

CRIMINALIZATION OF GRATIFICATION AS A CORRUPTION OFFENSE

Samsul Huda*, Bambang Sugiri, Nurini Aprilianda, Heru Ratno Hadi

Universitas Brawijaya, Malang, Indonesia

Email: samsuladvokat@gmail.com*

ARTICLE INFO

Date received : October 22, 2022
Revision date : November 15, 2022
Date received : November 28, 2022

Keywords:

Criminalization; gratification; corruption

ABSTRACT

Gratification or gifts are criminal acts of corruption, if given to state officials or civil servants. The form of corruption is bribery. This corruption crime was only formulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (hereinafter referred to as the Corruption Law). The birth of the regulation regarding gratification as one of the criminal acts of corruption in the Anti-Corruption Law is a form of state anticipation in dealing with various new modus operandi in acts of corruption. In order to provide a sense of justice, usefulness and legal certainty in its implementation, gratification offenses should be prepared on a philosophical, sociological and juridical basis. The study aims to find out bribe and gratification acts. This study uses normative research methods. Moreover, as part of the element of offense in the criminal act of corruption with the offense itself being the recipient of gratification, the proof in gratification adheres to the principle of the reverse burden of proof. Therefore, in the Law on the Eradication of Criminal Acts of Corruption, Gratification recipients are required to submit a report to the Corruption Eradication Commission (KPK) within 30 (thirty) days. the gratification report is received by the KPK, within 30 (thirty) days the KPK will determine whether the gratification is a bribe or not. If it is proven that a bribe is proven, the gratuity will become the property of the state and vice versa if it is not related, then the gratification becomes the right of the recipient of the gratification.

INTRODUCTION

Corruption is one of the problems that most need serious attention in the field of law enforcement, especially in the current reform era. Moreover, problems related to corruption continue to pile up. As one of the biggest problems faced by almost every country in the world, corruption does not only cause state material losses, but also has an impact on the social life of people who can indirectly become victims. In Indonesia itself, corruption cases occur systematically and widely so that it not only harms the state's finances, but also violates the social and economic rights of the community at large (Hamzah, 2001).

The word corruption itself in Latin is called *Corruptio-corruptus*, in Dutch it is called *corruptie*, in English it is called *corruption*, the literal meaning of *corrupt* refers to *corrupt*, *rotten*, *depraved*, *dishonest actions* that are related to finances (Sudarto, 1996).

The definition of corruption itself has been clearly explained in 13 Articles of the Law on the Eradication of Corruption Crimes which are formulated into 30 forms/ types of corruption. These articles explain in detail the actions that can be subject to criminal sanctions due to corruption. The thirty forms/types of criminal acts of corruption can basically be grouped as follows (Ardisasmita, 2006):

- 1) State financial loss
- 2) Bribery
- 3) Embezzlement in office
- 4) Blackmail
- 5) Cheating
- 6) Conflict of interest in procurement
- 7) Gratuities (gratification).

Meanwhile, the definition of corruption according to Transparency International is an act of abusing public power and trust for personal gain. This definition, if elaborated further, has several elements that make up a criminal act of corruption, namely: First, there is an abuse of power or authority. Second, this power and trust is related to financial or material access. Third, this act can provide personal benefits (in this case including the perpetrator himself or others). Even though this definition is still too simple and abstract to reach more concrete actions so that it can be defined as a corrupt act, basically the scope of corruption cannot be separated from acts of bribery, embezzlement and gratification. Even in some countries, there are slight differences in regulations regarding acts that are considered criminal acts of corruption.

Bribery in French comes from the word "briberie" which means "begging" or "vagrancy" (begging). While in Latin it is interpreted as "bribe" in the word "a piece of bread given to beggar" (a piece of bread given to a beggar). In its development "bribe" means alms (alms), "blackmail" or "extortion" (extortion) in relation to "gift received or given in order to influence corruptly" (a gift or gift received or given with the intent to influence maliciously or corrupt) (Wiyono, 2005).

This definition of bribery connotes the existence of a promise, lure or giving an inappropriate advantage by someone to a civil servant or official, either directly or indirectly with the intention that the civil servant or official does or does not act in accordance with his legal duties. Meanwhile, embezzlement related to office crimes is a criminal act of embezzlement committed by civil servants or state administrators by violating their mandate or oath of office (breach of trust). This is understandable if the notion of corruption is not only related to the problem of embezzlement but also relates to moral depravity, improper conduct or stains (depravity, perversion, or taint) and indicates an impairment of integrity, virtue or moral principles (an impairment of morals). integrity, virtue or moral principle) (Muladi, n.d.).

