



Gratification development in corruption in Indonesia

Ariman Sitompul^{1*}, Rina Melati Sitompul², Mhd.Nasir Sitompul³

¹Magister Hukum Universitas Dharmawangsa, Medan, Indonesia

²Fakultas Hukum Universitas Dharmawangsa, Medan, Indonesia.

³Fakultas Hukum Muhammadiyah Sumatera Utara, Medan, Indonesia

 : ariman.sitompul@dharmawangsa.ac.id

Coresponding Author*

ARTICLE INFO

Keywords:

Gratification, Corruption, Indonesia

Date received : 2 July 2023

Revision date : 22 March 2024

Date Published : 23 March 2024

ABSTRACT

The background of this article is the number of cases of gratuities received by state administrators / officials that cause corruption bribery. The purpose of this article is to find out the general overview and regulation of gratuities and analysis of gratitude that can be a corruption of gratuities. In this writing, normative legal methods are used, the solution of which is based on literature and legislation. The conclusion in this writing is that gratification can be classified as bribery corruption and a sign of gratitude that can be a gratuitous type of corruption. Acceptance of such gratuities is contrary to its obligations. In order for the gratuity not to be considered a corruption offense of bribery, the recipient must submit a report to the Corruption Eradication Commission, no later than 30 days after receiving the gratuity.

INTRODUCTION

The term gratuity is part of corruption that began to be called since the ratification of Law No. 20 of 2001 on amendments to Law No. 31 of 1999 on the eradication of corruption. In connection with Law No. 20 of 2001, there have been several changes as based on Law No. 30 of 2002 concerning the Corruption Eradication Commission which was later amended as based on Law No. 10 of 2015 concerning the determination of government regulations in lieu of Law No. 1 of 2015 concerning the amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission into law and the last Amendment as based on Law No. 19 of 2019 concerning the amendment Second, Law No. 30 of 2002 on the Corruption Eradication Commission.

Definition of gratuity according to elucidation of Article 12b of Law Number 20 of 2001, that gratuity is a gift and in a broad sense that includes

the provision of money, goods, rebates(discounts), commissions, interest-free loans, travel tickets, free treatment, and other facilities. The exception related to gratification is in Law Number 20 of 2021, article 12C paragraph (1). The regulations governing the gratuity are in Article 12b paragraph (1) of law no.31/1999 jo UU No.20/2001 which states that any gratification to a public servant or state administrator is considered bribery, if it is related to his position and contrary to his obligations or duties. The sanctions that become rewards for violations related to gratification are in Article 12b paragraph (2) of law no.31/1999 jo UU No.20/2021 which reads life imprisonment or prison for a minimum of 4 years and a maximum of 20 years and a fine of at least Rp 200 million and at most Rp 1 billion.

In Indonesia, gratuity receipts have been grouped into two categories, namely gratuities that are considered bribes and gratuities that are not

considered bribes. Gratuities that are considered as bribes when things are given to civil servants and/or state officials who are considered not in accordance with the code of ethics or gratuities that can be classified as corruption bribery, when the gratuities are given to civil servants / State administrators / officials related to their positions. Both of these types of gratuities may be relatively easy to interpret but rather difficult to implement. It is characterized by facts and realities that occur in public servants and even to state officials, both functional and structural.

The receipt of such gratuity is contrary to the obligations or duties of the state administrator. Including to speed up the service process or ensure the service process is completed on time, or also for things that determine the decision. Meanwhile, gratuities are not considered as bribes, if the things given to civil servants and/or state officials are not related to the position and are not related to the obligations or duties of the recipient of the gratuity.

This certainly has an impact on the development of the country from all aspects ranging from social to government. If we examine the meaning of the type of gratification above by relating it to the possibilities and effects that will occur in a government in a country, of course this becomes a common task so that we can become a control and people of balance and work together to fight. If gratification occurs in the model of bribery or corruption, where the community acts as a control and the authorities as law enforcers are the executors.

For this reason, the importance of integrity in a person's personal especially if he is a government or public official because with the integrity they have the practice of gratification that occurs can be said not to be bad for anyone let alone impact the country. Associated with the subject of gratification, integrity is currently something that is needed by all children of the nation in order to combat the practice of fraudulent gratification.

METHOD

The research method used in this paper is a type of normative research by using the type of approach to legislation (the Statute Approach), where a problem that exists in this paper can be seen from the example of the case and can be associated with legislation so that we know the rules that govern it.

RESULTS AND DISCUSSION

A. Legal Arrangement Of Gratuities

Gratification based on elucidation of Article 12b paragraph (1) of Law No. 20 of 2001 on amendments to Law No. 31 of 1999 on the eradication of corruption (corruption law). Gratuities are gifts in the broadest sense, which include the provision of money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free treatment, and other facilities. Gratuities are either received domestically or abroad and are carried out using electronic means or without electronic means.

From Article 12b paragraph (1) of Law No.31 of 1999 jo law No.20 of 2001, it is said that "any gratification to a civil servant or state administrator is considered bribery, if it is related to his position and is contrary to his obligations or duties" so it can be concluded that the element of gratification or bribery is :

1. Civil servants or state officials;
2. Giving and receiving gratification(handover);
3. Associated with the department; and
4. Contrary to their duty or obligation.

The subject of gratification law itself is not much different from the subject of corruption law:

1. State Officials The civil service includes:
 - a. civil servants as defined in the Civil Service Act;
 - b. civil servants as referred to in the Criminal Code;
 - c. person who receives a salary or wages from keuang country or region;
 - d. a person who receives a salary or wages from a corporation receiving state or local financial assistance; or
 - e. a person who receives a salary or wages from another corporation that uses the capital or facilities of the state or society. (Article 1 Paragraph (2) of Law No. 31 of 1999 on corruption.)
2. State Organizer Article 1 Number (1) of Law No. 28 of 1999 concerning the implementation of a clean and Free State from corruption, collusion and nepotism, the definition of a state administrator is a state official who performs executive, legislative, or judicial functions, and other officials whose main functions and duties are related to the implementation of the state in accordance with the provisions of applicable laws and regulations. In Article 2 states that State administrators include:
 - a. State officials at the highest national institutions;
 - b. State office at the National High Board;

- c. Minister;
- d. Governor;
- e. Judges;
- f. Other state officials in accordance with the provisions of applicable laws, and;
- g. Other officials who have strategic functions in relation to the administration of the state in accordance with the provisions of applicable laws and regulations.

Related regulations regarding gratuities have been regulated in several regulations, namely:

1. Article 12b paragraph (1) of Law No.31/1999 jo UU No. 20/2001, reads "any gratification to a civil servant or state administrator is considered bribery, if it is related to his position and contrary to his obligations or duties".
2. Article 12C paragraph (1) of Law No.31/1999 jo UU No. 20/2001, reads "the provisions as meant in Article 12b Paragraph (1) shall not apply, if the recipient reports the gratification received to the KPK".
3. Article 12C paragraph (2) of Law No.31/1999 jo UU No. 20/2001, reads "the submission of the report as meant in Paragraph (1) shall be made by the recipient of the gratuity no later than 30 (thirty) working days from the date the gratuity is received".
4. Article 16, 17, 18 of Law No. 30 of 2002 on the Corruption Eradication Commission.
5. PMK number 7 / PMK.09/2017 on guidelines for controlling gratuities within the Ministry of Finance.

Sanctions from the act of gratification itself is also regulated in Article 12 of Law Number 20 of 2001, namely : "Shall be punished with life imprisonment or imprisonment of at least 4 (four) years and at most 20 (twenty) years and a fine of at least Rp 200,000,000.00 (Two hundred million rupiah) and at most Rp 1,000,000,000. 00 (one billion rupiah)."

B. Gratification of common habits problems included in corruption

Especially in the country of Indonesia has a culture that is quite unique, where people have a sense of discomfort or as if having a sense of responsibility to give something to others as a sign of gratitude for having been helped or helped by the person even not only in terms of gratitude sometimes even discomfort is almost there in every aspect that is done.

It seems to be a habit that needs to be limited, where from the discomfort will cause discomfort again that will make someone who receives will think to return the favor and will continue like that.

For example, when someone really wants something, he will try to be kind to others. Whether it's giving a gift or anything else, which will cause discomfort for the recipient and feel that he must return the favor. So help the person to get what he wants. It is usually often we hear as money thanks, money lubricants, money tired, and so on. Where these things can be called gratuities, which gratuities are delayed bribes. Because sometimes gratification is not just giving gifts without intent but it is very likely to be a strategy for some people to make their affairs easier without wanting to look dirty.

From this kind of public behavior that can lead to gratification types of corruption so that over time the habit of bribery appears and leads to corruption. Therefore, the Indonesian government issued several laws to address this, one of which is the Corruption Act or the Corruption Act. And it turns out that the act of gratification has become a habit or culture in society and it seems that if there is no act of gratification, everything or business will be difficult or run longer than the act of gratification.

Self-gratification has actually become a hereditary culture in our society. As in the case of weddings, Thanksgiving, birthdays and others, where the events are usually done the practice of giving gifts as a form of expression of friendship, solidarity, and kinship. However, in its development, gratification has been turned into a way to smooth an affair. Gratification is often ridden by the veiled interests of certain elements.

Giving gratification is usually not shown frankly or directly, but is more likely to instill a sense of reciprocity, or attract the attention of officials. This reciprocity then creates a conflict of interest between the official who is given the gratification and the gratifier so that the conflict causes the policy to be unbiased, one-sided, and often discriminatory. Other things that can happen from this form are the appointment of employees based on remuneration, the selection of partners or work partners based on unprofessional decisions, and so on.

The gratifier hopes that by giving the gratification, he can facilitate his business. For example, the delivery of parcels from partners to procurement officials or officials who have power.

Partners hope that with the delivery of the parcel, it will be the winner of the tender. This kind of gratification can also be called a bribe. In addition to causing corrupt behavior, gratification can also damage bureaucracy.

These habits will eventually become cultural and considered commonplace. If you take care of something you have to pay, if you don't pay it will be complicated. Events like this will eventually cause bureaucratic costs to be expensive. Things that previously had no tariff, there is a tariff. Events like this will cause people to be lazy to take care of something that in the end people will not obey the rules.

Prohibited gratuities in general are those related to the duties and obligations of civil servants or state officials. In addition, this gratification usually has an unnatural value. Such as giving gifts at fantastic prices or contrary to laws and regulations or giving honors that are not in accordance with standards.

Gratuities that are acceptable have at least four characteristics, namely : generally accepted gratuities; not contrary to applicable laws and regulations; seen as a form of expression of hospitality and respect in social relations between others within reasonable value limits; and is a form of acceptance that is in the realm of Customs and habits and norms that live in society within reasonable value limits.

There is a method to identify which gratuities we will receive are forbidden gratuities or not. The KPK in its booklet entitled gratification Control describes a method called PROVE it. This method uses some questions that can be asked to ourselves when considering whether a gift is acceptable to us or not. The questions consist of seven topics, namely Purpose, Rules, Openness, Value, Ethics, Identity, and Timing.

CONCLUSION

Gratuities that can be classified as bribery corruption, when the gratuities were given to civil servants / state officials / officials related to their positions. The receipt of such gratuity is contrary to the obligations or duties of the state administrator. This can be seen in Article 12 B paragraph (1) of Law No. 31 th.1999 jo Act no.20 th.2001. A sign of gratitude that can lead to a gratuitous type of corruption crime is a sign of gratitude or a gift given and related to the duties and obligations of civil servants or state administrators. Salain it usually has an unnatural value. Such as giving gifts at

fantastic prices or contrary to laws and regulations or giving honors that are not in accordance with standards.

REFERENCES

- Akbar, S. (2016). Gratifikasi seksual sebagai bentuk tindak pidana korupsi. *Jurnal IUS Kajian Hukum dan Keadilan*, 4(3), 485-500.
- Ariman Sitompul (2020). E-Procurement System in the Mechanism of Procurement of Goods and Service Electronically. *International Asia of Law and Money Laundering*, 1(1),
- Ariman Sitompul, P Hasibuan, M Sahnun. (2021). The Morality Of Law Enforcement Agencies (Police, Prosecutor's Office, KPK) In Money Laundering With The Origin Of The Corruption. *European Science Review* 9 (10).
- Ariman Sitompul, Sabela Gayo. (2022). The Use of Mediation as an Alternative Health Dispute Resolution. *Hong Kong Journal of Social Sciences*
- Ariman Sitompul. (2023). Alternative Dispute Resolution Criminal Acts Of Money Politics In Elections In View Of Normative Law. *International Asia Of Law And Money Laundering (Iaml)*, 2(1), 1-9. <https://doi.org/10.59712/Iaml.V2i1.52>
- Ariman Sitompul. (2023). Eradication Of Corruption By Tracing Money Laundering As An Integral Legal System That Can Not Be Separated. *International Asia Of Law and Money Laundering (IAML)*, 2(3), 111-118. <https://doi.org/10.59712/iaml.v2i3.66>
- Audy, V., & Firmansyah, H. (2023). Analisis Yuridis Pemberian Hibah Kepada Pejabat Ditinjau Dari Tindak Pidana Gratifikasi. *UNES Law Review*, 6(2), 4604-4614. <https://doi.org/10.31933/unesrev.v6i2.1296>
- Aziza, Sofi Nur. 2022. "Pentingnya Pendidikan Anti Korupsi Terhadap Mahasiswa." *JUSTICES: Journal of Law* 1(1):46-54.
- Baidi, Ribut. 2019. "Peluang Dan Tantangan Penegakan Hukum Dalam Pemberantasan Tindak Pidana Korupsi." *Hukum Pidana Dan Pembangunan Hukum* 1(2).
- Barda Nawawi Arief, Kapita Selektta Hukum Pidana, (Bandung : PT. Citra Aditya Bakti, 2003).

- Bethesda, E. (2019). Masyarakat Memandang Gratifikasi Dalam Tindak Pidana Korupsi. *Jurnal Komunikasi Hukum (JKH)*, 5(2), 62.
<https://doi.org/10.23887/jkh.v5i2.18311>
- Christianto, Hwian. 2020. "From Crime Control Model to Due Process Model: A Critical Study of Wiretapping Arrangement by the Corruption Eradication Commission of Indonesia." *PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW)* 7(3):421–42.
- Ewapriyandi Fahmi Saputra, Hery Firmansyah, [Politik Hukum dalam Upaya Pemberantasan Tindak Pidana Korupsi melalui Pembaharuan Pengaturan Tindak Pidana Korupsi sebagai Extraordinary Crime dalam KUHP Nasional](#), *UNES Law Review: Vol. 6 No. 2 (2023): UNES LAW REVIEW (Desember 2023)*
- Ince, Fatma. 2023. "Strategies to Combat Hidden Resignation and Disguised Unemployment." Pp. 258–73 in *Management Strategies and Tools for Addressing Corruption in Public and Private Organizations*. IGI Global.
- Indah Ayu Lestari, S., & Haryono. (2022). Tindak Korupsi : Budaya Praktik Gratifikasi Dalam Pelayanan Administratif Masyarakat (Analisis Sosiologi Korupsi). *Jurnal Cahaya Mandalika ISSN 2721-4796 (online)*, 3(2), 120-125.
<https://doi.org/10.36312/jcm.v3i2.668>
- Marbela, S., Aprilya, Z., & Ulfa, K. (2023). Pentingnya Prinsip Etika Administrasi Publik Dalam Upaya Pemberantasan Gratifikasi Di Lingkungan Birokrasi Publik. *SANGER Journal*, 1(1), 28-42. Retrieved from <http://journal.ar-raniry.ac.id/index.php/sanger/article/view/2956>
- Mhd. Nasir Sitompul, Ariman Sitompul . (2023). Application of money laundering in corruption cases in maintaining state stability. *The International Journal of Politics and Sociology Research*, 11(1), 94–102.
<https://doi.org/10.35335/ijopsor.v11i1.121>
- Putri, A. B., & Saragih, R. (2023). Komunikasi Budaya Salam Tempel Di Indonesia Sebagai Bentuk Gratifikasi Pada Tindak Pidana Korupsi. *Kompetensi*, 16(2), 321–332.
<https://doi.org/10.36277/kompetensi.v16i2.191>
- Razak, A., Sunggara, R., & Thalib, H. (2023). Pengaturan Gratifikasi Sebagai Salah Satu Tindak Pidana Korupsi Dalam Undang-Undang Tentang Pemberantasan Tindak Pidana Korupsi. *Journal of Lex Theory (JLT)*, 4(1), 164-180.
<https://doi.org/10.52103/jlt.v4i1.1537>
- Rina Melati Sitompul, and Andi Maysarah. "Ultimum Remedium Principles In Criminal Decisions In Creating Restorative Justice." *JCH (Jurnal Cendekia Hukum)* 7, No. 1 (2021): 32–46.
<https://doi.org/10.33760/jch.v7i1.324>
- Setiasih, R. (2021). Beban Pembuktian Bagi Pegawai Negeri Sipil dan Pejabat Negara Di Indonesia Atas Pemberian Gratifikasi. *Jurnal Penelitian Tindakan Dan Pendidikan*, 7(1), 1-8.
- Soerjono Soekanto, Faktor-Faktor Yang Mempengaruhi Penegakkan Hukum, CV Rajawali, Jakarta, 1983.
- Sukmadi, Sukmadi. 2022. "The Pentahelix Model in Synergizing Sectors Tourism in West Java to Improve Local Economy." *International Journal of Social Science* 2(4):1873–78.
- Sumaryanto, D. (2019). Harmonisasi Pembalikan Beban Pembuktian Tindak Pidana Korupsi. *Supremasi Hukum: Jurnal Penelitian Hukum*, 28(2), 108-122.
- Umara, N. S. (2017). Pemisahan Pertanggungjawaban Perampasan Barang Dalam Penguasaan Pihak Ketiga Yang Beritikad Baik Dalam Putusan Tindak Pidana Korupsi. *Jurnal Hukum Novelty*, 8(2), 232-251.

Copyright holder :

Ariman Sitompul, Rina Melati Sitompul, Mhd. Nasir Sitompul

First publication right :

International Asia Of Law and Money Laundering

This article is licensed under:

