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A Proportional Sentencing Norms for Accomplices in Indonesian Corruption Cases: Norma Hukuman yang Proporsional untuk Pelaku Pendamping dalam Kasus Korupsi di Indonesia

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Abstract

General Background: Corruption is an extraordinary crime requiring effective legal measures. **Specific Background:** In Indonesia, accomplices in corruption crimes receive the same punishment as principal offenders, raising concerns about fairness. **Knowledge Gap:** Current laws do not differentiate culpability levels, leading to potential injustices. **Aims:** This study examines the proportionality of sentencing norms for accomplices in corruption cases. **Results:** Findings show that equal sentencing contradicts proportional justice and creates legal inconsistencies. **Novelty:** The study highlights conflicts between the Anti-Corruption Law and the Criminal Code, advocating for reform. **Implications:** Policy adjustments are needed to align sentencing with justice principles, ensuring fairness in anti-corruption enforcement.

Highlights:

- Unequal Punishment: Accomplices receive the same sentence as principal offenders, raising fairness concerns.
- Legal Inconsistency: The Anti-Corruption Law conflicts with the Indonesian Criminal Code on culpability.
- Policy Reform Needed: Sentencing should align with proportional justice to ensure fairness in law enforcement.

Keywords: Proportionality, Accomplices, Offence

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Introduction

Corruption is recognized by the global community as an extraordinary crime that has severe consequences on societal life. This crime disrupts economic, social, cultural, political, educational, and environmental stability [1]. Corruption not only causes material losses but also erodes public trust in state institutions and good governance. Furthermore, the transnational nature of corruption often involves international syndicates that conceal illicit proceeds across multiple foreign jurisdictions, complicating efforts to combat corruption [2].

As one of the most serious forms of crime, corruption has been regarded as a common enemy of humanity (hostis humani generis) [3]. To address the massive impact of corruption, the United Nations (UN), through the United Nations Convention against Corruption 2003 (UNCAC 2003), has called on all countries to take effective measures in preventing and eradicating corruption [4]. Law enforcement efforts should not only target the principal perpetrators but also those who assist in the commission of the crime. Both the main perpetrators and accomplices must be held criminally accountable through a credible and just national legal framework.

In Indonesia, the Anti-Corruption Law, which consists of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 and is commonly known as the Anti-Corruption Law, stipulates that any individual who aids in the commission of a corruption offense shall be subject to the same legal sanctions or penalties as the principal offender. This provision is explicitly outlined in Article 15 of the Anti-Corruption Law. This regulation has led to considerable debate, especially regarding the fairness of sentencing. The main concern is whether it is equitable for an accomplice, who plays a comparatively smaller role than the main offender, to receive an equally severe punishment.

Article 56 of the Indonesian Criminal Code establishes a clear distinction in sentencing severity between the main offender and an accomplice. According to this provision, an accomplice may receive a sentence that is up to one-third less severe than that of the principal perpetrator. This differentiation is grounded in the principle that an accomplice's involvement in a crime is generally less significant than that of the main offender, who acts as the initiator or executor of the offense. Consequently, the criminal penalties for accomplices are designed to be proportional to their comparatively lower degree of culpability. However, the policy established under Article 15 of the Anti-Corruption Law eliminates this distinction, thereby creating the potential for injustice in sentencing practices. Therefore, this paper examines the concept of sentencing for accomplices in corruption offenses, focusing on efforts to strike a balance between the objective of effectively combating corruption and the application of the principle of proportional justice. This study is expected to contribute to the development of a sentencing policy that is more responsive to the demands of justice.

Method

This study employs a dogmatic or normative legal research method aimed at identifying legal norms and doctrinal principles used to provide solutions to sentencing issues for accomplices in corruption crimes. This research relies on existing and applicable legislation as positive law, followed by a selective inventory of relevant statutory provisions, which are then analyzed using legal concepts, theories, and principles as analytical tools. The objective is to examine the issue of proportional justice in sentencing norms for accomplices in corruption crimes in Indonesia, with a particular focus on sentencing proportionality. The research approach used in this study includes the statutory approach, the historical approach, the comparative approach, and the case approach.

Result and Discussion

A. Daderschap en deelneming in Criminal Code and the Anti-Corruption Law

In criminal law theory, the concept of perpetrators and participation in crime is well recognized. This concept aims to classify individuals involved in a criminal act and determine their criminal liability. Participation in crime under the Criminal Code is divided into two main categories, namely:

1. Principal offenders can be further classified into:

a. The direct perpetrator (or the person who commits the act);

b. The indirect perpetrator, or the person who causes another to perpetrate or engage the act;

c. Co-perpetrators, referring to those who jointly engage in the act;

d. The instigator, the individual who provokes or encourages others to undertake the act.

2. Accomplices

A person is deemed a criminal offender if they fulfill the criteria outlined in the legal provisions governing the offense. These elements include the objective element, which consists of an act that is unlawful , committed with culpability, which constitutes the subjective element and is punishable for a perpetrator who is legally accountable [5]. The objective element of a criminal act refers to a prohibited action that is subject to criminal sanctions for anyone who violates it [6]. Such actions

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may take the form of a positive act, known as by commission (engaging in an act), or a negative act, known as by omission (failing to act), such as allowing or neglecting a situation.

The subjective element of such an act lies in its commission with intent and full awareness, known as *dolus* or *opzet*, or due to negligence, referred to as *culpa* [7]. Furthermore, in the context of material offenses, the elements of a criminal act may also include the outcomes that result from the prohibited behavior. Moreover, there may be supplementary elements manifested as specific conditions or legal prerequisites that must be met for an individual to bear criminal responsibility, all these elements must be met cumulatively, and no justifications or excuses must apply. If these conditions are satisfied, the perpetrator will be held legally accountable.

