

(Research/Review) Article

Opening Opportunities for Fairness in Developing Alternative Sanctions for Corporations in Corruption Cases

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Abstract: Corporate corruption poses a significant threat to economic stability and public trust. Traditional punitive sanctions, such as substantial fines or dissolution, often fail to achieve restorative justice and can lead to unintended consequences, including harm to innocent employees and stakeholders. This paper explores the imperative of developing alternative sanctions for corporations implicated in corruption cases, with a central focus on establishing a framework grounded in fairness. Through a normative juridical research method employing statutory, comparative, and conceptual approaches, this study analyzes the limitations of the current punitive paradigm. It examines various alternative sanctions, including Deferred Prosecution Agreements (DPAs), Non-Prosecution Agreements (NPAs), corporate monitorship, and mandatory compliance program overhauls. The findings indicate that these alternatives offer a more flexible and effective mechanism for balancing accountability with corporate rehabilitation. They create opportunities to incentivize self-reporting, cooperation, and genuine internal reform. This paper concludes that by integrating principles of proportionality, restorative justice, and forward-looking prevention into the legal framework, a fairer and more effective corporate sanctioning system can be developed. Such a system would not only penalize misconduct but also foster a culture of corporate integrity and contribute more effectively to the broader fight against corruption.

Keywords: Alternative Sanctions; Corporate Sanctions; Corruption; Fairness; Restorative Justice

1. Introduction

Corporate corruption has emerged as a systemic threat to the stability of the global economic order and the integrity of markets worldwide. Corruption can no longer be understood merely as deviant acts committed by individuals; rather, it has evolved into a highly organized and sophisticated phenomenon capable of eroding the very foundations of a nation's economy, undermining public trust in institutions, and fostering unfair business competition that distorts the market (Rose-Ackerman, 2010). On a broader scale, corporate corruption has far-reaching consequences that go beyond financial loss. It creates a ripple effect that weakens regulatory frameworks, discourages fair investment practices, distorts resource allocation, perpetuates rent-seeking behavior, and ultimately exacerbates socioeconomic inequality, thereby deepening public disillusionment and diminishing confidence in the rule of law.

In Indonesia, corporations have been formally recognized as legal subjects capable of bearing criminal liability. This recognition is firmly established in several legal instruments, including the Law on the Eradication of Corruption and is further reinforced by Supreme Court Regulation (PERMA) No. 13 of 2016 concerning the Procedures for Handling Criminal Cases by Corporations. This legal framework affirms that corporations, as artificial legal entities, may commit criminal acts through their agents, employees, or representatives, and therefore must be held accountable for unlawful conduct committed for or on behalf of the corporation itself (Hiariej, 2018). This acknowledgment reflects a shift in legal thinking moving away from a purely individual-based liability toward a more comprehensive framework that encompasses organizational culpability.

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Despite the existence of this legal framework, the enforcement of corporate criminal liability in corruption cases faces fundamental challenges, particularly in the imposition of sanctions. Conventional punitive approaches, such as imposing large-scale fines or even corporate dissolution, have often proven to be blunt and ineffective instruments. While imposing massive fines may appear strict and deterrent on the surface, for many large corporations these penalties are frequently internalized as part of their operational expenses merely a “cost of doing business” thus failing to deliver a meaningful deterrent effect (Garrett, 2014). Conversely, excessively severe sanctions such as dissolution or revocation of corporate licenses may result in disproportionate collateral damage, including widespread layoffs of innocent employees, disruption of essential services, and destabilization of the broader economic ecosystem.

These limitations have prompted an important discourse on the necessity of developing alternative sanctioning mechanisms for corporate offenders. In several jurisdictions, particularly in the United States, legal instruments such as Deferred Prosecution Agreements (DPA) and Non-Prosecution Agreements (NPA) have evolved into central tools for addressing corporate crime (Alexander & Cohen, 2015). These alternative sanctions embody a more balanced and pragmatic approach that combines punitive, restorative, and preventive dimensions. Rather than relying solely on retributive punishment, DPA and NPA frameworks emphasize corporate cooperation with authorities, institutional reforms, compliance monitoring, and internal governance improvements under the supervision of independent monitors. This allows corporations to take responsibility while simultaneously mitigating the broader social and economic fallout that often accompanies conventional criminal penalties.

