foundational principles [2]. Another study by Febby and colleagues explored the application of the DPA and plea bargaining as concrete forms of the principle of simple, fast, and low-cost justice, proposing their use in corruption cases oriented toward recovering state losses [3]. Further research has highlighted that implementing the DPA in Indonesia's criminal justice system must consider constitutional structures and legal traditions [4]. The key distinction between previous studies and the current research is that the latter focuses on resolving disputes through the DPA in cases of environmental pollution.

This research aims to analyze whether the Deferred Prosecution Agreement can realize simple, fast, and low-cost justice in handling corporate environmental crimes.

The study is important because environmental protection is a constitutional right of every citizen. Delays in addressing environmental pollution can seriously harm both society and the environment. Moreover, corporate environmental crimes are often economically motivated and bring financial gain to the company. Corporate crimes tend to employ sophisticated and unconventional methods, such as undetectable financial manipulation [5]. Corporations engaged in production inevitably generate waste, which must be treated to make it safe before being released into the environment (rivers, oceans, soil, etc.). Waste treatment incurs costs that companies often seek to reduce or avoid to cut production expenses, disregarding environmental sustainability and public safety [6]. This situation enables corporations to take actions in their business operations that harm the public [7]. Additionally, poor case management contributes to the failure to implement the principles of simple, fast, and low-cost justice effectively [8].

Method

This research is a normative juridical study [9]. Normative juridical research views law as part of a system of norms oriented toward certain values [10]. The approaches used include the statute approach and the comparative approach, the latter involving a comparison of dispute resolution cases carried out by corporations in the United Kingdom and the United States. The legal materials for this study consist of primary legal sources, including Law Number 32 of 2009 on Environmental Protection and Management, Law Number 8 of 1981 on the Criminal Procedure Code, and Law Number 48 of 2009 on Judicial Authority. The statute approach employs systematic or logical interpretation, in which statutes are understood as part of a broader legislative system and interpreted in conjunction with other relevant laws. Secondary legal materials include books, research findings, and journal articles related to the concept of simple, fast, and low-cost justice in handling corporate environmental crimes through the Deferred Prosecution Agreement. The analysis applied is prescriptive analysis, which provides suggestions or recommendations on what should be done to resolve specific legal issues.

Result and Discussion

A. The Criminal Justice Process in Environmental Pollution Cases Is Inconsistent with the Principles of Simple, Fast, and Low-

Cost Justice

Regulations concerning the resolution of environmental crime cases, whether directly or indirectly, refer to a legal concept adopted in Indonesia's procedural law: the principle of simple, fast, and low-cost justice. When viewed in light of this longstanding principle, which is embedded in the Indonesian judicial framework, efforts to address environmental pollution seem aligned with it. However, despite its longstanding presence, the functionalization or operationalization of this principle remains unclear, and its impact is yet to be realized. This principle is explicitly stated in Article 2 (4) of the Law on Judicial Power, which reads: "The judiciary shall be conducted in a simple, fast, and low-cost manner." [11] As mentioned, in practice, this principle has not been properly implemented. In resolving environmental crime cases, not only has the process failed to adequately address the problems, but it has also proven ineffective in efficiently recovering state losses, thereby falling short of the principle of simple, fast, and low-cost justice as reflected in the General Elucidation of the Criminal Procedure Code (KUHP) and the Law on Judicial Power. There are multiple issues that hinder the realization of this principle. These include the organizational structure and the pattern of relationships built by the Supreme Court and the courts under its jurisdiction [12]. Another contributing factor is the relationship between the Supreme Court and other branches of state power. The absence of detailed and clear regulatory provisions regarding this principle in legislation renders it seemingly ineffective or, at worst, legislatively flawed. Case management is another factor impeding the effective implementation of this principle [13]. Additionally, the evidence presented during trials poses challenges. At the start of each hearing, evidence related to the facts is often not yet available in court and is not disclosed to the opposing party (due to the absence of a disclosure system), resulting in lengthy and drawn-out trials [14]. Moreover, the increasing number of cases has not been matched by an increase in the number of judges. This has led to environmental crime cases being processed slowly, in a complicated manner, and at high cost. Although the Supreme Court has issued regulations to accelerate case examinations at the District Court and Appellate levels setting time limits of five (5) months for the first instance and three (3) months for appeals—in practice, these regulations are often not implemented as intended. All of the above points illustrate that the principle of simple, fast, and low-cost justice, as stipulated in the Criminal Procedure Code and the Law on Judicial Power, has yet to function effectively within Indonesia's judicial system.