Normatively, every formulation of a criminal offense aims to prohibit individuals from engaging in certain actions that are contrary to the law. If such provisions are violated, the perpetrator shall face penalties or sanctions as prescribed by the applicable legal provisions. These legal provisions are enforced against those responsible for the offense, specifically an individual who executes the prohibited act and whose behavior meets the criteria of a punishable offense under the law. The concept of 'perpetrator' additionally applies to those who order others to engage in illegal actions, individuals who act together in committing an offense, or those who incite or influence others to take part in unlawful activities.

Normatively, criminal provisions are also often directed at accomplices in criminal acts, provided that the relevant law regulates and stipulates that aiding and abetting constitute a criminal offense and may be subject to criminal liability. Individuals who are not classified as principal perpetrators may still be deemed criminally liable under the theory of causality, which asserts that a criminal act may arise due to the involvement or contribution of individuals other than the primary offender. [8]

Similarly, an accomplice may bear criminal liability if at least two elements are met. According to Prof. Simons, for an accomplice to be punished, their actions must fulfill two types of elements: an objective element and a subjective element [9]. The subjective element pertains to the accomplice’s intentional support their role is limited to providing assistance rather than directly initiating or executing the crime. However, despite this secondary role, an accomplice remains criminally liable due to their intentional contribution to the offense. Their responsibility is generally lower than that of the principal offender, as they do not fully control or carry out the crime. Instead, they offer support, such as supplying resources, financial aid, or critical information, which facilitates the offense. Nonetheless, if their assistance significantly enables or accelerates the crime, their liability may be assessed more strictly, potentially leading to penalties similar to those imposed on the principal offender if their participation is mainly through providing support [10]. This help can include direct assistance, providing tools or resources, or even giving moral support that encourages or helps the main offender commit the crime.

The level of responsibility or degree of guilt of an accomplice is a crucial aspect in determining the extent of the penalty imposed. In the Indonesian legal system, fault serves as the main criterion for determining whether an individual merits punishment and the degree of the penalty to be enforced. In essence, an accomplice does not take part directly in committing a crime but only offers help or support to the main offender [11]. Consequently, the level of culpability assigned to an accomplice is typically lower than that of the principal offender, who is directly responsible for carrying out the criminal act. This distinction arises from the accomplice’s indirect role, which primarily involves providing assistance or support rather than personally executing the offense.

According to Article 15 of the Anti-Corruption Law, anyone who takes part in or aids the execution of a corruption offense will face the same penalty as the main perpetrator in the crime. In essence, the law does not distinguish between the main offender and the accomplice, treating them equally regardless of their level of participation or responsibility. This provision creates an imbalance and may result in unfair outcomes, as an accomplice typically plays a lesser role compared to the principal offender in both involvement and accountability

Consequently, there is a contradiction arises between of the Anti-Corruption Law and Article 56 of the Indonesian Criminal Code. While Article 15 prescribes equal punishment for both the principal offender and the accomplice in corruption cases, Article 56 of the Criminal Code states that an accomplice should receive a lesser penalty than the principal offender, with a maximum of one-third of the sentence imposed on the principal perpetrator. This regulation on the criminal liability of accomplices in corruption offenses creates a conflict between legal certainty and justice.

The difference in sentencing between the principal perpetrator and the accomplice under the Criminal Code reflects the concept of distinct roles and degrees of culpability in criminal acts. The principal perpetrator is subjected to a more severe punishment due to their greater involvement in committing the offense, whereas the accomplice receives a lighter sentence, acknowledging their limited role in the unlawful act. This discrepancy raises concerns regarding the principles of justice and equality in sentencing, which should place greater emphasis on the extent of each perpetrator’s culpability and involvement in the criminal act.

In this regard, Ruslan Saleh has explained that of participants emerges as a result of the unlawful act carried out by each individual involved, provided that three conditions are fulfilled: the participant has knowledge of the actual meaning of their actions, recognizes that their actions are socially unacceptable, and possesses the capacity to determine their will in committing the act [12]. Criminal liability can only exist if this applies only when a criminal act has indeed taken place, as imposing punishment on someone who has not been involved in the crime would be considered an irregularity [13]. Thus, before assigning criminal responsibility to an individual, it is crucial to first assess the specific nature of their actions they have committed.

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There are three essential elements that must be proven in aiding a criminal act. First, the element of intent, refers to the perpetrator's awareness That the aid given is intentionally meant to assist or enable the main offender in carrying out the crime. The second element is cooperation, which pertains to the connection between the main offender and the accomplice. This connection may include a shared understanding of each party's role or, alternatively, an unawareness that one's actions contributing to the commission of a crime. The third element concerns timing, which evaluates whether the assistance was provided before or during the execution of the offense. In accordance with Hoge Raad, the location of the accomplice should be considered based on where the assistance was rendered, rather than the place where the crime itself occurred [14]. Such assistance can include offering opportunities, resources, or information, even if, in certain instances, the accomplice may not fully realize or anticipate that their support would contribute to a criminal act. All three elements must be met for a person to be deemed legally responsible as an accomplice to a crime.

As Druff stated, "substantive questions about the proper foundations and scope of criminal liability seem to connect with questions about the concept of action.". This can be interpreted as the notion that liability for an act influences whether it constitutes a criminal offense or participation in a criminal act [15].

