

# **The Nature Of The Crime Of Gratification Based On Law Number 31 Of 1999 In Conjunction With Law Number 20 Of 2001 Concerning Eradication Of Criminal Acts Of Corruption**

Adi Asrul<sup>1</sup>, Hambali Thalib<sup>2</sup>, Syahrudin Nawi<sup>2</sup> & Baharudin Badaru<sup>2</sup>

<sup>1</sup>Doctor of Law, Indonesian Muslim University

<sup>2</sup>Faculty of Law, Indonesian Muslim University

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## **ABSTRACT**

The purpose of this study is to analyze the nature of the gratification arrangement in Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Corruption Crimes. The research method uses empirical legal research methods. The results of the study that 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 with the following provisions: The value of which is Rp. 10,000,000. bribes are made by the recipient of gratification; With a value of Rp. 10,000,000.00 (ten million rupiahs) or more, the proof that the gratification is not a bribe is made by the recipient of the gratification. This provision is a system of imposing reverse proof, where the recipient of gratification is given the obligation to prove that he has not received gratification, or that the gift he receives has nothing to do with his position, and does not conflict with his duties and obligations.

**KEYWORDS: Gratification; Eradication; Corruption**

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## **I. INTRODUCTION**

The current practice of corruption is developing with the emergence of new practices that seek to take advantage of the gaps or weaknesses of various existing laws and regulations.<sup>[1]</sup> We often think of giving gifts as just a thank you or congratulations to an official. But what if the gift comes from someone who has an interest in the official's decision or policy?<sup>[2]</sup> And what if the value of the gift is above the fair value? Will the giving of the gift does not affect the integrity, independence and objectivity in decision-making or policy, so that it can benefit others or yourself?<sup>[3]</sup>

Giving a gift as an act or act of someone who gives something (money or objects) to another person of course is allowed.<sup>[4]</sup> However, if the gift is given in the hope of influencing the decision or policy of the official who is given the gift, then the gift is not just a congratulation or a sign of gratitude, but as an attempt to gain an advantage over the official or examiner which will affect the integrity, independence and objectivity, is an act that is not justified and this is included in the definition of gratification.<sup>[5]</sup>

The prohibition of all forms of giving gifts or gratuities to someone related to their capacity as an official or state administrator is not something new.<sup>[6]</sup> The Islamic tradition itself has been passed down to us throughout history regarding this matter. As part of efforts to eradicate corruption, gratification is a special concern, because it is a new provision in the legislation and needs more optimal socialization. UU no. 20 of 2001 concerning the Eradication of Corruption Crimes defines gratification as a gift in a broad sense, which includes the provision of money, goods, rebates or discounts, commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free medical treatment, and other facilities.

Article 12 B of Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes reads:

*"Every gratification 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." Legally, there is no problem with gratification.*

This action is simply an act of someone giving a gift or a gift to another person. Of course, this is allowed. However, with the development of time, culture, and lifestyle, gifts that are often called gratifications began to experience a dualism of meaning. Our neighbours, for example, one day gave us a bowl of goat soup complete with rice and ice doger. intended in the framework of friendship and establishing familiarity with the

surrounding environment. This is a model of allowed gratification because there are absolutely no strings attached to the gift.

Try to compare it with the following gratification model: a company director sends a parcel, shopping voucher, tourist gift, special discount, or commission to a government official who has authority over the policy of procurement of goods and services. There is no blood relationship between the two of them. Also, the two of them do not have a friendly relationship except based on the capacity of their respective positions. Then, is it true that this gift can be said to be selfless?

Gratification in the second model story is accommodated by law as one of the modes of corruption. Giving to government officials or state administrators is always accompanied by the hope of obtaining convenience in reaching an agreement with the government, generally in the field of procurement of goods and services. Here, the party who benefits in the future is the giver of the gift. At the time of tender, for example, tender participants who have given gratuities certainly have more points or even the highest points compared to other tender participants. The practice of corruption in the form of gratification is as old as human civilization. This culture does not only occur during the modern government era as it is today but can also be traced back to the prophetic era, especially at the beginning of the development of Islamic civilization. On one occasion, as narrated by Abu Daud, the Prophet Muhammad said: "Whoever I have appointed as a worker in a position and then I give a salary, then something that is received outside of his salary is corruption."

*Black's Law Dictionary* provides an understanding of Gratification or *Gratification* as "a voluntarily given reward or recompense for a service or benefit".

Gratification can be interpreted as positive or negative. Positive gratification is giving gifts with sincere intentions from one person to another without any strings attached, meaning given in the form of a "sign of love" without expecting anything in return.<sup>[7]</sup> Negative gratification is the giving of gifts with the aim of self-interest, this type of gift has been entrenched among bureaucrats and businessmen because of the interaction of interests. Thus, from the perspective of gratification, it does not always have a bad meaning but must be seen from the interests of gratification. something can not be avoided without any strings attached.

In developed countries, gratification to bureaucrats is strictly prohibited and the perpetrators are given quite severe sanctions, because it will affect bureaucratic officials in carrying out their duties and making decisions that can cause imbalances in public services, even in the private sector a ban is also given, for example, leaders Private television stations strictly prohibit reporters or their journalists from receiving money or goods in any form from anyone in carrying out their reporting duties. Therefore, gratification must be banned for bureaucrats accompanied by severe sanctions (money fines or imprisonment or imprisonment) for those who violate it and must be imposed on both parties (giver and recipient).

Therefore, the legislators are trying diligently to create a very tight legal net so that there are no gaps in the possibility of free civil servants from the legal net in receiving any gifts in any form and from anyone. in such a way and regulates all matters relating to misappropriation of State Finances to civil servants who receive money with malicious intent are also regulated in this Law.

In the end, the legislators agreed to include gratification as one of the criminal acts of corruption in Law no. 20 of 2001 where the law amends and complements Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. In Law no. 31 of 1999, there is no regulation regarding gratification. So, gratification is a gift in a broad sense which includes the provision of money, goods, rebates (*discounts*), commissions, interest-free loans, travel tickets, tourist travel lodging facilities and other facilities, both received at home and abroad and carried out using other facilities. electronic or non-electronic.

## **II. RESEARCH METHODS**

This research uses normative legal research methods or normative juridical research, namely by collecting data through library *research*. Normative legal research is also known as doctrinal legal research because this research is carried out or aimed only at written regulations and other legal materials.

This legal research is also referred to as library research or document study because this research is mostly carried out on secondary data in the library. Such literature research can also be said to be the opposite of empirical research (field research). The method of answering the problems in this research is normative legal research. Normative legal research is conducted in the writing of a dissertation by examining legal literature materials related to the enforcement of criminal law against the criminal act of corruption gratification.

## **III. DISCUSSION**

### **Limitations on Gratification**

Law concerning the Corruption Eradication Commission as referred to in Article 12C paragraph (4) currently exists, namely Law no. 30 of 2002 concerning the Corruption Eradication Commission which came into force on 27 December 2002. Article 12 C paragraph (4) stipulates that the law on the corruption eradication commission regulates:

- a. Procedures for submitting reports from Civil Servants or State Administrators to the commission for the eradication of criminal acts of corruption regarding the receipt of gratuities;
- b. Determination of the status of gratification by the corruption eradication commission, whether the gratuity received by a civil servant or state administrator will be determined to be the property of a civil servant or a state administrator who receives it or becomes the property of the state.

Regarding the procedure for submitting the report and determining the status of the gratification, it is further regulated in Article 16 to Article 18 of Law no. 30 of 2002. From the provisions contained in Article 12C paragraph (1), it can be seen that not every gratification received by a civil servant or state administrator is always a criminal act of corruption regarding gratification.

If a civil servant or state administrator has reported the gratuity he received to the KPK, the civil servant or state administrator cannot be said to have committed a criminal act of corruption regarding gratification, but on the contrary, if the civil servant or state administrator does not report the gratification he received, the civil servant or state administrator it can be said to have committed a criminal act of corruption regarding gratification.<sup>[8]</sup> Or in other words, receiving a new gratuity is a criminal act of corruption, if a civil servant or state administrator does not report the gratuity he has received to the KPK. So, whether a Civil Servant or State Administrator can be said to have committed a criminal act of corruption regarding gratification is highly dependent on whether the Civil Servant or State Administrator has reported or not the receipt of the gratuity he has received to the KPK. Because the provisions contained in Article 12C paragraph (1) only mention Article 12B paragraph (1), then what is meant by gratification in that provision is either gratuities whose value is Rp. 10,000,000.00 (ten million rupiahs) or more as referred to in Article 12B paragraph 1 letter an as well as gratuities whose value is less than Rp. 10,000,000.00 (ten million rupiah) as referred to in Article 12B paragraph (1) letter b. This criminal act of gratification of corruption is a new crime, which was not regulated in the old law. However, regarding the inclusion of the reasons for eliminating criminal prosecution in the form of reporting receipt of gratuities by civil servants who receive gratuities to the Corruption Eradication Commission according to Article 12C paragraph (1), apparently imitating the provisions of Article 1 paragraph (1) letters d and e of Law no. 3 of 1971, reads: (d). any person who gives a gift or promise to a civil servant as referred to in Article 2 by remembering something of the power or authority attached to his position or position or by the giver of the gift or promise is considered attached to that position or position. (e). whoever without a reasonable reason in the shortest possible time after receiving a gift or being given to him as mentioned in Articles: 418, 419, and 420 of the Criminal Code do not report the gift or promise to the authorities.

The only difference is that according to Article 1 paragraph (1) letter d of Law no. 3 of 1971, the place to report is determined by the authorities, meaning the police. However, according to Article 12C paragraph (1), it is the Corruption Eradication Commission (KPK). Another difference is that the submission of the gratification acceptance report according to Article 12 C paragraph (2) is given a grace period of no later than 30 (thirty) working days from the date of receiving the gratification. Meanwhile, Article 1 paragraph (1) letter d of Law no. 3 of 1971 does not mention a certain grace period, only mentions "in the shortest possible time". **Article 12 C** of Law no. 20 of 2001 concerning the Eradication of Corruption Crimes.

1. The provisions as referred to in Article 12B paragraph 1 do not apply if the recipient reports the gratification 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 of receiving the report. obliged to stipulate that gratuities can belong to the recipient or belong to the state.
3. The Corruption Eradication Commission within a period of no later than 30 (thirty) working days from the date of receipt of the report shall determine that the gratuity may become the property of the recipient or the property of the state.
4. Provisions regarding the procedure for submitting the report as referred to in paragraph 2 and determining the status of gratification as referred to in paragraph 3 are regulated in the Law on the Eradication of Criminal Acts of Corruption.

#### **Procedure for Reporting and Determination of Gratification Status**

Every civil servant or state administrator who receives gratification is required to report to the Corruption Eradication Commission, with the following procedures:

- a. The report is submitted in writing by filling out the form as determined by the Corruption Eradication Commission by attaching documents related to gratification.
- b. The form as referred to in letter a shall at least contain:
  1. Full name and address of recipient and giver of gratification;
  2. Position of a civil servant or state administrator;
  3. Place and time of receipt of gratification;
  4. Description of the type of gratuity received; and

5. Gratuity value received.

#### **Article 17**

1. The Corruption Eradication Commission within a maximum period of 30 (thirty) working days from the date of receipt of the report must determine the status of ownership of the gratification accompanied by considerations.
2. In determining the status of ownership of the gratification as referred to in paragraph 1, the Corruption Eradication Commission may summon the recipient of the gratification to provide information regarding the receipt of the gratification.
3. The status of ownership of gratification as referred to in paragraph 1 is determined by a decision of the Chairperson of the Corruption Eradication Commission.
4. The decision of the leadership of the Corruption Eradication Commission as referred to in paragraph 3 may be in the form of determining the status of gratification ownership for the recipient of gratification or becoming state property.
5. The Corruption Eradication Commission is obliged to submit a decision on the status of ownership of gratification as referred to in paragraph 4 to the recipient of the gratification no later than 7 (seven) working days from the date of stipulation.
6. The delivery of gratuities belonging to the state to the Minister of Finance shall be carried out no later than 7 (seven) working days from the date of stipulation.

#### **Article 18**

The Corruption Eradication Commission is obligated to announce gratuities that are determined to be state property at least 1 (one) time a year in the State Gazette. According to the provisions of Article 12C paragraph (1) jo (2), the provisions referred to in Article 12B paragraph (1) do not apply, if the recipient reports the gratification he has received to the KPK within 30 (thirty) working days from receiving the gratuity. Does it mean that Article 12B paragraph (1) does not apply? Is it the same as not being a crime? Or the reason for the waiver of a criminal?

Based on a systematic interpretation, it seems that the sentence "Article 12B paragraph (1) is not applicable" means that it does not apply as a crime, because what is meant is Article 12B paragraph (1) does not apply. Article 12B paragraph (1) is regarding the crime of bribery receiving gratification. Therefore it can be interpreted that if a report is made, it is not a crime of bribery to receive gratification, but from a logical point of view, that opinion is certainly not true, because if the gift (gratification) has been received the crime of corruption has occurred. If the criminal act has been completed perfectly, it is impossible to become a non-criminal act because it then reports to the KPK.

Is this provision regarding reporting receipt of gratuities a reason for the abolition of the crime? It May not either. Why? Because the reason for eliminating the crime which in legal doctrine consists of excuses and justifications, both inside and outside the law, is formed by things that already existed and took effect at the time the act was committed. and or part of the inner state of the maker, which must have existed at the time the action was done, and not after the action was done. Meanwhile, the act of a civil servant receiving a gratuity "reporting the receipt of gratification" to the KPK is after the act has occurred, or long after the act has occurred, possibly in the 30 (thirty) working days. Therefore, from this point of view, the act of reporting the receipt of gratuities cannot be considered a reason for eliminating the crime.

If so, can it be considered as an element that nullifies a criminal act as stated in Article 12C paragraph (1)? Similarly, such an assumption is also incorrect. Yes, then the crime that has occurred has turned into a non-crime?

Then, can the act of reporting the receipt of gratuities to the KPK be considered as the basis for eliminating the unlawful nature of the act of receiving gratification as there are 3 reasons (in the legal considerations of Supreme Court Decision No. 42K/Kr/1965: 8-1-1966), namely the state does not disadvantaged, the community is served and the maker is not benefited which can remove the unlawful nature of the act in a criminal act of corruption? If you see the legal findings through the Supreme Court decision like that, some may consider the act of reporting the receipt of gratuities to the KPK as the basis for eliminating the unlawful nature of the act. However, this opinion is also weak considering that the criminal act has already occurred. Is it possible that a criminal act has occurred and then by reporting, the nature of being against the law will be nullified by the act of reporting it? already formed after the crime is committed, not formed after the crime is committed.

Indeed, it is understandable that the intent of the legislators by making such provisions is in the context of moral education of the nation, especially for civil servants and state administrators towards commendable morals, in addition to providing legal certainty regarding the halalness of the property of the object of the

gratification, even though the intended purpose is to provide legal certainty. the latter also does not have a strong juridical basis.

Why not have a strong juridical basis? If we examine the sound of Article 16 to Article 18 Chapter III of Law no. 30 of 2002 concerning the Corruption Eradication Commission (KPK), which does not explain how the decision-making procedure is, even though this law also regulates the Corruption Court, but the decision on the gratification is not made through a court trial, but only through a decision mere KPK leadership (Article 17 paragraph 4).

Meanwhile, according to law, the institution authorized to determine an action in case of acceptance of gratification as legal and unlawful should be a judicial institution, not another institution such as the KPK. According to Drs. Adami Chazawi, SH: "I feel that the report on the gratuity received by the civil servant is better considered as a reason for waiving the prosecution (*vervolgingsuitsluitingsgronden*).

So if you have reported it, it will still be submitted to the court. The police who carry out the investigation and the prosecutor who submits to the court can be justified. If it is proven that there has been such a report, and the report was made voluntarily and is still made within a grace period of 30 working days from its receipt, the judge will issue a decision stating the release of the lawsuit (*ontslag van alle rechtsvervolging*). If the legal advisor submits an exception, the judge in the interim decision stipulates that the prosecutor has no authority to prosecute a crime." Besides having to be considered as a reason for eliminating criminal prosecution, the reporting requirements for civil servants who receive gratuities are aimed at 3 (three) things, namely:

1. Not to punish civil servants who voluntarily report receiving gratuities. Reporting can be assessed as awareness for civil servants, to be honest, uphold morals and uphold the degree and dignity and oath of office by civil servants or state administrators as implementers of public services.
2. Aims at moral education for civil servants or state administrators. Within 30 working days, it is sufficient time for civil servants to reflect with their hearts, and think with their minds about the prohibition of receiving a gratuity.
3. It is intended to determine whether the receipt of gratification belongs to the state or belongs to the civil servant who receives the gratification (Article 12C paragraph 3).

Presumably, the provisions of Article 12 C paragraph (3) do not apply to all receipts of gratuities. Seeing that the purpose of reporting to the KPK is to determine whether gratuities become state property or private property of civil servants or state administrators who receive gratuities, because of their nature, not all receipts of gratification can be considered and determined to be private property or state property as ordered by Article 12C. lodging, medical services, and the like, because of their nature, it is impossible to consider and decide whether to become state property or private property. So, it only applies to receiving gratuities in the form of goods.

From the provisions of Article 12 paragraph (3), which allows a civil servant who receives gratification to become the legal owner of what he receives, it does not mean that his act of accepting it can then be declared a lawful act if materially it has complied with Article 12 B. 12C is admittedly very useful in terms of receiving gratuities that do not meet the elements of a passive bribery crime. This article is indeed aimed at acceptance by civil servants which is not clear when viewed from other articles concerning passive bribery. The unclear elements in particular are:

1. The element of receiving gratification is whether related or not related to his position; and
2. Whether the recruitment of civil servants is contrary or not to their obligations and or duties.

However, for revenues that have fulfilled the elements specified in the law, this provision can hinder efforts to eradicate or overcome corruption in our country. As it is known that this criminal act of corruption is in the form of a criminal act that takes place or occurs immediately, not including a criminal act that takes place continuously such as kidnapping (Article 333 of the Criminal Code), although corruption is often carried out for a long time continuously, both in the form of concurrent actions, or continuing action (*voortgezete handling*).

The occurrence of a criminal act of accepting bribes (passive bribery) is when the act of receiving has been completed, meaning that the object of corruption has been received, and is in full and absolute control. prosecuted or convicted. It is impossible to bring it to court, even more so when the Corruption Eradication Commission (KPK) declared that the gift was lawful and belonged to the civil servant who received the gratuity.

The grace period of 30 (thirty) working days is not a short time for the civil servant concerned who has used the gift in such a way, which means that the use is also unlawful, and in the end, he is not brought to court because on the thirtieth working day report to the Corruption Eradication Commission.

So, the provisions regarding the reporting of criminal acts of bribery gratification should not be treated in general terms, considering that gratification is very broad in meaning. What it means should not be treated in a general way, is that every report by the Corruption Eradication Commission is not used as an excuse by Investigating officials not to carry out an investigation, or not to process the receipt case.

The KPK in determining the gratuity as the property of the recipient or the property of the state cannot be considered a judge's decision. And indeed from a juridical perspective, the investigation does not stop or the right to investigate is not nullified because the maker has reported it to the KPK. In Law no. 30 of 2002 concerning the Eradication of Criminal Acts of Corruption, no provision prohibits investigators from conducting investigations if a civil servant or state administrator has reported receipt of gratuities, or prohibits stopping an ongoing investigation if receipt of gratification is reported to the Corruption Eradication Commission by the recipient. Likewise, those who will determine whether the civil servant receives the gift, whether there is a reason for omitting a prosecution or a reason for eliminating a crime, naturally determine not the KPK institution, but the judiciary or the court of corruption as referred to in Article 53.

According to Drs. Adami Chazawi, SH, there is a weak point, namely the KPK's decision that states the money is halal, while the court's decision declares it haram. However, the question of this weakness is answered, that there is only one truth, not two or three. one of them is not the truth. The truth that has been released by the Corruption Eradication Commission in terms of criminal law is a pseudo-truth because, from a criminal law standpoint, the judicial truth is in the judiciary through its final decision. However, the KPK's decision can also be used as the basis for an appeal, cassation or judicial review, which will be taken into consideration by the examining judge at the level of the legal effort. If the final decision cannot be challenged with any legal remedy, it is still contradictory, then the court's decision should be chosen, and not the KPK's decision.

So it is said that the provisions of Article 12C can hinder efforts to eradicate corruption, because a dishonest civil servant can use an excuse/base as an excuse to take refuge, which in the end he is not punished, if the corruption crime of accepting bribes has occurred perfectly.

#### **IV. Conclusion The**

the essence of the gratification arrangement is the effort made by using a scientific approach in finding the truth about the enforcement of norms based on the gratification arrangement as one of the corruption crimes in Law no. 20 of 2001 is to remember that in Indonesia the culture of giving has long developed and has become one of the characteristics of the Indonesian state. Giving a gift as an act or act of someone who gives something (money or objects) to another person of course is allowed.

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