The scope of corruption that is the author's discussion this time is about gratification. As for what is meant by gratification as regulated in Article 12B Paragraph (1) of the Law on the Eradication of Corruption Crimes/ Corruption Crimes Law is "gifts in a broad sense including the provision of money, goods, rebates (discounts), commissions, interest-free loans, travel tickets tours, free medical treatment and other facilities. The gratuities are received both domestically and abroad and carried out using electronic means or without electronic means".

When viewed from the formulation of the gratification article, at first glance it has similarities with the bribery article which is regulated in pairs between the bribe giver in Article 5 and Article 13 and the bribe recipient in Article 12a or 12b and Article 11 of the Anti-

Corruption Law. However, the difference between gratification and bribery is that in bribery there is a meeting of mind between the bribe giver and the bribe recipient, while in gratification between the giver and the recipient there is no meeting of mind. So gratification is also called passive bribery. Meanwhile, according to Eddy Omar Syarif, the term "meeting of mind" is another name for consensus or transactional matters (KPK, 2015). Thus, the study aims to find out the bribe and gratification acts.

METHOD

This research uses normative research methods (or legal research), in order to find philosophical values, constructions, relevant legal rules, legal principles, legal principles, and legal doctrines in order to answer the problems the author wants to explore. In general, normative research (legal research) is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. The author will use 2 (two) approaches, including (Marzuki, 2017):

- 1) Approach to legislation (statute approach); The statutory regulation approach is an approach that is carried out by examining the laws and regulations relevant to the research theme, to explore the conformity and contradiction of norms to one another.
- 2) Conceptual approach; The conceptual approach is an approach that starts from the opinions (postulates) of legal experts that develop from time to time, both in terms of substance and point of view, in order to find new ideas or ideas that are relevant to the issues that the author wants to explore.

RESULTS AND DISCUSSION

A. Results

Gratification is based on a habit that often occurs in social life where it has become a habit that is considered normal by the community. But in order to create a clean and authoritative government, legislators consider this to be something negative. This is because gratification has the potential to cause corruption which begins with neglect of a duty or obligation (Mas, 2014).

The word gratification according to the Dutch legal dictionary is gratificatie, but the word gratification is then used as the basis for the formation of legislation which is formulated as a form of corruption. Meanwhile, gratification in English is gratify which means giving happiness and satisfaction. Gratification in legal terminology is any gift or gift in a broad sense including the provision of money, goods, travel tickets, miscellaneous other facilities given because it has something to do with the position, power, and authority of a person to do or not to do an act. Gratification is an act that has the opportunity to cause abuse and abuse of power because there is the lure of giving (Kaufmann, 1998).

Therefore, gratification is defined as a form of giving to someone who has the authority with certain aims and objectives desired by the giver. The provisions regarding gratification as referred to in Article 12 B and Article 12 C of Law Number 31 of 1999 on the Eradication of Corruption Crimes read as follows:

Article 12 B

- (1) *Every gratuity to civil servants and state officials is considered as giving bribes if it is related to their position and which is contrary to their obligations or duties with the following provisions:*
 - a) *The value is Rp. 10,000,000 (ten million rupiah) or more, proof that the gratification is not a bribe is made by the recipient of the gratification;*

b) The value is less than Rp. 10,000,000 (ten million rupiah), proof that the gratification is a bribe is carried out by the Public Prosecutor.

(2) The punishment for civil servants or state administrators as referred to in paragraph (1) is life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years, and a minimum fine of Rp. 200,000,000 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000 (one billion rupiah).

Article 12 C

- (1) The provisions as referred to in Article 12 B paragraph (1) shall not apply if the recipient reports the gratuity he has received to the Corruption Eradication Commission.*
- (2) The report as referred to in paragraph (1) must be submitted by the recipient of the gratification no later than 30 (thirty) working days from the date the gratification is received.*
- (3) The Corruption Eradication Commission, within a period of no later than 30 (thirty) working days from the date of receipt of the report, must determine whether the gratuity belongs to the recipient or belongs to the state.*
- (4) Provisions regarding the procedures for submitting reports as referred to in paragraph (2) and determining the status of gratification as referred to in paragraph (3) are regulated in the law concerning the Corruption Eradication Commission."*

From the explanation of the article above, it is obtained that the elements of Gratification are (Adami, 2018):

1. Elements of the action (Legal Subject)

Civil Servant or State Administrator. Whereas what is meant by civil servants is regulated in Article 1 point 2 of the Corruption Law which includes:

- Civil servants as referred to in the employment law.
- Civil servants as referred to in the criminal law law.
- People who receive salaries or wages from state or regional finances.
- People who receive salaries or wages from a corporation that receives assistance from state or regional finance.
- People who receive salaries or wages from other corporations that use capital and facilities from the state or society (Hamzah, 2005).

