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# CORPORATE COMPLIANCE AS AN ALTERNATIVE TO THE CRIMINAL JUSTICE SYSTEM IN RESOLVING BUSINESS CRIMES

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## ABSTRACT

**Objective:** This study critically examines whether corporate compliance has evolved from a preventive governance instrument into a de facto substitute for criminal justice in the enforcement of business and economic crimes, particularly through non-judicial settlement mechanisms.

**Research Design & Methods:** Using a doctrinal-comparative qualitative design within a socio-legal framework, this study analyzes international journal literature on corporate compliance, Deferred Prosecution Agreements (DPAs), Non-Prosecution Agreements (NPAs), administrative settlements, and individual accountability regimes in various jurisdictions.

**Findings:** Findings show that corporate compliance increasingly operates as a negotiation-based law enforcement tool that partially replaces formal criminal proceedings. Compliance mechanisms systematically shift law enforcement from public courts to administrative settlements and negotiations, weakening deterrence, judicial transparency, and individual accountability, especially for senior corporate actors. This transformation contributes to selective law enforcement and the emergence of a shadow justice system that favors economically powerful corporations.

**Implications:** Replacing criminal proceedings with negotiated compliance undermines the principle of equality before the law and reduces business crime to operational risk. This study recommends a hybrid enforcement model. In this model, compliance serves as a complement to, rather than a substitute for, criminal prosecution.

**Contribution & Value Added :** This study develops the Compliance Justice Substitution Theory, linking compliance governance with criminal justice outcomes, and provides policy recommendations to prevent the use of compliance as a tool for corporate impunity.

**Keywords:** Corporate Compliance, Corporate Crime, Negotiated Justice, Deferred Prosecution Agreements, Individual Accountability.

JEL codes: K14, K22, K42

**Article type:** research paper

## INTRODUCTION

Corporate compliance programs have served as a key instrument in the prevention and management of business crime, with the aim of ensuring that companies adhere to legal and ethical standards and reducing organizational liability. Through internal guidelines, monitoring mechanisms, and codes of conduct, compliance programs seek to regulate employee behavior and prevent actions that harm society, often supported by prosecutorial incentives such as reduced or lenient sentencing (Armour et al., 2020; Rorie and West, 2022). This program is promoted as an alternative to traditional punitive approaches. As reflected in the law enforcement framework in jurisdictions such as the United States and Germany (Yuning, 2018).

However, the increasing reliance on compliance raises critical concerns. Many compliance frameworks reflect the logic of criminal law, which can produce undesirable behavioral consequences, including employee rationalization and normalization of unethical behavior, potentially undermining its deterrent effect (Haugh, 2017, 2021). At the same time, although compliance programs require significant costs, they are generally considered worthwhile due to their benefits, such as legal protection, regulatory stability, and risk reduction. These benefits

are further reinforced by the existence of global standards in the areas of health, safety, and environmental governance (Giavazzi, 2022; Teichmann et al., 2023).

In recent years, law enforcement against corporate crime has increasingly shifted from traditional criminal prosecution to negotiated settlements that prioritize compliance and remediation. Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs) are now widely used to resolve corporate criminal cases without going to trial, allowing corporations to avoid formal punishment by admitting wrongdoing, paying financial penalties, and committing to improved compliance (Davis, 2021; Miller, 2016; Shiner and Ho, 2018). This mechanism is promoted as a pragmatic tool to reduce the collateral consequences of full criminal prosecution while effectively maintaining corporate accountability (Campbell, 2021; Zhou, 2025). The level of judicial oversight of agreements varies across jurisdictions. In the United States, limited oversight has led to concerns about a weakening deterrent effect. Meanwhile, jurisdictions such as the United Kingdom apply a more stringent judicial review framework (Zhou, 2025).

Alongside DPA and NPA, administrative settlements have emerged as a flexible and efficient alternative to criminal prosecution. This allows regulators to tailor remedial and compliance obligations to specific corporate violations while avoiding lengthy and resource-intensive trials (Garrett, 2019; Pieth, 2020). This settlement involves fines, structural reforms, and ongoing compliance monitoring, thereby placing compliance as the primary deterrent to future violations (Fey et al., 2014; Samvel, 2020; Templeton and Kohler, 2014). As a result, a robust compliance program demonstrates the company's good faith when negotiating with regulators and is a key reason for reducing criminal penalties (Fahrner, 2024; Liao and Jin, 2007; Martinez et al., 2013).

The application of non-judicial mechanisms raises questions about whether corporate compliance strengthens the criminal justice system or weakens it. There are serious problems with this practice of "shadow justice," particularly the low level of accountability at the top management level. Even though corporations pay large fines, the individuals behind the crimes often escape prosecution. The absence of public trials reduces judicial oversight and transparency, which are essential to the rule of law. Compliance programs are often seen as merely a tool for negotiation between prosecutors and corporate lawyers, leading the public to believe that large corporations are "too big to jail" (Reilly, 2018).

Although studies on corporate compliance have grown rapidly, the existing literature still shows significant fragmentation. The literature on compliance is generally normative and managerial in nature, focusing on internal structure design and operational efficiency. On the other hand, the criminal justice literature tends to focus on the doctrine of criminal sanctions and traditional principles of retribution (Diskant, 2008). There is a lack of research integrating compliance governance with criminal justice outcomes. Few studies have critically measured how the managerial logic of compliance permeates and alters the fundamental principles of criminal law, and how this integration impacts the long-term effectiveness of business crime prevention (Artello and Albanese, 2024).

Against this backdrop, this study aims to critically examine whether corporate compliance has evolved into a de facto substitute for criminal justice in the enforcement of business crime laws. Specifically, this study investigates the role of compliance programs in non-trial settlement mechanisms such as DPAs and NPAs in various jurisdictions, identifies conditions under which compliance undermines procedural integrity and individual accountability, and assesses the long-term policy implications of this shift in law enforcement for national and global criminal justice systems. This study contributes theoretically by introducing the concept of compliance-justice substitution, analytically by offering a comparative assessment of non-trial settlements, and practically by proposing policy recommendations to strengthen judicial oversight and prevent the use of DPAs as a mechanism for individual impunity.

Research Questions:

RQ1 : What is the role of corporate compliance in non-judicial settlement mechanisms?

RQ2 : Under what circumstances does compliance weaken criminal proceedings?

RQ3 : What are the implications of the policy for the criminal justice system?

## LITERATURE REVIEW

### Corporate Compliance in Business Crime

Corporate compliance programs have become a central instrument in corporate governance and the prevention of business crime, particularly in highly regulated sectors. These programs are generally framed as internal control mechanisms aimed at ensuring compliance with legal and ethical standards, often driven by strategic objectives to reduce regulatory scrutiny and avoid criminal prosecution (Haugh, 2017). In practice, compliance is increasingly positioned as a form of ex ante crime prevention that replaces direct state intervention.

Compliance programs that focus on monitoring and sanctions tend to reduce compliance to a procedural formality, encourage rationalization, and paradoxically facilitate covert violations (Haugh, 2017, 2021). Therefore,

compliance effectiveness depends less on formal rules and more on the development of an ethical corporate climate, supported by informal norms, leadership commitment, and internal trust mechanisms that reinforce law-abiding behavior beyond mere legal minimalism (Fasterling, 2016).

### The Criminal Justice Approach to Corporate Crime

The approach to corporate crime in the criminal justice system varies greatly across jurisdictions, reflecting different legal traditions and philosophies of law enforcement. In the United States, the expansion of corporate criminal liability has gone hand in hand with increased self-regulation and negotiated enforcement, effectively shifting the responsibility for crime prevention from prosecutors to corporations (Diamantis and Laufer, 2019; Fenwick, 2016). Although this model improves the efficiency of law enforcement, critics argue that it weakens the expressive and preventive functions of criminal law, because corporate prosecution and individual punishment (Diamantis and Laufer, 2019). Conversely, some jurisdictions are experimenting with hybrid models that more explicitly embed compliance obligations within the framework of corporate governance and criminal law. These approaches seek to align internal compliance mechanisms with public law enforcement objectives, positioning compliance not only as a defensive strategy but as a legally enforceable obligation linked to criminal accountability (Colacurci, 2022). This difference illustrates the unresolved tension between managerial governance logic and traditional criminal justice principles in dealing with corporate crime.

### Suspension of Prosecution and Settlement Without Trial

Deferred Prosecution Agreements (DPAs) and other non-trial settlements have emerged as the dominant law enforcement tool in corporate crime cases, particularly in a transnational context. DPAs allow corporations to avoid criminal trials by agreeing to financial penalties, compliance reforms, and ongoing cooperation with authorities (Davis, 2022; Garrett, 2019; Miller, 2016). Supporters argue that the mechanism reduces enforcement costs, prevents disproportionate additional consequences, and encourages corporate self-reporting.

Nevertheless, a significant body of literature questions the preventive and normative effectiveness of DPAs. Critics argue that these agreements often prioritize organizational reform over individual accountability, resulting in lenient penalties that fail to meaningfully deter future violations (De Vita and Voza, 2024; Gottschalk, 2024; Lord, 2023). Furthermore, the absence of open trials limits judicial oversight and public transparency, undermining the legitimacy of criminal court outcomes (Zhou, 2025). Empirical studies show that the effectiveness of DPAs depends heavily on the depth of judicial oversight and the substantive rigor of the compliance obligations imposed, not merely on their formal existence (Davis, 2022; Zhou, 2025).

### Conceptual Gaps in Corporate Criminal Justice

The existing literature reveals a significant conceptual gap in the contemporary framework of corporate criminal justice. Traditional criminal law, which is largely designed for individual perpetrators, struggles to address the dispersed structures of responsibility, collective decision-making, and organizational culture that characterize corporate crime (Laufer and Sousa, 2025; Stewart, 2013). These limitations have contributed to inconsistent application of criminal liability and increased reliance on compliance programs as a substitute for punishment and deterrence (Laufer and Sousa, 2025).

However, the assumption that compliance mechanisms can adequately replace criminal justice has not yet been sufficiently theorized and empirically tested. Bridging this gap requires a reconceptualization of corporate criminal liability that integrates enforcement with proactive compliance strategies aimed at reshaping corporate norms and ethical behavior (Colacurci, 2022; Fasterling, 2016; Laufer and Sousa, 2025). Such an integrated approach is essential to ensure that compliance enhances, rather than replaces, the core principles of criminal justice in corporate governance.

Table 1. Corporate Compliance and Criminal Justice Approaches

Aspect	Details
Corporate Compliance	Programs to ensure legal and ethical corporate behavior; effectiveness debated.
Criminal Justice Approaches	Varies by jurisdiction; US relies on self-regulation; other models integrate compliance.
Deferred Prosecution Agreements (DPAs)	Allow avoidance of trials; criticized for leniency; effectiveness depends on oversight.

## METHODS

This study uses a comparative doctrinal qualitative research design within a socio-legal framework, with the aim of critically assessing how corporate compliance functions as a partial substitute or complement to the criminal justice process in handling business crimes. This design was chosen because it allows for an integrated analysis of legal doctrine, enforcement practices, and compliance governance dynamics, as reflected in the shift

from criminal prosecution to non-trial mechanisms and compliance-based negotiations, which are the main findings of this study.

This research is entirely based on secondary data sources in the form of reputable international scientific journal articles, particularly in the fields of criminal justice, business crime, corporate governance, compliance studies, and regulatory enforcement. The articles analyzed include empirical and theoretical studies on Deferred Prosecution Agreements (DPAs), Non-Prosecution Agreements (NPAs), non-judicial mechanisms, corporate compliance programs, individual accountability regimes, and selective enforcement in corporate and economic crimes. The selection of journal sources allows for a systematic exploration of normative patterns and enforcement practices across jurisdictions, as reflected in findings on the privatization of justice, enforcement negotiations, and the erosion of individual accountability.

## RESULT

### The Role of Corporate Compliance in Non-Judicial Resolution Mechanisms

The results of the study show that corporate compliance programs play a central role in non-judicial settlement mechanisms, particularly as a facilitative instrument that replaces the repressive function of formal criminal proceedings. Non-judicial mechanisms, known in international literature as non-compliance mechanisms (NCMs), are designed to encourage compliance through support, coordination, and negotiation, rather than through conventional punishment (Fahrner, 2024; Redgwell, 2011).

In the context of international agreements, such as the Kyoto Protocol, compliance mechanisms combine a facilitative approach and limited enforcement to ensure the transparency and credibility of the global regime, without involving a full criminal justice process (Maljean-Dubois and Anne-Sophie, 2011). A similar pattern can be seen in the corporate context, where Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs) emphasize internal reform, administrative fines, and increased compliance in lieu of open trials.

The flexibility of non-judicial mechanisms has proven to be the main reason for their preference among regulators and prosecutors, as they allow for solutions tailored to corporate circumstances and avoid the economic and reputational costs of formal criminalization (Ermakova and Yazdanimoghadam, 2022; Jones, 2024). However, the effectiveness of this approach is highly dependent on the domestic context and institutional strength. Studies on the Aarhus Convention show that compliance is achieved in less than 41% of cases, indicating that non-judicial mechanisms are weak when not supported by strong national accountability structures (Samvel, 2020).

Non-Judicial Grievance Mechanisms (NJGMs) emerged as a response to victims' limited access to formal justice, particularly in cases of human rights violations by corporations. NJGMs are generally established by the companies themselves and operate within the context of soft law, where normative standards are developed and enforced internally (Reisch, 2020). The results of the study show that the effectiveness of NJGMs is highly dependent on the quality of the recovery actions taken, the motivation of corporations in implementing these mechanisms, and the level of transparency and participation of the affected communities. However, due to their non-binding and closed nature, NJGMs tend to strengthen corporate control over the accountability process, rather than opening up space for public accountability.

Second, Deferred Prosecution Agreements (DPAs) have proven to be a key instrument in managing corporate violations, particularly in cases of cross-border corruption and bribery. DPAs allow corporations to avoid criminal prosecution on condition that they fulfill certain obligations, including paying fines and implementing internal compliance programs (Lord, 2023). The findings indicate that this practice creates problematic law enforcement infrastructure, where compliance serves as a substitute for criminal proceedings. Corporations are effectively exempt from prosecution, raising serious questions about the adequacy of DPAs in ensuring substantive accountability and long-term deterrence (Lord, 2023).

Third, corporate compliance programs themselves are positioned as a key pillar in non-judicial settlements. The results of the study confirm that effective compliance programs can serve as a preventive mechanism and even as a basis for mitigation or exemption from legal liability for employee actions (Teichmann et al., 2023). In practice, compliance serves as a corporate stabilization tool to avoid legal scandals and maintain business continuity. However, findings also show that compliance is often reduced to formal fulfillment of regulatory requirements, without being accompanied by substantive ethical cultural transformation (Arjoon, 2005).

Fourth, Alternative Dispute Resolution (ADR) mechanisms and Restorative Justice (RJ) approaches offer non-judicial resolution models based on dialogue and participation. These approaches emphasize victim recovery and social relationship reconstruction through restorative processes (Schormair and Gerlach, 2020). The results of the study indicate that ADR and RJ have the potential to broaden participation and increase the legitimacy of dispute resolution. However, in a weak institutional context, these mechanisms risk marginalizing the interests of victims and placing corporate power imbalances as a dominant factor in the negotiation process (Schormair and Gerlach, 2020).

Fifth, studies on compliance-based non-prosecution models in China show a more structured institutional approach. This model requires corporations to establish effective internal compliance systems as a condition for discontinuing prosecution, involving third-party monitoring and evaluation (Zhaojun and Huan, 2024). The results of the study indicate that although this model strengthens state control over the compliance process, there is still a risk that the focus on organizational reform will divert attention from individual criminal responsibility. These findings confirm that compliance in non-judicial mechanisms functions more as an instrument of system stabilization than as a tool for criminal justice enforcement, especially when judicial oversight is minimal.

### Compliance as a Negotiation Instrument in Criminal Enforcement

Corporate compliance is increasingly transforming into a strategic negotiating tool in the settlement of business crime cases. In this framework, compliance is no longer positioned as an ex ante normative obligation, but rather as an ex post bargaining commodity between corporations and law enforcement authorities (Monnerie and Tir, 2023). Compliance is used by companies to demonstrate good faith, cooperation, and a law-abiding corporate character, which then influences how law enforcement authorities interpret violations and determine enforcement responses (Hock and Dávid-Barrett, 2022). In practice, the existence and quality of compliance programs are often decisive factors in settlement negotiations, including out-of-court settlements, reduction of penalties, or even discontinuation of prosecution (Fantoly, 2024; Lonati and Borlini, 2020).

Compliance provides significant leverage in negotiations, particularly in cases of bribery and transnational crimes, where proactive cooperation and compliance-based defense can shape the construction of legal facts and the direction of enforcement (Hock and Dávid-Barrett, 2022; Lonati and Borlini, 2020; Makinwa, 2020). On another note, integrating compliance into enforcement creates a problematic form of public-private partnership, as some of the state's investigative functions are implicitly transferred to corporations (Lonati and Borlini, 2020). Thus challenging the state's monopoly on criminal law enforcement.