Based on the above explanation, compared to other forms of participation, aiding a criminal act constitutes the least severe form of involvement. Normatively, deviations from general sentencing provisions in the Criminal Code may be justified, but they must be accompanied by relevant legal arguments to prevent the perception of injustice. Therefore, it is essential to ensure that the application of sentencing norms remains aligned with the principles of justice, both retributive and preventive [16].

In criminal law, the Deelneming theory explores the notion of involvement in criminal offenses, which is categorized into two primary approaches: integrated participation and separated participation.

The Theory of Integrated Participation :

This theory views that an accomplice has a close involvement or cooperation alongside the main offender in a crime—not just offering support, but also having knowledge of the offense and actively participating in its execution. This participation can include offering assistance or engaging in other acts that demonstrate close cooperation between the main offender and the accomplice. As a consequence, the accomplice's involvement is considered equivalent to that of the principal offender in the commission of the crime. As a result, the accomplice's legal standing becomes inseparable from that of the main perpetrator, resulting in an equal level of criminal liability.

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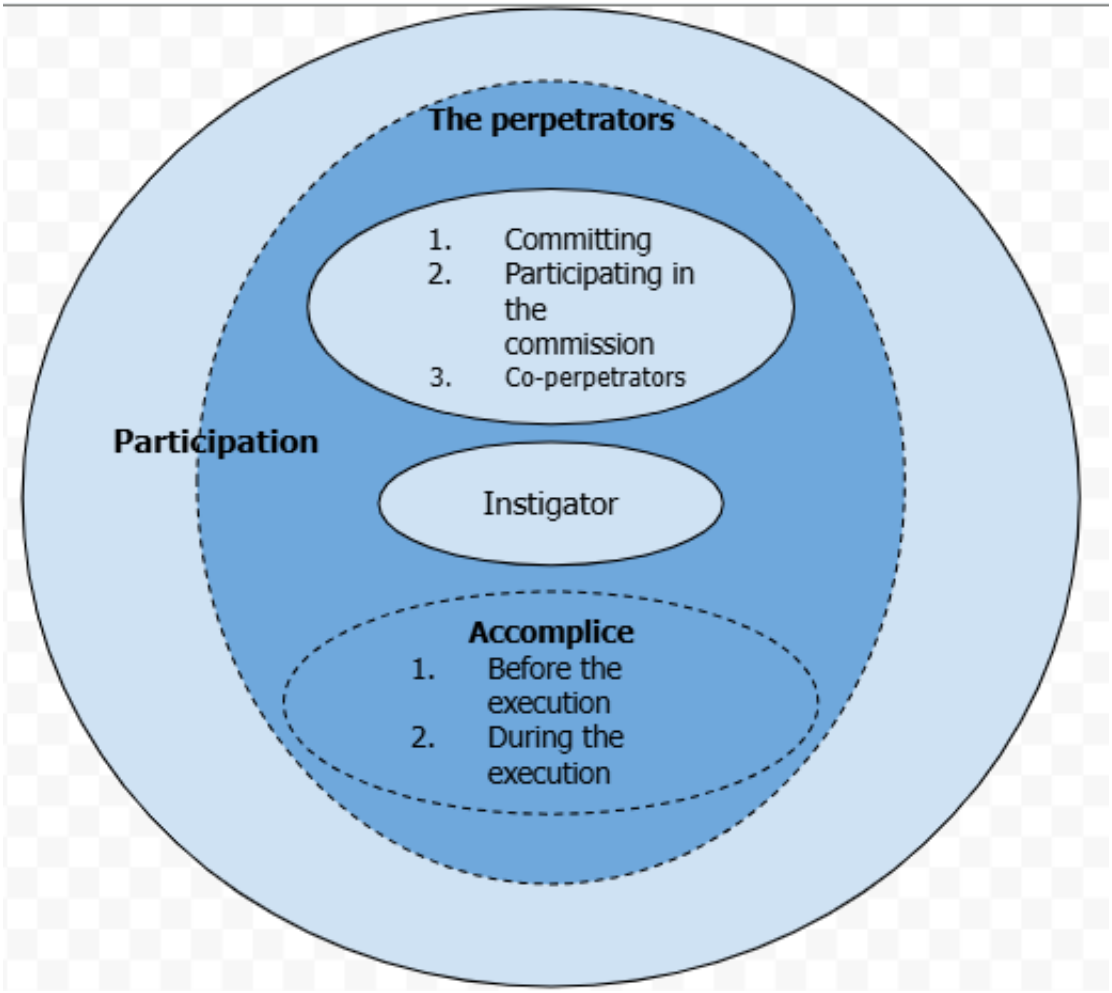

Figure 1. Illustration of Theory Integrated Participation

The Theory of Separated Participation :

The Civil Law system (Netherlands, Germany, Indonesia, and other Continental European countries) adheres to the concept of separating the principal perpetrator of a criminal act from those who merely assist in its commission. The primary distinction between the two lies in their intent and role in the crime. The first category consists The first category includes principal offenders—those who have the intent and take the initiative to commit a crime, executing actions that fulfill all legal elements of the offense. The second category consists of accomplices, who lack the intent to directly carry out the crime but are still legally accountable due to their assistance to the principal perpetrator. This liability arises from their intention to provide aid, which is materialized through specific actions. The role of an accomplice is limited to providing assistance or opportunities, either during the planning stage or at any stage before the crime is fully executed. Since an accomplice does not have direct intent to commit the offense and their involvement does not cover the entire act, the penalty imposed is generally less severe than that of the main offender.

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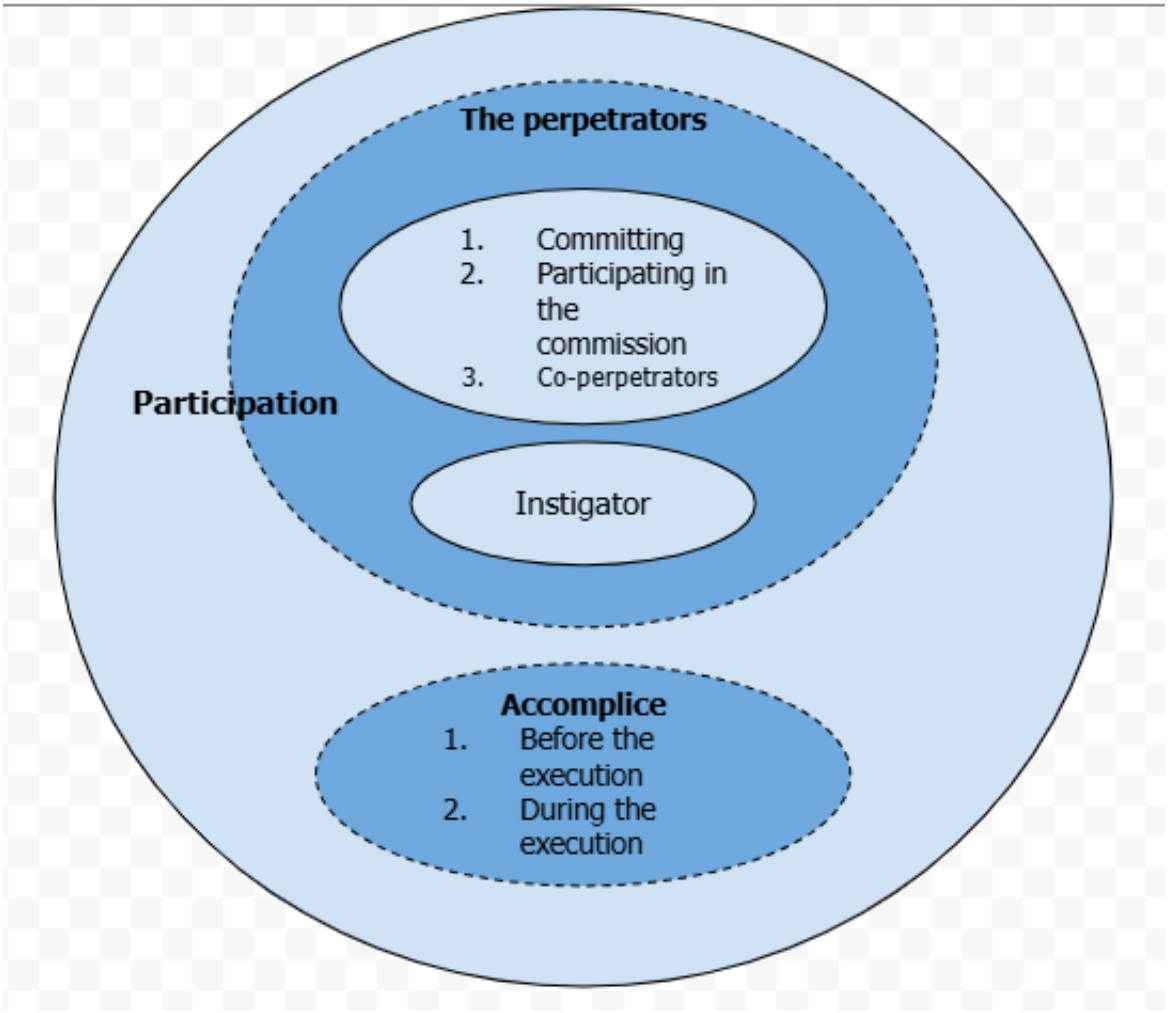

Figure 2. Illustration of The Theory Separated Participation

In the concept of Indonesian criminal law, as observed from the doctrine of separated participation in criminal acts, the principle of criminal liability—particularly in the context of corruption offenses—does not apply in a linear manner. Ideally, under the doctrine of separated participation, an accomplice should be subject to a lighter punishment compared on the main offender. However, in corruption cases, the legal framework imposes equally severe criminal sanctions on both the aider and the primary perpetrator.

B. The History of Sentencing Regulations for Accomplices Outside the Criminal Code

Before the sentencing of accomplices was specifically regulated under the Anti-Corruption Law with norms differing from the regulation of sentencing for accomplices had been established in a special law outside the Indonesian Criminal Code as early as 1955. This was formally outlined in Emergency Law No. 7 of 1955 concerning the Investigation, Prosecution, and Adjudication of Economic Crimes. The provisions within this law specified that accomplices would be subject to sentencing guidelines that, in general, did not differ significantly from those set forth in the Indonesian Criminal Code. This demonstrates that, even before specific legal reforms, the treatment of accomplices in economic crimes had already been aligned with broader criminal law principles in Indonesia. This includes the provision that accomplices may receive a lighter sentence than the principal offender, emphasizing that an accomplice's role is not entirely identical to that of the principal offender in terms of intent and degree of culpability in committing the crime. What distinguishes the provisions in the Emergency Law on Economic Crimes is that the sentencing norms for accomplices apply not only to economic crimes but also to certain violations in economic offenses. In contrast, the Indonesian Criminal Code does not recognize or impose aiding liability for mere violations.

It can be observed in the following Article:

Article 4 of the Emergency Law on Economic Crimes

If this emergency law refers to economic crimes in general or a specific economic crime, it shall include aiding or facilitating the commission of such crimes and attempted commission of such crimes, unless otherwise stipulated by specific provisions.

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Explanation of Article 4 of the Emergency Law on Economic Crimes:

Attempts to commit and aiding in the commission of economic crimes are extended to include violations.

As a result, Article 4 of the Emergency Law on Economic Crimes diverges from Article 60 of the Indonesian Criminal Code. The imposition of criminal liability on accomplices in economic violations is deemed necessary due to the hazardous nature of such violations, which may disrupt economic stability. However, the maximum principal penalty for economic violations remains the same as stipulated in the Criminal Code, namely reduced by one-third.

Accordingly, Emergency Law Number 7 of 1955 expands the scope of accomplices who can be subjected to criminal penalties, not only for aiding and abetting a crime but also for violations in economic offenses, which are considered less severe than crimes. This provision demonstrates that although the Indonesian Criminal Code already regulates accomplices, Emergency Law Number 7 of 1955 introduces broader provisions regarding the application of criminal penalties, including for lesser offenses categorized as violations. The *ratiolegis* underlying the sentencing norms for accomplices in the Emergency Law on Economic Crimes is based on the dangerous nature of certain offenses. Consequently, an accomplice to an economic crime, even at the level of a violation, may be held criminally liable in a proportional manner according to their degree of involvement and culpability. This can be understood as a preventive effort to deter individuals from violating regulations on sound economic practices, aimed at protecting public interests in relation to the national economy.

C. Ratio legis Article 15 of the Anti- Corruption Law in Determining Sentences for Accomplices in Corruption Cases

The regulatory framework for punishing accomplices in corruption-related crimes, as stipulated in Article 15 of the Anti-Corruption Law, is formulated to address the serious threat posed by such offenses. This provision functions as a preventive measure to create a deterrent effect and strengthen its influence, making it a vital strategy in corruption prevention efforts. Nevertheless, the provisions in Article 15 of the Anti-Corruption Law do not sufficiently establish a strong *ratiolegis* to justify deviations from the general principles outlined in the Indonesian Criminal Code. The legislator's approach in formulating this norm appears to be driven more by an emotional reaction to the significant impact of corruption crimes rather than by rational considerations rooted in the principle of justice. In several criminal law literatures, this phenomenon is often regarded as a form of "law influenced by social resentment," where hostility toward certain crimes leads to the establishment of punitive norms that tend to be excessive.

From the perspective of sentencing theory, one of the fundamental principles is the principle of proportionality, which requires that punishment be imposed in proportion to the degree of culpability and the role of each offender [17]. The relevance of this principle is that an accomplice whose contribution to the crime is partial and non-dominant should not face identical criminal penalties as the principal offender, who meets all the elements of the offense in full. The fundamental principle in sentencing, according to Cesare Beccaria, necessitates consideration of several factors, including [18]:

a. Let punishment fit the offense or the crime; this principle asserts that the punishment's severity must correspond to the seriousness of the crime committed;

b. Discretionary power; in this regard, Beccaria argues that judges should not have excessive discretion in deciding cases, as they merely serve as the mouthpiece of the law;

c. Preventif; means that punishment should serve as a deterrent, preventing both the offender and others from committing crimes. Thus, the purpose of sentencing is to instill deterrence rather than serve as an act of vengeance.

The principle of proportionality must be taken into account when formulating criminal sanctions for offenders in legislation. Criminal sanctions stipulated in legislation must be formulated objectively in accordance with the severity and/or harm caused by the criminal act committed by the offender. This principle of proportionality not only serves to prevent future criminal acts but also shifts the paradigm of criminal law from being primarily retributive toward a more progressive approach.

The regulatory model as stipulated in Article 15 of the Anti-Corruption Law has also set a precedent followed by other special criminal laws. In various regulations, the criminal sanctions for accomplices are often equated with those of the principal perpetrators, without considering the degree of culpability and involvement of each party. This reflects a legislative tendency to emphasize the deterrence effect and repressive law enforcement against extraordinary crimes while tending to overlook the principle of substantive justice, which is a fundamental pillar of the rule of law [19].

This provision inevitably raises a fundamental question: does emphasizing the danger of an act while disregarding the level of individual culpability genuinely adhere to the principle of justice rooted in the doctrine of criminal law? A sentencing regulation that solely considers the severity of a criminal act without being grounded in an adequate *ratiolegis* tends to create legal disparities and even opens the door for inconsistencies in law enforcement by legal authorities. So, it is essential to reconstruct the sentencing approach in Article 15 of the Anti-Corruption Law to More accurately maintain a balance between the urgency of eliminating corruption as an exceptional crime and the fundamental principle of justice, which lies at the heart of the criminal justice system.

In *De facto*, this norm is open to various interpretations due to the tension between legal certainty and the principle of

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proportionality. In practice, law enforcement authorities inconsistently apply it by balancing legal certainty with a sense of justice. The ambiguity and inconsistent application of a disproportionate norm lead to unjust sentencing disparities. This phenomenon reflects a fundamental contradiction between legal certainty and justice, which must be resolved—or at least minimized—by reconstructing the norm aligned with the principle of justice proportionality.

D. Conflict with Legal Principles: A Perspective from Article 103 of the Indonesian Criminal Code and the In dubio pro reo Principles

The provision in Article 15 of the Anti-Corruption Law, which prescribes identical criminal sanctions for accomplices and principal offenders, raises substantial concerns when examined in light of the fundamental principles of criminal law within the Indonesian Criminal Code. One relevant principle is articulated in Article 103 of the Indonesian Criminal Code, which states that:

The provisions in Chapters I to VIII of Book I of the Indonesian Criminal Code apply to offenses regulated in other laws unless otherwise stipulated by those laws.

Stated differently, the core principles established in the Indonesian Criminal Code remain applicable unless a specific legal provision explicitly dictates an exception. As a specialized regulation that deviates from these general principles, Article 15 of the Anti-Corruption Law raises issues concerning its practical application. At the same time, it also serves as a special provision under Article 103 of the Criminal Code, but on the other, it creates injustice. In cases of legal uncertainty, the principle of *in dubio pro reo* prioritizes provisions that favor or mitigate the defendant's liability. This anomaly in Article 15 of the Anti-Corruption Law poses a critical issue as it contradicts the principle of justice, which serves as the foundation of Indonesia’s criminal law system.

Through a systematic interpretation, Article 15 of the Anti-Corruption Law may be set aside in favor of the general provisions of the Indonesian Criminal Code, which dictate that “If there is a conflict between legal certainty and justice, the judge must prioritize justice”. Furthermore, this provision contradicts the principle of proportionality, necessitating the exclusion of Article 103 of the Indonesian Criminal Code (lex specialis derogat lex generali), as its strict application could undermine the sense of justice. Hence, it would be more appropriate to adopt the principle of applying the most favorable provision for the defendant, which involves referring to Article 56 of the Indonesian Criminal Code while disregarding Article 15 of the Anti-Corruption Law. This legal approach seeks to safeguard the Defendant's rights within the criminal justice system, ensuring that any uncertainty or ambiguity in the law is addressed by prioritizing justice in a way that best serves the Defendant's interests.

In reality, the implementation of Article 15 of the Anti-Corruption Law creates uncertainty for law enforcement officials in enforcing it consistently, as it contains elements of injustice. For instance, there have been Instances where an accomplice was given an equal or even harsher sentence than the principal offender. This contradicts the legal rationale that an accomplice has only a limited role in the execution of a crime, both temporally and substantively. Some law enforcement officials have instead opted to apply Article 56 of the Indonesian Criminal Code, which prescribes a lighter penalty for accomplices. This inconsistency in legal application demonstrates that Article 15 of the Anti-Corruption Law not only contradicts the principle of proportionality but also creates uncertainty in its enforcement, as it conflicts with the sense of justice. As a result, it is often disregarded and not utilized by law enforcement officials.

In several corruption cases where the defendants were accomplices, law enforcement officials have been hesitant to apply Article 15 of the Anti-Corruption Law prescribes that accomplices receive the same punishment as principal offenders. However, in practice, law enforcement authorities frequently rely on Article 56 of the Indonesian Criminal Code, either independently or in conjunction with Article 15 of the Anti-Corruption Law, as a legal basis, indicating uncertainty in choosing between the two provisions. Such inconsistencies can be observed in corruption cases involving accomplices, including those of defendants Eliyana Kotambunan in Case No. 18/Pid.Sus-TPK/2015/PN.Tte date 16 Desember 2015 *juncto* No: 1016/K/PID.SUS/2016 date 8 September 2016, Andi Irfan Jaya in Case No. 49/Pid.Sus-TPK/2020/PN Jkt.Pst date 18 Januari 2021 *juncto* No:736 PK/Pid.Sus/2022 date 10 August 2022, Sadikin Rusli in Case No. 27/Pid.Sus-PK/2024/PN.Jkt.Pst date 20 June 2024 *juncto* No: 39/PID.SUS-TPK/2024/PT DKI date 8 August 2024 *juncto* 409K/PID.SUS/2025 date 23 January 2025, Sofyan Basir in Case No. 74/Pid.Sus-TPK/2019/PN Jkt.Pst dated November 4, 2019, in conjunction with Case No. 1111 K/Pid.Sus/2020 dated June 16, 2020, as well as the case involving Puji Hartono, S.Ip. bin Martodihardjo under Case No. 3/PID.SUS/TPK/2013/PN YK dated July 16, 2013, which was later reinforced by Decision No. 22/PID.SUS-TPK/2013/PT YYK dated September 26, 2013, and Decision No. 2293 K/Pid.Sus/2013 dated February 10, 2014. Additionally, the case of Margono, recorded under Case No. 26/PID.SUS/TPK/2012/PN.YYK, was later linked to the ruling dated May 14, 2013, as well as Decision No. 15/PID.SUS-TPK/2013/PT YYK date 1 August 2013, and Liones Wangsa in Case 51/Pid.Sus-TPK/2015/PN Tjk date 7 April 2016 *juncto* No: 5/PID.TPK/2016/PT TJK date 14 June 2016 *juncto* No: 2203 K/Pid.Sus/2016 date 6 June 2017 *juncto* No: 75 PK/Pid.Sus/2019 date 15 April 2019. These cases illustrate the ambiguity surrounding the application of Article 15 of the Anti-Corruption Law, leading to inconsistencies in sentencing and legal uncertainty.

In the analysis of several cases involving complicity in corruption offenses, several deviations have been observed, including: (1) There is inconsistency in the application of legal provisions governing complicity in corruption crimes, leading to legal uncertainty between Article 56 of the Indonesian Criminal Code and Article 15 of the Anti-Corruption Law are occasionally applied either separately or together. Meanwhile, Article 103 of the Criminal Code serves as the legal foundation for enforcing Article 15 of the Anti-Corruption Law as a specialized provision, law enforcement authorities have disregarded this principle—not in the interest of justice, but due to uncertainty. This hesitation has ultimately resulted in law enforcement

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officials lacking confidence in choosing between these two provisions, leading to the tendency to apply both simultaneously; (2) The consequence of applying both provisions on complicity has resulted in sentencing decisions that exhibit inconsistent disparity. In other words, there is no guarantee that an accomplice will receive a lighter sentence than the principal perpetrator of corruption; (3) In these cases, accomplices in corruption offenses have been sentenced unfairly, as they received harsher punishments than the principal perpetrators of corruption; (4) Sentencing disparity becomes even more pronounced when accomplices in corruption offenses and principal perpetrators are prosecuted and tried separately by different judicial panels; and (5) The primary source of this unjust sentencing disparity lies in the criminal provisions for accomplices under Article 15 of the Anti-Corruption Law, which were constructed without adequate *ratio legis*. This has led law enforcement authorities to apply it concurrently with Article 56 of the Indonesian Criminal Code, resulting in sentencing disparities that are difficult to justify.

E. Comparison of Sentencing Regulations for Aiding Corruption Crimes in Other Countries

The regulation of sentencing for accomplices in corruption crimes in other countries can be seen within the legal framework of the Netherlands' anti-corruption laws as stipulated in the Dutch Criminal Code. The definition of corruption-related offenses is outlined in Section 177 of the Criminal Code. Regarding accomplices, Section 48 of the Dutch Criminal Code establishes their criminal liability as follows:

Section 4

The following persons shall be criminally liable as accomplices to a criminal offence:

(1) any persons who intentionally aid and abet the commission of the serious offence;

(2) any persons who intentionally provide opportunity, means, or information for the commission of 43 the serious offence.

As stipulated in the Dutch Criminal Code, corruption offenses, including bribery, are categorized as serious crimes. As a result, the criminal liability of accomplices under Article 48 of the Dutch Criminal Code also applies to accomplices in corruption crimes under Dutch law. The criminal sanctions for accomplices are further regulated in Article 49 of the Dutch Criminal Code as follows:

Section 49

(1) In the case of complicity, the maximum of the principal punishments prescribed for the serious offence shall be reduced by one third.

(2) In the case of a serious offense carrying a sentence of life imprisonment, a term of imprisonment not exceeding twenty years shall be imposed.

(3) The additional punishments for complicity shall be the same as for the serious offence.

(4) In the determination of the punishment, only those acts that were intentionally facilitated or promoted by the accomplice and their consequences shall be taken into account.

The criminal sanctions for accomplices under Article 49 of the Dutch Criminal Code include a maximum imprisonment of four (4) years or a fine of the fifth category. Meanwhile, the punishment for accomplices in corruption cases is one-third of the sentence imposed on the principal offender. This similarity reflects the degree of involvement and responsibility of accomplices compared to the principal perpetrator, aligning with the principle of justice in corruption offenses. The uniform reduction in punishment aims to ensure fair treatment while maintaining a strong disincentive against participation in corruption.

In other countries such as Germany, the aiding of corruption offenses is regulated under the Strafgesetzbuch (StGB), specifically in Article 27. In the context of aiding, an offender who assists in a criminal act but plays a lesser role than the principal offender may receive a reduced sentence if mitigating circumstances exist. Article 49 grants the court the authority to replace a life sentence with a lesser prison term, with a minimum of three years. Additionally, if an accomplice is sentenced to a fixed-term imprisonment, the court may impose a sentence lower than three-quarters of the maximum penalty prescribed by law. This provision ensures that the punishment imposed is proportionate to the accomplice’s role and circumstances while allowing the court to impose a fairer sentence tailored to specific conditions, including those related to aid.

Unlike other Asian countries, Singapore regulates corruption offenses through several legislative instruments, including The Prevention of Corruption Act 1960, the Penal Code, and the Corruption, Drug Trafficking, and Other Serious Crimes (Confiscation of Benefits) Act 1992 jointly govern offenses related to corruption. Article 29 of the Prevention of Corruption Act z1960 specifically addresses the issue of aiding and abetting in corruption cases, stipulating the following:

Whoever abets, within the meaning of the Penal Code 1871:

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a. the commission of an offence under this Act; or

b. the commission outside Singapore of any act, in relation to the affairs or business or on behalf of a principal residing in Singapore, which if committed in Singapore would be an offence under this Act, shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

Singapore regards the concept of aiding and abetting as equivalent to in corruption offenses with the notion of participation as stipulated in the Penal Code of 1871, this principle is further reinforced under Section 5, Article 107, which specifically regulates that accomplices face the same penalties as those prescribed for corruption offenses. Consequently, individuals who merely provide facilities without realizing that they are being used or carried out by the principal offender to commit corruption may also result in the accomplice facing the same punishment as the principal offender. This may be one of the reasons why the level of corruption in Singapore remains very low, given the strict penalties imposed on corruption offenses.

Singapore has the same regulations as the United States, as stated in the U.S. federal law, specifically the U.S. Code, regarding provisions for those who aid or abet a crime. Anyone who assists or conspires In carrying out a crime, an accomplice will be regarded as equally culpable as the principal offender.

Based on a comparison of multiple countries, it can be concluded that some countries classify complicity in corruption offenses as a punishable act but apply criminal liability proportionally. This means that the determination of liability considers the relatively minor role and lesser culpability of the accomplice, who lacks the intent to commit corruption and merely provides assistance to the principal perpetrator. Consequently, the penalties imposed on accomplices are lighter than those for principal perpetrators. In these jurisdictions, the severity of criminal sanctions is not solely based on the dangerous nature of the offense but rather on a proportional assessment of the role and culpability of the offender. On the other hand, in countries that impose the same level of criminal sanctions on accomplices as on principal perpetrators of corruption, this approach stems from the absence of a distinction between their roles and degrees of culpability. Rather than acknowledging that an accomplice bears a lesser degree of culpability compared to the principal offender, yet these legal systems assign equal responsibility to all parties participating in the commission of the crime. This perspective assumes that an accomplice is equivalent rather than recognizing that an accomplice has a lower level of culpability than the principal offender, these legal systems assign equal responsibility to all involved, considering the close cooperation between them. Consequently, accomplices are broadly classified as perpetrators of the crime, disregarding the fact that they lack the intent to engage in corruption but merely acknowledge that their assistance is being used by the principal perpetrator to facilitate the criminal act.

F. The Perspective of UNCAC and the National Legal System

The United Nations Convention Against Corruption (UNCAC) explicitly regulates the importance of criminalizing accomplices in corruption offenses. This principle aligns with the legal implementation in Indonesia, as stipulated in the Law on Corruption Crimes. However, a fundamental issue remains regarding the application of criminal sanctions against accomplices, which requires serious attention. In this context, UNCAC recommends that the severity of penalties imposed on accomplices be adjusted In alignment with the legal framework of each respective country.

In Indonesia, where the criminal law system erives its foundation from the Criminal Code, which should require the implementation of the principle of proportionality in determining sentences. This principle serves as the basis for distinguishing the punishment between principal perpetrators and accomplices, whereby accomplices—who play a more limited role—should receive lighter sentences than principal perpetrators [20].

A recommended approach is the necessity of adjusting the existing sentencing policy to better reflect the principle of proportionality as established in the national legal system and in alignment with international standards set by UNCAC. This adjustment should not only emphasize substantive justice by considering the degree of culpability of the offender but also ensure that the punishment imposed corresponds to each perpetrator’s role and contribution to the criminal act. A sentencing policy revision that better adheres to this principle will strengthen the integrity of Indonesia’s legal system, both in its response to corruption offenses and in upholding the fundamental principle of justice at the domestic and international levels.

G. Sentencing Justice: A Comparison of Culpability and Proportionality of Punishment

Proportional sentencing takes into account the role of each offender in a criminal act. Therefore, accomplices should receive lighter punishments than principal perpetrators. The application of Article 15 of the Anti-Corruption Law has the potential to undermine justice within the sentencing system, as it fails to consider the differing levels of culpability among offenders.

The inconsistency between Article 15 of the Anti-Corruption Law and the principle of proportionality becomes more evident when compared to Articles 56 and 57 of the Indonesian Criminal Code, as there is insufficient recognition of the differing levels of involvement among offenders. Consequently, this regulation raises concerns that the existing sentencing approach fails to uphold the principle of justice, which should be a fundamental cornerstone of the legal justice system. Applying identical penalties to both the principal offender and the accomplice may result in injustice, as the accomplice does not bear the same level of involvement or responsibility in the commission of the crime.

In this context, it can be linked to The provisions outlined in Article 612 of the New Criminal Code, which govern the role of

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accomplices, state the following:

The provisions regarding criminal conspiracy, preparation, attempt, and complicity, as regulated in laws concerning serious crimes such as human rights violations, terrorism, corruption, money laundering, and narcotics offenses, shall apply in accordance with the provisions set forth in those respective laws.

The aforementioned provision indicates that legal proceedings concerning individuals implicated in these specific offenses are carried out in compliance with the prevailing legal framework and applicable regulations. The essence of complicity, along with its sentencing procedures, is governed by the New Criminal Code. However, in the context of complicity in corruption offenses, the applicable provisions are those set forth in the Anti-Corruption Law. This is because corruption is classified as a special crime (extraordinary crime) and is specifically regulated under a distinct legal framework.

In the author's view, the provisions of Article 15 *juncto* Article 612 of Anti-Corruption Law are unjust, as they impose equally severe punishments for two acts with differing degrees of culpability. The regulation in Article 15 focuses solely on the dangerous nature of the offense corruption as an extraordinary crime without considering the varying levels of culpability between offenders. Furthermore, Article 15 contradicts the principle of *in dubio pro reo*, which mandates the application of the law most favorable to the defendant.

Overall, the sentencing system must prioritize the principles of proportionality and justice by considering the role and contribution of each offender. Consequently, the imposed punishment will better reflect a fair and appropriate response to the acts committed.

Conclusion

Derived from the explanations outlined above, it can be inferred that the sentencing provisions for accomplices under Article 15 of the Anti-Corruption Law present several legal justice concerns. While the imposition of equal punishment with the principal perpetrator is intended to address corruption as an extraordinary crime, this sentencing model tends to overlook the principle of proportionality, which should take into account the varying degrees of culpability among offenders. This approach risks creating injustice, particularly in the causal relationship between the accomplice and the principal perpetrator, which does not always reflect an equivalent level of culpability.

The regulation of criminal punishment for aiding and abetting corruption in Indonesia is similar to that in the Netherlands and Germany, which follow the Continental European legal system (Civil Law System). However, it differs from countries that follow the Anglo-Saxon legal system (Common Law System), such as Singapore, Malaysia, and the United States, where accomplices are treated the same as those directly involved in committing the crime. The reason for the differentiated sentencing approach in Indonesia lies in the assessment of culpability and involvement between the principal perpetrator and the accomplice. In contrast, Singapore and the United States equate accomplices with other participants, considering them equally involved in the corruption offense.

Therefore, it is recommended that the government adjust its sentencing policies, both in the Anti-Corruption Law and its implementation should be revised to ensure greater alignment with the principles of justice and proportionality. Additionally, these revisions must integrate the foundational principles outlined in the United Nations Convention Against Corruption (UNCAC), which emphasizes the need for sentencing to align with national legal systems. The application of Articles 56 and 57 of the Criminal Code, which uphold the principle of proportionality, should function as a guideline to guarantee that the punishment imposed on accomplices is proportional to their level of involvement and culpability, in line with Indonesia's commitment to international standards in combating corruption.

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