Furthermore, an explanation regarding state administrators has been regulated in Article 1 point 1 of Law no. 28 of 1999 concerning State Administrators that are Clean and Free from Corruption and Nepotism, namely state administrators who carry out executive, legislative or judicial functions, and other officials whose main functions and duties are related to state administrators in accordance with the provisions of the applicable laws and regulations.

2. Action Element: Receiving

The act (receiving) is an absolute element that must be included in every formulation of a crime. If there is a criminal act in the law without including the elements of the prohibited act, this situation is an exception. This is like in the TPK receiving this gratification, in which the act of receiving is not explicitly stated, therefore it must be explored, found and determined. In this gratification article where the element of the act of receiving TPK receiving gratification is concluded from, firstly in article 12 B paragraph (1) there is the phrase "to civil servants" which implies that it is the civil servant who receives the gratification, secondly in article 12 B paragraph (1) letter a regarding the

evidence system which shows that it is the "recipient" of gratification who is burdened with criminal responsibility and can be sentenced to prison. Even though it is written, in the context of proving the act of receiving (gratification) it must be considered express and its form must be proven.

3. Object element: Gratification

There is no difficulty in understanding the meaning of objects in the Articles of gratification. The explanation of Article 12 B paragraph (1) has provided an authentic interpretation which states "Gratification is a gift in a broad sense which includes the provision of money, rebates, commissions, interest-free loans, travel tickets, other facilities". From the formulation of the article, it can be seen that the definition of gratification is very broad and open in nature. This can be seen in the phrase "other facilities" so that the public prosecutor can fill it with other types of grants/facilities.

4. Elements: Related to his position and contrary to his obligations and duties

This element in the TPK receiving gratification is objective, in which this element contains 3 parts, namely: (1) First, the quality of the legal subject who receives the gift must be a civil servant or state administrator. (2) Second, civil servants or state administrators must have the authority of office at the time of committing the act of receiving. To have office authority, they must have a position. (3) Third, gifts received by civil servants or state officials must be related to their position and contrary to their obligations and duties.

5. Element: Failure to report receipt of gift to KPK within 30 days of receiving gift

The element of "not reporting the receipt of gifts to the KPK" seen from the point of view of being able to be convicted is an additional element so that the recipient of the gratification can be sentenced. This element can be referred to as a condition for being able to be prosecuted for the crime of the maker. The unlawful nature of the act has arisen with the fulfillment of elements a, b, c, d and can only be prosecuted and convicted after the terms of 30 working days have passed against civil servants who receive gifts but do not report to the KPK.

6. Gratification in Historical and Cultural Context

If we want to study further about the origins of gratification and its practice in the culture of the people of the archipelago, it can be seen through one of the oldest records belonging to a Buddhist monk I Tsing (Yi Jing or Zhang Wen Ming) in the 7th century AD. The record tells of the trading events of the Srivijaya Kingdom era. Based on these records, around the year 671 AD, the Srivijaya Kingdom had used gold and silver as a medium of exchange but not yet in the form of currency but only in the form of lumps. I Tsing then explained briefly that traders from Champa and China gave gold and silver to the guards when they were going to meet with relatives of the Srivijaya Kingdom who handled trade issues with the aim of facilitating communication. Over time the giving of gold and silver became a separate habit among traders from Champa and China when dealing with trade with the Srivijaya Kingdom. Then in the note it is also stated that traders from Arabia who want to enter the archipelago often give unofficial 'money' so that they are allowed to lean in ports (Muhardiansyah & Zulaiha, 2010).

The note above illustrates that giving gifts to authorized officials has become a culture that has thrived in people's habits from the time of the kingdoms in the archipelago until Indonesia's independence. Gifts given to authorized officials tend to have strings attached and in the long term can affect the performance of these officials so that it affects the quality of fair service to all levels of society.

B. Discussion

1. The urgency of gratification as part of the element of offense in the crime of corruption

According to Barda Nawawi Arief, when viewed from the formulation, "gratification" is neither a type nor a qualification for an offense. This is because the offense is not the gratification, but the act of receiving the gratification. As formulated in Article 12 B of the Anti-Corruption Law, it adheres to the principle of the inverse burden of proof, namely that it is the recipient of the gratification who is obliged to prove that a person has not committed corruption in the form of gratification himself if the value of the gift is in the range of ten million rupiahs or more. However, if the value of the gift is less than ten million rupiah, then the burden of proof is on the Public Prosecutor, meaning the usual burden of proof system in accordance with the Criminal Procedure Code (Arief, 2003).

Although basically gratification will not become a crime if the provisions of Article 12 C of the Anti-Corruption Law are fulfilled, not all gratifications must be reported to the Corruption Eradication Commission (KPK). Therefore, the KPK through the Corruption Eradication Commission Circular Letter Number: B.143/01-13/01/2013 dated January 21, 2013 stated that not all gratuities must be reported to the Corruption Eradication Commission. The following are gratuities that do not have to be reported to the Corruption Eradication Commission (KPK):

- (1) *Obtained from direct prizes/raffles, discounts/rebates, vouchers, point rewards, or souvenirs that apply in general and are not related to work;*
- (2) *Obtained due to academic or non-academic achievements (championships/contests/competitions) at their own expense and not related to official service;*
- (3) *Obtained from profits/interests from fund placements, investments or private share ownership which are generally applicable and not related to official service;*
- (4) *Obtained from compensation for non-service professions, which are not related to the main duties and functions of civil servants or state administrators, do not violate conflicts of interest and employee code of ethics, and written permission from direct superiors;*
- (5) *Obtained from a blood family relationship in a straight line of two degrees or in a one-degree side-line lineage as long as there is no conflict of interest with the recipient of the gratification;*
- (6) *Obtained from marriage by marriage in a straight line of one degree or in a line of descent to the side of one degree as long as there is no conflict of interest with the recipient of gratification;*
- (7) *Obtained from parties who have family relations as referred to in letters f and g related to wedding gifts, child circumcision, birthdays, religious/customary/traditional activities and not from parties who have conflicts of interest with the recipients of gratification;*
- (8) *Obtained from other parties related to the disaster or disaster, and not from parties who have a conflict of interest with the recipient of the gratification;*
- (9) *Obtained from official official activities such as meetings, seminars, workshops, conferences, trainings, or other similar activities that generally apply in the form of seminar kits, certificates and plaques/souvenirs; and*

- (10) *Obtained from official official events in the form of dishes/servings/banquets in the form of food and drinks that are generally accepted* (Suprabowo & Alamsyah, 2019)

As part of the country that ratified the United Nations Convention Against Corruption (UNCAC) regarding the eradication of corruption, Indonesia has also received attention from other countries that have ratified UNCAC. The countries include Uzbekistan and England (United Kingdom). In 2012, the two countries evaluated the implementation of UNCAC regarding the existence of gratification and bribery arrangements in the Law on the Eradication of Corruption Crimes in Indonesia. Articles that regulate gratification are considered problematic because their allocation is not clear. They call these articles an aggravated form of bribery, and thus should be removed from the Corruption Act (Easter et al., 2014).

Furthermore, the two countries also consider that the application of Article 12 C as a tandem to Article 12 B is a big problem. Article 12 C is considered to give impunity to civil servants or state officials who receive illegal gratuities, but can be released from criminal responsibility, because they report the gratification to the KPK. Among the countries that have ratified UNCAC, Indonesia is the only one that has an article justifying the acceptance of gratification. This can be considered as an advantage, or even a weakness for Indonesia in optimizing efforts to eradicate corruption. The application of Article 12 C in the Anti-Corruption Law can be considered as a respect for the customs and habits that grow in the community, or even as a gap for the recipients of gratification to justify the acceptance.