Accordingly, this study argues that the formulation and implementation of alternative sanctions within Indonesia’s legal system is not merely an option but an urgent necessity to ensure more effective and equitable law enforcement in cases of corporate corruption. Justice, in this context, should not be narrowly defined as imposing proportionate punishment; it must also encompass efforts to restore state and societal losses, rehabilitate corporate governance structures, and prevent the recurrence of corrupt practices through sustainable compliance measures. This perspective resonates with the principles of restorative justice increasingly adopted in modern criminal law systems, which prioritize reparation and transformation over mere retribution (Setiadi, 2020). Therefore, this paper will critically examine the opportunities and challenges involved in developing a coherent framework for alternative sanctions grounded in restorative justice principles, aimed at achieving both accountability and systemic reform in corporate corruption cases in Indonesia.

2. Preliminaries

2.1 The Concept 2.1 Corporations as Subjects of Corruption Crimes

From a juridical and theoretical perspective, a corporation is an artificial legal entity (*fictitious legal person*) endowed by law with rights, obligations, and capacities similar to those possessed by natural persons (Sjahdeini, 2017). This legal recognition allows corporations not only to engage in lawful transactions such as entering contracts, owning property, or employing workers but also renders them capable of committing unlawful acts that may give rise to criminal liability. Thus, the principle of corporate criminal responsibility emerges from the acknowledgment that a corporation, though intangible, acts through human agents whose conduct can be attributed to the corporate body itself.

In the Indonesian legal framework, this concept has moved beyond theoretical discourse into established positive law. The recognition that corporations can be held criminally liable for corruption offenses is codified in Article 20 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption, which explicitly states that legal entities may be prosecuted and punished when criminal acts are committed for and on behalf of the corporation. This marks a paradigm shift in Indonesian criminal law from a purely anthropocentric system focused on individual liability to one that accommodates collective and systemic wrongdoing.

To determine the presence of *mens rea* (criminal intent) within a corporate structure, jurists have developed several theories that bridge the gap between individual conduct and corporate accountability. Among these, the Identification Theory posits that the intent and actions of those in positions of authority the “directing mind” or senior management—are legally attributed to the corporation itself. Conversely, the Vicarious Liability Theory broadens responsibility by holding corporations accountable for criminal acts committed by employees

or agents, provided those acts occur within the scope of their employment and for the corporation's benefit (Hiariej, 2018).

The Supreme Court Regulation (PERMA) No. 13 of 2016 operationalizes these theoretical constructs into procedural guidance for judges and prosecutors, outlining the criteria and evidentiary standards necessary to establish corporate fault. This pragmatic approach ensures that corporations cannot evade liability merely by hiding behind their complex organizational structures. Consequently, the legal framework affirms that corporations despite their artificial nature can possess culpability, bear responsibility, and face criminal sanctions for corruption offenses committed in their name or interest.

2.2 The Paradigm of Criminal Sanctions: From Retributive to Restorative

Historically, the foundation of criminal punishment has rested on the retributive justice paradigm, which seeks to impose suffering proportionate to the moral blameworthiness of the offender. This principle rooted in the maxim *lex talionis* ("an eye for an eye") has traditionally been perceived as the cornerstone of deterrence and moral balance. However, when applied to corporations, the retributive model reveals profound conceptual and practical flaws.

Imposing heavy fines on corporations for corruption, while symbolically strong, often fails to achieve its intended purpose. Large financial penalties are typically absorbed as part of the company's operational costs and subsequently passed on to shareholders, employees, or consumers through decreased dividends, layoffs, or increased prices (Hasnas, 2012). Moreover, sanctions such as corporate dissolution or revocation of licenses, though seemingly severe, can inflict disproportionate collateral damage leading to unemployment, disrupted markets, and economic instability, while leaving individual wrongdoers largely unaffected.

These limitations have prompted a global shift toward a more holistic understanding of justice one that moves beyond retribution toward restoration and prevention. The Restorative Justice Paradigm reframes the central question from "How should the offender be punished?" to "How can the harm be repaired, and who should take responsibility for doing so?" (Braithwaite, 2016). This model prioritizes repairing the damage inflicted upon victims and society, compelling offenders to actively participate in restitution and reform rather than passively endure punishment.

When applied to corporate contexts, restorative justice emphasizes organizational transformation. Corporations are not merely punished but are required to reform internal systems, strengthen ethical governance, and demonstrate genuine accountability through concrete corrective measures. Sanctions become instruments for systemic rehabilitation driving corporate culture toward transparency, integrity, and compliance. This paradigm aligns punishment with broader social objectives: restoring trust, deterring future misconduct, and ensuring that justice serves not only as retribution but as a catalyst for institutional reform.

2.3 The Concept of Alternative Sanctions in Corporate Crime

The evolution of alternative sanctions arises as a pragmatic response to the limitations of traditional punitive measures in addressing complex corporate wrongdoing. These sanctions seek to balance accountability, fairness, and social utility by shifting the focus from mere punishment to structured remediation and prevention. They represent a synthesis of legal innovation and moral pragmatism recognizing that effective deterrence in the corporate sphere often requires behavioral reform rather than annihilation.

Among the most influential forms of alternative sanctions are the Deferred Prosecution Agreement (DPA) and the Non-Prosecution Agreement (NPA), mechanisms that have gained prominence in jurisdictions such as the United States and the United Kingdom. Under these frameworks, prosecutors agree to defer or suspend criminal prosecution for a specified period, contingent upon the corporation's compliance with a set of rigorous, legally binding conditions (Alexander & Cohen, 2015). This arrangement serves a dual purpose: it incentivizes cooperation and reform while preserving the deterrent effect of potential prosecution should the corporation default on its commitments.

The conditions embedded within DPAs and NPAs are both restorative and preventive in nature. They typically require the corporation to: (a) Provide restitution or compensation to victims or the state. (b) Fully cooperate with investigative authorities, including disclosing internal misconduct and identifying individual perpetrators. (c) Implement comprehensive compliance programs, internal auditing mechanisms, and corporate ethics training. (d) Submit to oversight by an independent corporate monitor, tasked with evaluating and reporting the company's progress in reforming its governance practices (Pawar, 2014).

Through this model, enforcement transcends mere punishment and becomes a process of institutional rehabilitation. The corporation is encouraged to internalize ethical standards,

restructure decision-making processes, and cultivate a corporate culture that prioritizes integrity and accountability.

Furthermore, alternative sanctions embody the principle of proportionality and contextual justice ensuring that the legal response reflects not only the severity of the offense but also the corporation's level of cooperation, acknowledgment of wrongdoing, and efforts toward remediation. This nuanced approach prevents the over-penalization of organizations that demonstrate genuine commitment to reform while maintaining strict accountability for those that resist compliance.

Ultimately, the adoption of alternative sanctions in corporate crime enforcement represents a paradigm shift from punishment to prevention, from blame to responsibility, and from destruction to reconstruction. It embodies the pursuit of restorative justice in its fullest sense aiming not merely to penalize corporate offenders, but to transform them into agents of ethical change, thereby reinforcing the broader integrity of economic and legal systems.

3. Materials and Method

This study employs a normative legal research (also known as doctrinal legal research) approach, which focuses on the analysis of legal norms, legal principles, doctrines, and systematics derived from statutory materials and legal literature (Marzuki, 2013). The choice of this research type is based on the main objective of the study, namely to examine and construct a concept of justice in developing alternative sanctions for corporations a fundamentally normative task involving the study of both *ius constitutum* (the existing law) and *ius constituendum* (the law as it ought to be). Therefore, this research does not rely on empirical data collection from the field but instead conducts an in-depth and systematic examination of legal documents, statutory frameworks, jurisprudence, and scholarly works related to corporate criminal liability and corruption.

To comprehensively address the research problem, several research approaches are applied simultaneously. The Statute Approach is used to analyze laws and regulations relevant to corporate criminal liability and corruption offenses, focusing on the Indonesian Penal Code (KUHP), the Law on the Eradication of Corruption (Law No. 31 of 1999 as amended by Law No. 20 of 2001), and Supreme Court Regulation (PERMA) No. 13 of 2016 concerning the handling of corporate crimes. The Conceptual Approach supports this by exploring and interpreting essential legal concepts such as "justice," "alternative sanctions," and "restorative justice," through the study of legal theories, doctrines, and scholarly opinions, aiming to establish a conceptual foundation that aligns with the principles of fairness and restorative justice in corporate criminal responsibility (Marzuki, 2013). Furthermore, the Comparative Approach is utilized since alternative sanction mechanisms such as Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs) have been more extensively implemented in foreign jurisdictions. By comparing Indonesia's legal system with jurisdictions like the United States, this research seeks to draw legal insights and lessons that could be adapted to enhance the national framework of corporate criminal law enforcement.

The legal materials used in this research consist of three categories: primary, secondary, and tertiary sources. The Primary Legal Materials are authoritative and binding, comprising statutory laws and regulations such as the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the Indonesian Penal Code (KUHP), Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption, and Supreme Court Regulation (PERMA) No. 13 of 2016. The Secondary Legal Materials provide interpretation and commentary on the primary sources and include textbooks, academic journals (national and international), previous research, and doctrinal writings by legal scholars related to corporate crime and alternative sanctions. Meanwhile, Tertiary Legal Materials function as supporting references that facilitate understanding of primary and secondary materials, such as legal dictionaries, encyclopedias, and bibliographies.

The collected materials are analyzed using a qualitative analytical method, which involves identification, classification, and systematization of legal sources according to their relevance to the research objectives. The analytical process proceeds through several stages: first, identifying and inventorying the legal materials; second, organizing them based on themes related to the problem formulation; and third, interpreting the content of legal norms and doctrines to extract their essential meaning. The reasoning process is conducted through a deductive legal reasoning method, beginning from general theoretical premises such as theories of justice and the concept of alternative sanctions and moving toward specific applications in the Indonesian legal context. This process aims to construct a coherent and

logically consistent legal argument to support the formulation of an alternative corporate sanction model grounded in fairness and restorative justice principles (Salim & Nurbani, 2013).

4. Results and Discussion

4.1 Limitations of Corporate Criminal Sanctions in the Indonesian Legal System

The results of the statutory analysis reveal several fundamental limitations in the enforcement and imposition of sanctions against corporations involved in corruption in Indonesia. These limitations are not merely technical but structural, reflecting a legal paradigm that remains dominated by retributive punishment rather than transformative accountability.

First, there is an evident dominance of retributive monetary sanctions, primarily through fines. The Indonesian Anti-Corruption Law (*Undang-Undang Pemberantasan Tindak Pidana Korupsi*, or UU Tipikor) establishes fines as the principal punishment for corporations convicted of corruption. Although Supreme Court Regulation (PERMA) No. 13 of 2016 provides some flexibility by allowing judges to determine fines proportionally based on the corporation's profits and the state's losses, the sanction remains essentially monetary and punitive. In practice, the imposition of fines often fails to produce a genuine deterrent effect. For large and financially resilient corporations, fines are frequently perceived as a mere "cost of doing business" rather than a catalyst for structural reform or ethical transformation (Coffee Jr., 2016). Consequently, this approach tends to perpetuate corporate misconduct rather than correcting it.

Second, the additional sanctions provided by law lack restorative or rehabilitative orientation. Article 18 of the Anti-Corruption Law permits the imposition of supplementary sanctions such as the revocation of business licenses or the confiscation of assets. However, these sanctions are designed primarily as punitive measures tantamount to a "corporate death penalty" without creating a pathway for corporate rehabilitation or internal reform. There is no provision within these sanctions that explicitly mandates corporations to strengthen their internal compliance systems, retrain employees, or transform their organizational culture to prevent future corruption. As a result, while these penalties may eliminate the immediate problem, they do little to promote sustainable ethical governance within the corporate sector.

Third, and most crucially, Indonesia lacks a formal legal framework for the implementation of alternative sanctions. Despite PERMA No. 13 of 2016 being a progressive step in procedural law, it does not provide a normative basis for prosecutors or judges to employ mechanisms such as Deferred Prosecution Agreements (DPAs) or Non-Prosecution Agreements (NPAs). The prosecutorial process remains rigidly binary either guilty or acquitted with no intermediate or negotiated solutions. The absence of such "middle-ground" mechanisms forecloses opportunities for more constructive, proportional, and efficient case resolution that balances punishment with rehabilitation (Simanjuntak, 2019).

4.2 Opportunities for the Development of Justice-Oriented Alternative Sanctions

Drawing on both comparative and conceptual approaches, the development of alternative sanctions presents a promising opportunity to create a more just and balanced system of corporate criminal accountability in Indonesia. Justice in this context is understood not merely as retribution but as a multidimensional construct encompassing restorative, preventive, and proportional principles.

The first pillar is restorative justice, which focuses on *repairing the harm* caused by corporate wrongdoing. The adoption of mechanisms such as the Deferred Prosecution Agreement (DPA) can operationalize this idea. Under a DPA framework, corporations are not simply punished but are compelled to take concrete remedial actions, including full restitution to the state or victims, funding community service or social development programs, and publicly acknowledging their wrongdoing (Setiadi, 2020). This approach resonates with Braithwaite's (2016) theory of restorative justice, which emphasizes reconciliation and the restoration of social balance through meaningful accountability rather than punitive isolation. In this way, corporate offenders can become active participants in societal healing while restoring public trust.

The second pillar is preventive justice, which seeks to avert future offenses by transforming internal corporate behavior. Alternative sanctions are particularly powerful in achieving this aim. A core requirement of DPAs, for instance, is the corporation's obligation to reform its compliance and ethics programs under the close supervision of an *independent corporate monitor*. This supervisory mechanism ensures that reforms are substantive rather than symbolic changing the very "DNA" of corporate governance, fostering a culture of integrity,

and significantly reducing the risk of recidivism (Murphy, 2017). This proactive, forward-looking orientation marks a major departure from the traditional retributive model that focuses solely on punishment after the fact.

The third pillar is proportional justice, which allows for the individualization of sanctions according to the specific circumstances of each case. Under the current rigid legal system, penalties are largely uniform and often disproportionate to the actual degree of corporate culpability. By contrast, alternative sanction mechanisms such as DPAs offer flexibility for prosecutors and judges to tailor agreements that reflect the corporation's level of cooperation, the extent of its corrective actions, and the degree of public harm caused. This flexibility ensures that justice is not only served but also *felt* striking a balance between accountability, fairness, and practicality (Tonry, 2011).

4.3 Challenges and Directions for Legal Reform

Despite their promise, the implementation of alternative corporate sanctions in Indonesia faces several significant challenges. The most immediate is the absence of a formal legal foundation. Without a statutory framework explicitly defining the nature, scope, requirements, and oversight mechanisms for Deferred Prosecution Agreements (DPAs), any attempt to introduce such practices would lack legal certainty and could be vulnerable to judicial challenge. A robust legal architecture is therefore indispensable to legitimize and institutionalize these alternative mechanisms within Indonesia's criminal justice system.

Another major challenge is the risk of misuse of authority and lack of transparency. In jurisdictions where DPAs are practiced, such as the United States and the United Kingdom, criticisms have arisen regarding the potential for powerful corporations to "buy their way out" of prosecution through negotiated settlements conducted behind closed doors (Garrett, 2016). Such practices can undermine public trust in the justice system and reinforce perceptions of inequality before the law. To mitigate these risks in Indonesia, any future DPA framework must mandate full transparency, judicial oversight, and clear prosecutorial guidelines to prevent arbitrary discretion and ensure that agreements serve the public interest rather than private convenience.

In light of these challenges, the direction of future legal reform should encompass several key initiatives. First, there is an urgent need to amend the Anti-Corruption Law or to draft a new statute on corporate criminal liability that explicitly recognizes and regulates alternative sanctions, including DPAs. Second, the government should develop implementing regulations, such as a Government Regulation or a Prosecutorial Regulation, to provide detailed procedural guidance on how prosecutors may negotiate, execute, and monitor DPA agreements. Third, and equally important, the judiciary's role as the ultimate gatekeeper must be strengthened ensuring that every agreement is subject to court approval, judicial review, and public disclosure to uphold fairness and accountability.

5. Conclusion

The imposition of sanctions on corporations involved in corruption presents a complex legal challenge that requires firmness, fairness, and effectiveness. Indonesia's current criminal justice system still relies on a punitive paradigm centered on fines and retributive measures, which often fail to deter large corporations, improve governance, or protect innocent stakeholders.

This study finds that developing alternative sanctions, such as Deferred Prosecution Agreements (DPAs), offers a paradigm shift toward more balanced justice. Such mechanisms promote restorative justice (repairing losses and social harm), preventive justice (encouraging corporate reform), and proportional justice (aligning penalties with the degree of fault and cooperation). This approach combines accountability with rehabilitation, fostering more intelligent and fair law enforcement.

However, implementing alternative sanctions in Indonesia faces obstacles legal gaps, potential abuse of discretion, and weak oversight. Therefore, this study recommends: (1) Legislative reform, through explicit regulation of alternative sanctions and their procedures; (2) Technical guidelines, ensuring clear standards for prosecutors and judges; and (3) Enhanced transparency and oversight, to safeguard integrity and public trust.

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