No	Case Name	Criminal Offense	Duration
1	PT Adei Plantation:	Pasal 99 UU 32/2009	The case has been registered since Desember 24, 2013 with a duration 812 days
	1. 228/Pid. Sus/2013/ PN.Plw tanggal 9 September 2014		
	2. 286/PID. SUS/2014/ PT.PBR tanggal 9 Januari 2015		
	3. 2042K/Pid. Sus/2015 tanggal 14 Maret 2016		
2	PT Albasi Priangan Lestari:	Pasal 100 UU 32/3009	The case has been registered since juni 11, 2013 with duration a 591 days.
	1. 155/PID. SUS/2013/ PN.CMS tanggal 4 September 2013		
	2. 344/PID/2013/ PT BDG tanggal 18 November 2013		
	814K/PID. SUS/2014 tanggal 22 Oktober 2014		
3	PT Kalista Alam:	Pasal 108 UU 32/2009	The case has been registered since September 27, 2013 with a duration of 922 days
	1. 131/Pid.B/2013/ PN.MBO tanggal 15 Juli 2014		
	2. 201/PID/2014/ PT BNA tanggal 19 November 2014		
	3. 1554K/Pid. Sus/2015 tanggal 5 April 2016		
4	PT Koyama Casting Indonesia:	Pasal 103 UU 32/2009	The case has been registered since April 4, 2014 with a aduration 770 days.
	1. 89/Pid. Sus/2014/ PN.Krw tanggal 15 Desember 2014		
	2. 112/Pid. Sus/2015/ PT.Bdg tanggal 20 Mei 2015		
	2560K/PID. SUS.LH/2015		

	tanggal 12 Mei 2016		
5	PT Karawang Prima Sejahtera Steel: 1. No.434/ Pid.B/2011/P. Krw. tanggal 09 Februari 2012 2. 170/PID.SUS/ 2012/PT.Bdg tanggal 28 Mei 2012 3. 1405K/Pid. Sus/2013 tanggal 20 Januari 2014	Pasal 104 UU 32/2009	The case has been registered since Februari 9, 2012 with a duration 713 days

Table 1. *Duration of Environmental Crime Case Resolution in Court*

The data in Table 1 indicates that the enforcement of environmental law, particularly in holding corporations accountable, takes a considerable amount of time. This duration does not yet include the time of the offense itself, the investigation period, the inquiry process, and the execution of the court's verdict. Such prolonged timelines result in a convoluted legal process and incur substantial costs.

B. Concept Deferred Pro Secution Agreement (DPA)

A Deferred Prosecution Agreement (DPA) is essentially a contractual agreement between a public prosecutor and a defendant to resolve allegations of corporate criminal wrongdoing without proceeding to trial [15]. A DPA is considered to have punitive, deterrent, and rehabilitative effects equivalent to a guilty plea. It involves negotiations between the prosecutor and the defendant—or the defendant's legal counsel—where the defendant is a corporation. The objective is to divert prosecution from the judicial process to administrative or civil remedies. Various types of agreements are available to prosecutors and corporations as mechanisms to avoid criminal prosecution and instead address corporate misconduct through administrative or civil recovery procedures.

The agreement reached between the prosecutor and the defendant or their legal counsel is documented in writing. This written agreement, in addition to detailing the agreed terms, includes a statement from the defendant affirming that the agreement is made voluntarily, that the defendant understands the consequences of waiving the right to remain silent, and that there is no obligation to make self-incriminating statements (non-self-incrimination). The agreement must be signed by the prosecutor, the defendant, the defendant's legal counsel, and an interpreter (if one was used in the case). A copy of the agreement is then submitted to the Attorney General and the court. The DPA is similar to a civil law contract entered into between the public prosecutor and the defendant or their legal representative. It has a contractual nature, representing an agreement between the corporation and the state. Within the agreement, the corporation acknowledges that a criminal offense has occurred, promises not to repeat the offense, commits to taking preventive measures, and agrees to remedy the harm that has been done.

C. DPA in the United Kingdom and the United State

The background for the implementation of the Deferred Prosecution Agreement (DPA) in the United Kingdom stems from a statement in the UK Ministry of Justice's consultation document, which noted the inadequacy of existing mechanisms for effectively enforcing criminal law against commercial organizations involved in complex and serious economic crimes. In the UK, a DPA is a discretionary tool whereby prosecutors and companies engage in negotiations as an alternative to prosecution. To apply a DPA, prosecutors must apply a two-stage test: the evidential stage and the public interest stage. Prosecutors may proceed to court if the corporation fails to comply with the terms of the agreement.

DPAs in the United States and the United Kingdom share similarities, such as the filing of an indictment by the prosecutor containing criminal charges, which is then suspended. Prosecution will not proceed as long as the corporation adheres to the agreement. However, there are also notable differences. In the UK, the use of DPAs in the coming years will be strictly supervised by prosecutors, and prosecutors must obtain court approval to initiate DPA negotiations, to declare a DPA, or to amend one. In contrast, in the US, prosecutors have significant autonomy in how they approach and engage in DPAs, with judicial involvement often being limited.

D. The Concept of DPA as a Mechanism for Resolving Environmental Pollution Disputes in Indonesia

The DPA Concept Was First Implemented in the United Kingdom and the United States. The application of Deferred Prosecution Agreements (DPA) in both countries is adapted to the respective legal systems in place. Should DPA be implemented in Indonesia, it must also be adjusted to align with the Indonesian judicial system. The proposed concept of DPA in Indonesia is as follows [16]

The Concept of DPA to Be Applied in Indonesia Is as Follows:

1. Corporate Agreement to Cooperate

The public prosecutor offers the corporation the opportunity to enter into a Deferred Prosecution Agreement (DPA) as a form of accountability for the offense committed. The resolution of the case through a DPA must not be publicly disclosed, as corporations involved in legal problems often experience a decline in public trust, which can negatively affect their stock value, reduce consumer demand for their products, or even lead to public boycotts. The concept of the DPA is to resolve legal issues while minimizing the risk of corporate bankruptcy or insolvency.

2. Judicial Oversight of the Process

Since DPA proceedings are not to be made public, the role of judges in supervising the process becomes crucial. Prosecutors who carry out the DPA process must report the case's progress to prevent legal abuse. The main goal of the DPA is to satisfy the interest of justice.

3. Determining the Time Frame of the Agreement

To ensure a swift and efficient case resolution, a time frame for fulfillment must be established. Since the DPA is a form of Alternative Dispute Resolution (ADR), the time limit may refer to Article 48 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. Corporate obligations under the DPA must be fulfilled within no more than 180 (one hundred eighty) days from the date the agreement is signed.

4. Agreement Clauses

The agreement must include specific clauses outlining the obligations the corporation is required to fulfill. The public prosecutor will defer prosecution if the corporation agrees to comply with these conditions. Prosecution will only be formally dropped once the corporation has fulfilled all agreed-upon obligations. If the corporation fails to meet them, the prosecutor may proceed with formal prosecution.

E. Deferred Prosecution Agreement in Line with the Principles of Simplicity, Expediency, and Low Cost

When connected with the concept of a judicial system that is simple, expedient, and low-cost, the Deferred Prosecution Agreement (DPA) is expected to facilitate the recovery of state losses more efficiently, simply, and affordably. Administrative processes should be swift, uncomplicated, and inexpensive—serving the interests of the government, citizens, and the environment alike.

The principle of a prompt and proper trial is a universally recognized legal standard. However, the specific notion of a "simple and low-cost" process is somewhat unique to certain jurisdictions. Legal systems around the world—across various legal families—express this principle under different terms, though all aim for the same outcome. According to international standards, a "speedy trial" encompasses the entire process—from the suspect's arrest and detention, to trial proceedings and the final verdict, or until the decision becomes legally binding (in *kracht van gewijsde*). This aligns with many countries' emphasis on "speedy justice." However, in the context of recovering state losses, it is necessary to reaffirm this principle alongside the values of simplicity and affordability.

Recovering state losses through the DPA mechanism is, in the author's view, consistent with the principles of a simple and expedient judicial process. The procedure can be significantly shorter—for instance, through non-conviction-based asset recovery—thereby reducing the costs associated with legal proceedings. The emphasis should be on "speedy and simple trials," but without sacrificing accuracy and thoroughness in handling environmental crime cases.

Simplicity refers to proceedings that are clear, easily understood, and free from unnecessary complexity. A trial becomes more effective when it is not burdened by excessive formalities. The fewer the procedural formalities, the easier it is to comprehend and the less likely it is to create conflicting legal interpretations. "Expediency" refers to the swiftness of the trial process. Excessive formalities often impede the pace of justice, resulting in delays—such as prosecutors struggling to produce witnesses or parties requesting repeated adjournments.

"Low cost" implies that the expenses incurred should be as minimal as possible, enabling access to justice without compromising thoroughness in the pursuit of truth and justice. Excessive trial costs discourage individuals from asserting their legal rights in court. A judicial process that is simple, expedient, and affordable should not rely solely on electronic mechanisms. Rather, in resolving environmental crimes—especially those focused on state loss recovery—the emphasis should also be on procedural models that accelerate case resolution. This includes situations in which the defendant has admitted guilt and is willing to return the losses incurred by the state. In this regard, the DPA model is highly compatible with the principles of a simple, expedient, and low-cost judicial process.

Conclusion

The Deferred Prosecution Agreement (DPA) in cases of environmental crimes committed by corporations reflects the principles of simplicity, expediency, and low cost. A DPA is a written agreement signed by the public prosecutor, the corporation, and its legal counsel. One of the key elements of the agreement is the amount of compensation for state losses caused by environmental pollution. The public prosecutor will suspend prosecution if the corporation complies with the terms of the agreement. However, if the corporation fails to fulfill its obligations within the specified time frame, the prosecutor will proceed with formal prosecution. If the corporation meets all agreed-upon conditions, the criminal proceedings will be terminated.

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