In the international context, compliance behavior is greatly influenced by perceptions of the fairness of the prevailing regime. A study of German compliance with the Nuclear Non-Proliferation Treaty shows that structural injustice encourages selective compliance and normative resistance (Fey et al., 2014). This pattern parallels DPA practices, where corporations are willing to comply with certain standards as long as criminal penalties can be negotiated or mitigated. In jurisdictions with mature enforcement systems, such as the United States and the European Union, compliance has been explicitly institutionalized in prosecution policies and law enforcement reforms (Hock and Dávid-Barrett, 2022; Monnerie and Tir, 2023). Conversely, in countries with developing systems, the application of compliance in criminal negotiations tends to be discretionary and inconsistent (Lin, 2019).

In the business sector, compliance also serves as a legal risk mitigation mechanism in the pre-contractual phase, such as through letters of intent and compliance verification, which play a role in preventing disputes from escalating to the criminal realm (Fey et al., 2014; Mansur et al., 2025). Within the regulatory framework, particularly in the energy and data protection sectors, compliance is positioned as a tool for coordinating the interests of multiple parties, rather than as an instrument of strict law enforcement (Cremona, 2012; Reza et al., 2025). These results reinforce the finding that, in the context of corporate crime, compliance has been instrumentalized, shifting from a preventive tool to a currency of settlement, which systematically reduces the role of formal criminal proceedings.

### Substitution of Criminal Process and Weak Individual Accountability

There is a consistent pattern in which compliance mechanisms and non-trial resolutions contribute to the substitution of criminal proceedings, particularly in terms of individual accountability. Substitute liability clauses extend criminal responsibility to organizational entities, but paradoxically often exclude the individuals who are factually responsible for the crime (Zawiejski, 2022). The phenomenon of penal substitution, primarily through financial penalties, is selectively accepted as a substitute for criminal punishment, reflecting normative inconsistency in the corporate punishment system (Lewis, 2021). Although large fines are presented as a form of strict law enforcement, research shows that this approach fails to deter decision-makers at the top management level.

Efforts to strengthen individual accountability through Individual Accountability Regimes (IARs), such as SMCR in the UK and BEAR in Australia, have shown limited results. These regimes tend to focus on administrative compliance, but are unable to penetrate the complexity of organizational structures and corporate responsibility delegation mechanisms (McGrath and Scholten, 2024; Scholten and McGrath, 2025). This finding confirms that structural compliance does not automatically correlate with personal criminal liability.

Table 2. Legal Mechanisms and Individual Accountability

Aspect	Impact on Individual Accountability
Substitute Liability Clauses	Can leave actual perpetrators unaccountable (Zawiejski, 2022)
Restorative Justice	Focuses on repair, potentially diluting accountability (Cabezas, 2024; Shilovskaya and Sitdikova, 2018)

Economic Crimes	Expands liability, diluting personal accountability (Al-Ahmad, 2024)
Criminal Policy	Balances expanded responsibility with individual rights (Lima, 2012)
Administrative Mediation	Shifts focus from punishment to resolution (Casado, 2025)

### Selective Enforcement and the Erosion of Criminal Justice Integrity

The shift towards compliance mechanisms and non-trial resolutions indirectly reinforces selective law enforcement patterns, which ultimately erodes the integrity of the criminal justice system. Selective enforcement is not solely caused by limited resources, but also by institutional discretion, political and economic considerations, and power imbalances between regulated actors and law enforcement agencies (Yun-hui and Yu-bin, 2010; Zhang and Zhang, 2010). Inconsistent enforcement of the law leads to inefficient allocation of resources and undermines the credibility of the law as an instrument of substantive justice.

Studies on racially selective enforcement in the context of conventional criminal law provide important illustrations of how selectivity is structurally institutionalized. Although the United States Supreme Court formally prohibits race-based law enforcement practices, the very high standard of proof makes claims of selectivity rarely successful (Rubinstein, 2025). The ACLU's findings on racial disparities in drug enforcement, particularly more intensive patrols in African-American communities, show that selectivity is not an anomaly, but rather a systemic pattern (Umsted, 2014). The same principle, as demonstrated by this study, also applies to corporate crime: large corporate actors with strong legal resources tend to obtain non-judicial resolutions, while small companies face full criminal proceedings with more severe consequences.

In the context of corporate law enforcement, reliance on Deferred Prosecution Agreements (DPAs) and negotiated compliance mechanisms creates a normative paradox. On the one hand, these mechanisms are promoted as efficient and pragmatic solutions; on the other hand, they open the door for companies to interpret compliance as a cost of doing business, rather than as a substantive legal and ethical obligation. This reinforces a culture of minimal accountability and encourages opportunistic behavior, where compliance strategies are tailored to the probability of enforcement, rather than to the legal norms themselves (Zhang and Zhang, 2010). This disparity is even more apparent when small companies, which lack adequate negotiating power and compliance resources, face more repressive penalties than large corporations (Hidayat & Noerdajasakti, 2025).

The international dimension of selective enforcement also reinforces this finding. Criticism of the International Criminal Court (ICC) shows that geographical, identity, and thematic selectivity in prosecution has long been a structural problem in international criminal law, undermining claims of universality and impartiality in global criminal justice (Cryer, 2005; Ezennia, 2016). This pattern reflects a similar logic in transnational corporate crime, where economic actors with strategic positions in the global system tend to be more protected from harsh law enforcement. The literature suggests that this selective pattern undermines the legitimacy of the law and encourages opportunistic behavior, whereby corporate actors tailor their compliance strategies based on the probability of enforcement rather than the legal norms themselves (Zhang and Zhang, 2010). Although extreme examples of selectivity are often discussed in the context of race and conventional criminality, the same principle applies to corporate crime: large companies with strong legal resources tend to receive non-judicial treatment, while smaller actors face full criminal proceedings.

Negotiated compliance helps shape a shadow justice system, where accountability and transparency are not determined by open judicial processes, but by the negotiating power of economic actors. The pattern of selective law enforcement is increasingly evident through the difference in treatment between large and small companies. Large companies are consistently more often directed to non-trial mechanisms, such as Deferred Prosecution Agreements, compliance programs, and cooperation with prosecutors, so that they can avoid open criminal proceedings that risk damaging their reputation and market value (Eeckhoudt, 2016). This practice reinforces the narrative of "too big to jail," where compliance is positioned as a substitute for criminal prosecution, rather than a complement to it.

There is structural bias in law enforcement, where the probability of imprisonment for managers of large companies is much lower than for perpetrators from small companies (Choi et al., 2016). This bias is related to prosecutorial discretion and career incentives for law enforcement officials, which implicitly undermine the courage to enforce the law against dominant economic actors. Conversely, small companies are more vulnerable to direct criminal prosecution, especially in cases of regulatory violations that impact public safety, health, and the environment. These prosecutions often serve as a deterrence showcase, even though they do not systematically touch the actors with the greatest economic destructive power (Steinzor, 2016). In the antitrust context, aggressive enforcement also tends to burden small businesses and disproportionately affect their business climate (Feinberg, 2014). Negotiated compliance deepens the shadow justice system, where the outcome of law enforcement is determined more by the economic capacity and structural position of business actors than by the principle of equality before the law or the level of substantive wrongdoing.

Table 3. Enforcement Asymmetry by Corporate Size

Aspect	Large Companies	Small Companies
Resolution Type	Non-trial resolutions, compliance programs	Criminal prosecution
Judicial Bias	Favorable, lower probability of incarceration	Higher likelihood of prosecution
Regulatory Impact	Implement internal policies, avoid trials	Negative impact from antitrust enforcement
Deterrence	Cooperation to avoid prosecution	Aggressive criminal investigations

## DISCUSSION

The findings of this study indicate that corporate compliance is increasingly functioning as a quasi-criminal justice mechanism, particularly in the context of business and economic crimes, where traditional repressive approaches are often replaced or softened by prevention, negotiation, and compliance-based oversight strategies. This shift raises fundamental questions about the boundaries between criminal law enforcement and private governance carried out by corporations.

### Compliance as a Mechanism for Behavioral Control

Compliance serves as a key element in non-judicial settlement mechanisms by replacing some of the coercive functions of formal judicial proceedings through a facilitative, cooperative, and dialogical approach. Non-compliance mechanisms (NCMs), as reflected in the Aarhus Convention and the Kyoto Protocol, are designed to encourage compliance with legal obligations through behavioral correction and institutional support, rather than through the attribution of criminal liability. Although these mechanisms can improve transparency and coordination, their effectiveness is highly dependent on domestic institutional capacity and the accompanying political, reputational, and administrative pressures. A similar pattern is seen in the corporate context, where compliance programs, DPAs, and other non-trial mechanisms function more as a means of system stabilization and legal risk management than as instruments of substantive criminal accountability.

In line with the findings of electronic monitoring studies, the effectiveness of compliance is not solely determined by the threat of sanctions, but by perceptions of procedural justice, the legitimacy of rules, and the internalization of norms within organizations. In the context of business crime, this reinforces the Compliance–Justice Substitution Theory, which explains that compliance operates as a functional equivalent of criminal punishment through non-judicial mechanisms such as DPAs, NPAs, and ADRs. Under this regime, criminal sanctions are replaced by internal reforms, administrative fines, and negotiated compliance commitments, while compliance serves as an instrument of institutional legitimacy for the state to maintain its claim to law enforcement without incurring the costs of formal criminalization. As a result, criminal justice is not abolished, but reconfigured into a more flexible but less confrontational administrative-negotiative regime.

### Negotiation Logic in Criminal Justice and Corporate Enforcement

Compliance tends to weaken the effectiveness of criminal proceedings when it is overly formalized and treated as a substitute for, rather than a complement to, criminal law enforcement. Compliance programs built on quasi-criminal logic that mimics the structure of criminal supervision, reporting, and sanctions often operate instrumentally. They are used as a legal risk management tool rather than as a mechanism for internalizing ethical values. Under these conditions, compliance facilitates the rationalization of violations under a procedural veil, while the focus of enforcement shifts from the attribution of guilt and personal accountability to the protection of corporate entities. When compliance programs are used as a basis for mitigation or justification for discontinuing prosecution, the expressive and deterrent functions of criminal law undergo substantive erosion and are replaced by institutional negotiation logic.

This shift is in line with a broader trend in modern justice systems that increasingly rely on dialogue, persuasion, and non-coercive resolution. The practice of crisis negotiation, including the use of the Behavioral Influence Stairway Model (BISM) in hostage situations and suicide crises, demonstrates how persuasive approaches are replacing coercive interventions as the primary strategy for risk management. Similar patterns are seen in business law enforcement through plea bargaining in Australia and non-trial resolutions (NTRs) in transnational anti-bribery cases, where companies with strong compliance programs are able to influence the construction of legal facts and enforcement outcomes. In this context, compliance functions as a bargaining tool that effectively replaces formal criminal judicial processes, while strengthening the transformation of criminal justice into a more flexible but less confrontational administrative-negotiative regime.

#### 1. Corporate Compliance and the Risks of Privatization of Justice

Cases involving anti-foreign bribery laws show that NTRs enable corporations to avoid open court proceedings in exchange for internal improvements. Although effective in terms of efficiency, this practice poses the risk of privatization of justice, in which public accountability and the symbolic functions of criminal law, such as

deterrence and moral condemnation, are weakened. Thus, corporate compliance not only complements but also has the potential to replace the role of criminal justice, especially in high-level economic crimes.

## 2. Cultural Context and Multi-Level Compliance

Studies on the integration of customary law and national law in Indonesia show that compliance is often built through mediation and consensus, rather than formal sanctions. This pattern is in line with the problem-solving approach to compliance in the European Union system, which combines legal pressure with institutional support. These findings confirm that compliance, both in the context of the state and corporations, is contextual and cannot be separated from social and cultural legitimacy.

## 3. Corporate Compliance in Digital Business Crime

Cases of money laundering through online platforms show that the speed and complexity of digital crime have left conventional criminal enforcement behind. In this situation, internal compliance measures such as know-your-customer (KYC) and anti-money laundering (AML) become the main line of defense. However, over-reliance on internal corporate mechanisms also opens up opportunities for regulatory capture and compliance washing, where compliance is formalistic without substance.

### Implications for Criminal Justice

The substitution of criminal justice by compliance has serious implications for the fundamental principles of the criminal justice system. First, there is an erosion of the principle of equality before the law, as access to non-trial resolutions is highly dependent on economic capacity, reputation, and corporate bargaining power. Large companies receive non-judicial treatment, while smaller actors continue to face full criminalization. Second, negotiated compliance mechanisms undermine transparency, as enforcement moves from open courtrooms to closed negotiations between regulators and corporations. This situation creates the risk of normalizing business crime, where legal violations are perceived as operational risks that can be managed through ex post compliance, rather than as reprehensible acts that demand personal criminal responsibility. In the long term, this has the potential to undermine the expressive function of criminal law as an enforcer of social norms.

At the international level, the limitations of the International Court of Justice's (ICJ) jurisdiction in resolving armed conflicts show that international compliance often depends on non-coercive mechanisms (Mollel, 2007). Studies on the implementation of victims' rights in Sweden also indicate that normative commitments are not always followed by long-term substantive compliance (Holm, 2022). This reinforces the argument that compliance in both international criminal law and corporate crime cannot stand alone without the support of credible enforcement mechanisms.

### Policy Tensions

The results of the study reveal inherent policy tensions between efficiency and fairness, as well as between economic stability and deterrent effects. From a regulatory perspective, compliance mechanisms and non-trial resolutions offer procedural efficiency, certainty of outcomes, and protection of market stability. However, this efficiency is achieved at the expense of retributive justice and individual accountability. Similarly, efforts to maintain economic stability, particularly by avoiding the criminalization of large corporations, often weaken the deterrent effect of criminal law on strategic decision-makers at the top management level. This tension shows that corporate law enforcement policy is not normatively neutral, but rather reflects political choices about which actors to protect and which risks to tolerate.

Overall, this discussion shows that corporate compliance has evolved from a supporting instrument to a partial substitute for criminal justice in business and economic crimes. Although it offers efficiency and flexibility, this shift raises normative dilemmas related to transparency, public accountability, and substantive justice. Therefore, this study emphasizes the need for a hybrid framework in which corporate compliance is strengthened through strict assurance standards and remains under the threat of real and enforceable criminal sanctions.

### Comparison with Existing Literature

Theoretically, these findings confirm and expand upon the literature's criticism of Deferred Prosecution Agreements and similar mechanisms, which have long been viewed as weakening deterrence and individual accountability. However, the main contribution of this research lies in the formulation of substitution logic, namely the understanding that compliance does not merely soften criminal enforcement, but systematically replaces the core function of criminal justice in corporate crime. By positioning compliance as the currency of settlement, this study shows how modern enforcement regimes shape a shadow justice system, where justice is determined by negotiating capacity rather than public adjudication. This perspective complements the existing literature by explaining not only what is problematic about DPAs, but also how and why these mechanisms structurally shift the logic of criminal law.

## CONCLUSION

Based on doctrinal-comparative analysis within a socio-legal framework, this study concludes that corporate compliance has evolved from a complementary instrument to a partial substitute for criminal proceedings in the handling of business and economic crimes. The findings show that non-trial mechanisms such as Deferred Prosecution Agreements (DPAs), Non-Prosecution Agreements (NPAs), and compliance-based resolutions systematically replace the coercive, expressive, and adjudicative functions of criminal law with an administrative-negotiative regime oriented towards efficiency, market stability, and corporate risk management.

When compliance is overly formalized and operationalized as an ex post bargaining chip, the deterrent and personal accountability functions of criminal law experience substantial erosion. Compliance no longer serves as a mechanism for internalizing ethical norms, but rather as a currency of settlement that allows corporations, especially large economic actors, to avoid public adjudication and formal criminal sanctions. This shift reinforces selective law enforcement patterns, weakens the principle of equality before the law, and encourages the substitution of individual accountability for symbolic organizational responsibility.

Systemically, reliance on negotiated compliance contributes to the formation of a shadow justice system, where law enforcement outcomes are determined more by negotiation capacity and institutional resources than by open judicial processes. The implication is that business crime risks being normalized as operational risks that can be managed through internal reforms and administrative fines, while criminal law's expressive function as a reinforcer of social norms and an instrument of long-term deterrence is increasingly diminished.

The main contribution of this study lies in the formulation of the Compliance Justice Substitution Theory, which explains how compliance not only softens criminal enforcement but also structurally replaces the core function of criminal justice in corporate crime. By showing that compliance has been institutionalized as a stabilization and negotiation mechanism, this study emphasizes the need for a hybrid enforcement framework: corporate compliance must remain under strong judicial oversight and a credible threat of criminal prosecution, particularly against individual perpetrators, so that enforcement efficiency is not achieved at the expense of public accountability and substantive justice.

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