Although in Article 12 C paragraph (3) of the Anti-Corruption Law, the KPK has the authority to determine whether gratuities can belong to the recipient or the state, normatively this article can potentially overlap with Article 12 B of the Anti-Corruption Law. In addition, there are several elements of criminal gratification which are almost similar to bribery as can be explained in the following table:

Table 1
Criminal Gratification

The Crime of Bribery in the Anti-Corruption Law	
Bribery	Bribery Receiver
<p>Article 5 paragraph (1) Sentenced to a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred fifty million rupiah) every person who:</p> <p>a. give or promise something to a civil servant or state administrator with the intention that the civil servant or state administrator do or not do something in his position, which is contrary to his obligations; or</p> <p>b. giving something to a civil servant or state administrator because of or in connection with something that is contrary to his obligations, done or not done in his position."</p>	<p>Article 5 paragraph (2) "For civil servants or state administrators who receive gifts or promises as referred to in paragraph (1) letter a or letter b, shall be subject to the same punishment as referred to in paragraph (1)."</p> <p>Article 12 "Shared with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah):</p> <p>a. a civil servant or state administrator who receives a gift or promise, even though it is known or reasonably suspected that the gift or promise was given to mobilize to do or not do something in his position, which is contrary to his obligations;</p> <p>b. a civil servant or state administrator who receives a gift, even though it is known or</p>

	reasonably suspected that the gift is given as a result of or because he has done or not done something in his position that is contrary to his obligations;
Article 13 "Every person who gives a gift or promise to a civil servant by remembering the power or authority attached to his position or position, or by the giver of a gift or promise deemed attached to that position or position, shall be punished with imprisonment for a maximum of 3 (three) years and or a maximum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah)."	Pasal 11 <i>Sentenced to a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred fifty million rupiah) civil servant or state administrator who accepts a gift or promise even though it is known or reasonably suspected that the gift or promise was given because of the power or authority related to his position, or in the mind of the person who gave the gift or promise to be related to position."</i>

Based on the explanation of the table above, it can be concluded that the elements of the criminal act of gratification have a material content that is not much different from the elements of the crime of bribery. It's just that some articles in bribery carry a relatively lower penalty with gratuities. However, based on the meeting of mind concept described above, there are several views of experts and legal practitioners regarding the difference between the crime of gratification and the crime of bribery. These views include:

Djoko Sarwoko (Former Head of Special Crimes and Supreme Court Justice of the Supreme Court of the Republic of Indonesia): "That bribery and gratification are different. In the case of arrests carried out by the KPK, when a suspect reports after being arrested by the KPK while an act indicating a meeting of mind has occurred before, it cannot be called gratification. Gratification reporting within 30 days must be emphasized in awareness and in good faith. In bribery, the acceptance of something is related to doing or not doing something related to his position. Meanwhile, gratification can be equated with the concept of self-assessment, such as a tax case based on one's honesty."

Drs. Adami Chazawi (Lecturer of Criminal Law, Faculty of Law): "In the provisions regarding gratification, there is no malicious intent (*mens rea*) of the recipient when the money or goods are received. Malicious intent is considered to exist when the gratuity is not reported within 30 working days, so that after this time has passed, it is considered a bribe until it can be proven otherwise. Whereas in the provision regarding bribes, the recipient has a malicious intent when the money or goods are received."

Based on what is described in the KPK gratification module, gratification can be analogized as an 'embryo' of bribery. thus bribery is the 'foetus' of corruption. This means that gratification is more preventive in nature to prevent it from causing corruption in the form of bribes. If gratification cannot be prevented properly, then the crime of bribery will spread like a 'chronic disease' that undermines people's lives and has an impact on the potential for greater state financial losses.

If it is briefly explained, it can be explained that gratification can lead to bribery and then bribery can lead to corruption which results in the goal of equitable development distribution being not realized.

In terms of urgency, the Gratification which is included as part of the offense element in the criminal act of corruption is the need to abolish the gratification article by strengthening the offenses listed in the crime of bribery. This can also be seen from the input of other countries that participated in ratifying UNCAC, namely the country of

Uzbekistan and the United Kingdom (United Kingdom) on the evaluation of the implementation of UNCAC in the regulation of gratification and bribery in the Law on the Eradication of Corruption Crimes in Indonesia. In addition, there is a blurring of norms (unclear norms) caused by elements of the criminal act of gratification also contained in the elements of the crime of bribery while the only difference is the concept of meeting of mind and mens rea as explained by previous experts. Moreover, there is Article 12 C of the Anti-Corruption Law which could potentially overlap with Article 12 B of the Anti-Corruption Law in its implementation in the field. Thus the provisions regarding criminal acts of gratification in the Anti-Corruption Law need to be removed in order to provide legal certainty between gratification and the crime of bribery.

2. Implementation of Gratification in the Law on the Eradication of Corruption Crimes

At first, the criminal gratification had been implemented into General Crimes through the Criminal Code (KUHP). Within the umbrella of the Dutch colonial legacy of national criminal law, the crime of gratification comes from the crime of bribery (omkoping) in the Criminal Code, where the Criminal Code itself distinguishes 2 (two) groups in the crime of bribery, namely the crime of giving bribes and the crime of accepting bribes. bribe. For criminal acts where the legal subject is giving bribes, it is also known as active bribery (active omkoping) which is regulated in Chapter VIII Book II in Article 209 and Article 210 of the Criminal Code and is part of the crime of the general authorities. The text of the two articles is as follows:

Article 209

(1) Threatened with a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiah:

- 1. Whoever gives or promises something to an official with the intention of moving him to do or not to do something in his position that is contrary to his obligations;*
- 2. Anyone who gives something to an official because or in connection with something that is contrary to his obligations, is done or not done in his position. The revocation of rights in Article 35 No. 1-4 can be dropped.*

Article 210

(1) Threatened with a maximum imprisonment of seven years:

- 1. Any person who gives or promises something to a judge with the intention of influencing the decision on a case submitted to him for trial;*
- 2. Any person who gives or promises something to a person who according to the provisions of the law is determined to be an advisor or adviser to attend a hearing or court, with the intention of influencing the advice or opinion to be presented in connection with a case submitted to the court for trial.*

(2) If the gift or promise is made with the intention that in a criminal case a sentence is imposed, the guilty person is threatened with a maximum imprisonment of nine years.

(3) Revocation of rights based on Article 35 No. 1-4 can be dropped.

Meanwhile, the second group which is called passive bribery (passive omkoping), the legal subjects are civil servants who accept bribes as regulated in Chapter XVIII Book II in Article 418, Article 419, and Article 420 of the Criminal Code, which reads in full as follows:

Article 418

An official who accepts a gift or promise even though it is known or ought to be suspected, that the gift or promise was given because of the power or authority related to his position, or in the mind of the person who gave the gift or promise that is related to his position, is threatened with imprisonment at the most. six years or a maximum fine of four thousand five hundred rupiah.

Article 419

An official shall be punished by a maximum imprisonment of five years:

- 1) Who accepts a gift or promise even though he knows that the gift or promise was given to move him to do or not do something in his position that is contrary to his obligations;*
- 2) The recipient of the gift knows that the gift is given as a result. or because the recipient has done or not done something in his position that is contrary to his obligations.*

Article 420

(1) Threatened with a maximum imprisonment of nine years:

- 1. A judge who accepts a gift or promise. even though it is known that the gift or promise was given to influence the decision of the case which is his duty;*
- 2. Whoever according to the provisions of the law is appointed as an adviser to attend a court session, receives a gift or promise, even though it is known that the gift or promise was given to influence advice on a case that must be decided by the court.*

(2) If the gift or promise is accepted knowingly that the gift or promise was given in order to be punished in a criminal case, the guilty person is threatened with a maximum imprisonment of twelve years.

The enactment of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption is based on the consideration that Law Number 31 of 1999 needs to be amended to avoid the diversity of legal interpretations and provide protection for the rights of the community, especially the rights of the community. social and economic aspects, as well as fairer treatment in eradicating corruption. This can be seen from several new provisions in Law Number 20 of 2001 which were not previously contained in Law Number 31 of 1999. The provisions referred to are the formulation of a new offense of gratification as part of a criminal offense of corruption as well as the application of a reverse proof system that which is an extension of the source of obtaining legal evidence and the right of the state to file a civil lawsuit against the convict's hidden or hidden assets. The reverse proof system is also applied to gratification and to claims for confiscation of the defendant's property suspected of originating from one of the criminal acts as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption and Articles 5 to 12 of Law Number 20 of 2001.

Provisions for the application of a reverse proof system or also known as "premium remidium" is a special preventive measure against civil servants as referred to in Article 1 number 2, or against State administrators as referred to in Article 2 of Law Number 28 of 1999 concerning State Administrators who Clean and Free from Corruption, Collusion, and Nepotism, not to commit criminal acts of corruption.

The criminal act of gratification is regulated in Article 12 B of Law Number 20 of 2001. However, the provisions of gratification in Article 12 B have similarities with Article 5 paragraph (2) and Article 6 paragraph (2) which consist of: (1) In Article 5 paragraph (2) and Article 12 B

the makers are Civil Servants and State Administrators, while in Article 6 paragraph (2) the makers are judges and advocates; (2) The actions of these three articles are the same, namely accepting gifts or promises; (3) The purpose of the action is for the civil servant or state administrator, judge or advocate to do something or not to do something that is contrary to or contrary to his authority and obligations (Hafrida, 2013).

Based on the explanation of the formulation of the norms above, it can be seen that the implementation of gratification in the Corruption Eradication Act seems too excessive and convoluted which can later have an impact on the law enforcement process in the field and what is more worrying can lead to uncertainty in law enforcement.

When looking at the process of criminalizing an act in criminal law, there are 3 important principles, namely:

- **Lex Certa** means that legislators must formulate clearly and in detail what is called a criminal act, define it clearly without being vague so that there is no ambiguous formulation because an unclear or too complex formulation can result in legal uncertainty (Andi & Azisa, 2016).
- **Lex Stricta** emphasizes that a material in the legislation cannot be expanded or interpreted other than what is written in the legislation or in other words the principle of a provision or legislation cannot be extended other than being determined explicitly and clearly according to the legislation.
- **Lex Scripta** emphasizes that the Act (statutory, law) must regulate behavior (actions) which are considered as criminal acts. Without a law that regulates prohibited acts, the act cannot be said to be a criminal act.

In a formulation of legal material that is not clear or too complicated will only have an impact on legal uncertainty and hinder the success of prosecution (criminal) efforts because the party who will be prosecuted will always be able to defend himself that such provisions are not useful as a code of conduct. Therefore, the Lex Certa principle emphasizes that legislators must define norms clearly without ambiguity (*nullum crimen sine lege stricta*).

Furthermore, based on the Lex Stricta principle, the formulation of the content of Article 12 B, which is similar to the formulation of the content of Article 5 and Article 6, has the potential to be expanded and interpreted differently than what is meant in the provisions concerning gratification. This can be seen from the formulation of Article 12B paragraph 1 which reads: "Every gratuity to a civil servant or state administrator is considered a bribe, if it is related to his position and is contrary to his obligations or duties...". The meaning of the word "considered" implies that "gratuity" is basically not a bribe, but if the granting of gratification is "related to his position and contrary to his obligations or duties" it will change its meaning to "giving a bribe".

In other words, gratification itself is an understanding of a gift in a broad sense that can have a positive connotation that does not mean evil so that it does not violate criminal provisions. But on the other hand, it can also have a negative connotation which means to get an advantage that is contrary to the obligations of civil servants or state administrators.

Based on the formulation of Article 12 B which has the potential to overlap with several articles related to the crime of bribery and from the elaboration of the principles that can be used as a reference in criminalizing a criminal act as referred to above, the writer hereby concludes that gratification is basically not a crime because of gratification can be interpreted as a gift in a broad sense where the gift if it has a positive connotation is not a crime, but if it has a negative connotation then it can be said as a criminal act as stated above. Therefore, it is necessary to make efforts to revise the provisions of gratification in Article 12 B of the Law on

the Eradication of Criminal Acts of Corruption so that the implementation of gratification in law enforcement of criminal acts of corruption can run optimally and have legal certainty.

CONCLUSION

The emergence of new provisions in the Eradication of Corruption Crimes in Indonesia is marked by the issuance of Law Number 20 of 2001 which regulates gratification where the provision was not previously contained in Law Number 31 of 1999. Gratification as part of the element of offense regulated in criminal acts of corruption are stated in Article 12 B of Law Number 20 of 2001. The article states explicitly and clearly that giving to a civil servant or state administrator is a criminal act if the purpose of the gift is related to his position and is contrary to his obligations or duties.

The application of gratification in Law Number 20 Year 2001 has not been maximally implemented. This is because there is still a vagueness or ambiguity of norms where the elements of Article 12 B are also contained in the crime of bribery as described above. Even in several articles related to bribe recipients, namely Article 5 paragraph 2 and Article 11 with a much lower criminal threat. The ambiguity of these norms has the potential to weaken law enforcement against criminal acts of gratification. In addition, there is also one article, namely Article 12 C which actually decriminalizes acts of gratification and grants impunity to recipients of gratification. Although there is still an opportunity for the Corruption Eradication Commission to determine whether gratuities can belong to the recipient or become state property, this can be exploited by irresponsible law enforcers by "negotiating" with the suspect/defendant in order to escape from legal bondage so that what should be property of the state turns into the property of the recipient.

The application of gratification in the Law on the Eradication of Criminal Acts of Corruption basically aims to make the act of gratification a criminal act of corruption with a high criminal threat. This is very necessary because gratification is the initial entry point for committing criminal acts of corruption that are more systemic and detrimental to the state which is more severe so that it has an extraordinary impact. However, as described above, gratification is not a crime, but a gift in a broad sense. It would be inappropriate if gratification was formulated as part of a criminal act in Article 12 B of Law Number 20 of 2001. In fact, the Law on the Eradication of Criminal Acts of Corruption has regulated the Crime of Bribery, both for the bribe giver and for the supposed bribe recipient. strengthened and elaborated in more detail by including content material regarding 'illegal gratification' on the part of the bribe recipient so that it can ensnare the perpetrators of the crime of bribery, especially with the existence of a reversed burden of proof system in the regulation of receiving the 'illegal gratification'.

REFERENCES

- Adami, C. (2018). *Hukum Pidana Korupsi di Indonesia (Edisi Revisi)*. Depok: Rajawali Press. [Google Scholar](#)
- Andi, S., & Azisa, N. (2016). *Buku Ajar Hukum Pidana*. Makassar: Pustaka Pena Press. [Google Scholar](#)
- Ardisasmita, M. S. (2006). Deputy for Information and Data of the KPK, Definition of Corruption from a Legal Perspective and E-Announcement for a More Open, Transparent and Accountable Governance. *National Seminar on Efforts to Improve the System for Procurement of Goods/Services Government*.

- Arief, B. N. (2003). *Kapita selekta hukum pidana*. Citra Aditya Bakti. [Google Scholar](#)
- Easter, L., Yaqin, M. A., Fatah, A., Purba, L., & Paradisha, N. Z. (2014). *Studi Tentang Penerapan Pasal Gratifikasi yang Dianggap Suap pada Undang-Undang Tipikor*. [Google Scholar](#)
- Hafrida, H. (2013). Analisis Yuridis terhadap Gratifikasi dan Suap Sebagai Tindak Pidana Korupsi Menurut Undang-Undang Nomor 31 tahun 1999 jo. Undang-undang Nomor 20 tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi. *INOVATIF/ Jurnal Ilmu Hukum*, 6(7). [Google Scholar](#)
- Hamzah, A. (2001). *Hukum Acara Pidana Indonesia Edisi Revisi*. Jakarta: Sinar Grafika. [Google Scholar](#)
- Hamzah, A. (2005). *Pemberantasan Korupsi: Melalui Hukum Pidana Nasional dan Internasional*. [Google Scholar](#)
- Kaufmann, D. (1998). Governance and Corruption: New Empirical Frontier For Program a Design", in T. Mulya Lubis, "Anti-Corruption Law Reform." *Conference Towards a Corruption-Free Indonesia*. [Google Scholar](#)
- KPK, P. P. G. (2015). *Komisi Pemberantasan Korupsi*. Jakarta. [Google Scholar](#)
- Marzuki, M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media. [Google Scholar](#)
- Mas, M. (2014). *Pemberantasan Korupsi*. Ghalia Indonesia. [Google Scholar](#)
- Muhardiansyah, D., & Zulaiha, A. R. (2010). *Buku Saku Pengertian Gratifikasi, Cetakan Pertama*. KPK
- Muladi. (n.d.). The Crime of Bribery as the Core Crime of the Judicial Mafia and its Countermeasures. *Bribery, Judicial Mafia, Law Enforcement and Criminal Law Reform*.
- Sudarto. (1996). *Hukum dan Hukum Pidana*. Jakarta: Alumni.
- Suprabowo, S., & Alamsyah, B. (2019). Tinjauan Yuridis Tentang Gratifikasi Sebagai Salah Satu Delik Tindak Pidana Korupsi Dalam Perspektif Hukum Pidana Indonesia. *Legalitas: Jurnal Hukum*, 10(2), 218–246. [Google Scholar](#)
- Wiyono, R. (2005). *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi*. [Google Scholar](#)

Copyright holder:

Samsul Huda, Bambang Sugiri, Nurini Aprilianda, Heru Ratno Hadi (2022)

First publication right:

Journal of Social Science

This article is licensed under:

