

# Review Juridical Gratification as One of the Follow Offense Corruption in Perspective Criminal Law Indonesia

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## Abstract

It was necessary to remember gratification has a tremendous impact, as an act of beginning or entrance to commit acts of corruption are more systemic and hurt the country in greater numbers. norms governing the criminalization of acts of gratification as set forth in Article 12B of Law on Corruption Eradication, should be strengthened. Strengthening the norm gratification is done with the elimination of fuzzy norms and conflicting norms, as set forth in Article 5, paragraph 2, Article 11, and Article 12 C of Law on Corruption Eradication, current.

**Keywords:** Gratification, Corruption.

## 1. Introduction.

Eradication of corruption is now more loudly, the crime of corruption in Indonesia even more massively regenerate. News of the arrests and punishment of perpetrators of corruption that adorn the media almost every day, as if it never able to deter others from committing the same act.

When the integrity factor of a reference nations of the world to move forward, in Indonesia just the opposite. Crime rampant corruption on a massive scale. During the years 2004-2011, there were 1,408 cases of corruption which robbing the people's money as much as Rp 39.3 trillion. It is evidence of a bad corruption in indonesia.<sup>1</sup>

The corruption case has caused structural impoverishment, horizontal conflict, and ultimately lead to a crisis role of the state. State losses of Rp 39.3 trillion. Budget for it can be to build, for example, 393,000 homes or provide capital assistance for 3.9 million youths.<sup>2</sup>

Meanwhile, corruption in the region is also increasingly common. The target is the Regional Budget (*APBD*). The results of the Commission investigation showed, the *Regional Budget* was targeted corruption by some officials of local governments and legislators. It involves political and financial.<sup>3</sup>

Ministry of Interior recorded during October 2004 to July 2012, there are thousands of local officials involved in corruption cases. Throughout 2004 and 2015, there are 277 government officials, consisting of the Governor, the Mayor, or regents involved in corruption cases. That's just the regional head only, not including subordinates. Every case involving the head area would also involved his subordinates, at least five subordinates certainly are involved the same case. If calculated to subordinate the head region, the officials involved in corruption could reach the 1,500-person.<sup>4</sup>

In the meantime, international pollsters are in Berlin, Germany, *Transparency International* (TI), released the results of a survey the cleanliness of the countries in the world based on the level of corruption. In 2015, Indonesia was ranked 118 out of 176 countries. That means far from free of corruption. Even if traced from the bottom, Indonesia got the 58th position in the world's most corrupt countries.<sup>5</sup>

Meanwhile, in the Asia Pacific region, Indonesia's position is more dire. Based on the survey results of *Political & Economic Risk Consultancy* (PERC), which is based in Hong Kong, Indonesia became the most corrupt countries of sixteen (16) countries in the Asia Pacific region. With such a position, in the eyes of the world Indonesia was aligned with the new countries, which to this day is still problematic in terms of warfare. This is the severity of the impact of corruption in Indonesia.<sup>6</sup>

Gratification is the provision in a broad sense including money, items, rebate (discount), commissions, interest-free loans, travel tickets, lodging, tours, free medical treatment, and other amenities. Gratuities are well

<sup>1</sup><http://nasional.kompas.com/read/2016/07/04/06154374/Koruptor.Rampok.Rp.39.3.Triliun.utm.source>. Accessed on July 4, 2016.

<sup>2</sup><http://nasional.kompas.com/read/2016/07/04/06154374/Koruptor.Rampok.Rp.39.3.Triliun.utm.source>. Accessed on July 4, 2016.

<sup>3</sup><http://nasional.kompas.com/read/2016/07/04/06154374/Koruptor.Rampok.Rp.39.3.Triliun.utm.source>. Accessed on July 4, 2016.

<sup>4</sup><http://www.tempo.co/read/news/2016/07/04/078426251/Ribuan-Pejabat-Daerah-Terlibat-Kasus-Korupsi>. Accessed on July 4, 2016.

<sup>5</sup><http://news.liputan6.com/read/464605/peringkat-118-Ri-Jauh-Dari-Bersih-Korupsi>. Accessed on July 4, 2016.

<sup>6</sup>PERC survey : Indonesia became the most corrupt countries in the Asia Pacific region, <http://nasional.kompas.com/read/2012/02/22/15413395>. Accessed on July 4, 2016.

received in the country and abroad and carried out by using electronic means or without electronic means.<sup>1</sup>

Related to the above, the United Nations Convention against Corruption (*United Nations Convention against Corruption / UNCAC*), insists that:

*The States Parties to this Convention, Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.*

In the perspective of the Indonesian criminal code, the crime of corruption regulated in Law Number 31 of 1999 on Corruption Eradication, as amended by Act No. 20 of 2001 on the Amendment of Act No. 31 of 1999 on Corruption Eradication, The provisions concerning "reversed evidence" should be added to the Law on Corruption Eradication as provisions that are "premium remedium" and it also contains properties of prevention specific to civil servants referred to in Article 1 paragraph (2), or to the State administrators were clean and free from Corruption, Collusion and Nepotism, not to commit criminal acts of corruption.

Provisions expansion regarding the sourcing of legal evidence in the form of instructions, formulated that the "guidance" apart from information obtained from witness statements, letters, and statements of the defendant but also of other evidence in the form of information uttered, sent, received, or stored electronics with optical devices or similar to it but not limited to the data link electronics, e-mail, telegram, telex, facsimile, and from documents, namely any recorded data or information that can be seen, read or heard that may be issued with or without the help of a facility, either on paper or any physical material other than paper, or recorded electronically in the form of text, sound, pictures, map designs, photographs, letters, signs, figures or perforations that have meaning.

As for the meaning of gratification, described in the Explanation of the Law on Corruption Eradication, that "what is meant by" gratification "in this paragraph is the provision in a broad sense, including money, items, rebate (discount), commissions, interest-free loans, travel tickets, lodging, tours, free medical treatment, and other amenities. Gratuities are well received at home and abroad and carried out by using electronic means or without electronic means". Observing the provisions regarding the crime of graft over, pulled the sense that the act of gratification as regulated in Article 12 B of Law on Corruption Eradication, is a form of new criminal offenses, which is sharpening or special formulation of one form of corruption before the acts of bribery.

## 2. Results And Discussion

### a. Regarding the criminal offense setting Gratification In Corruption According to the Criminal Law Indonesia.

Prior to discussion on the crime of gratification, it should be noted in advance the sense of gratification. Gratification in English is Gratification thus giving happiness and satisfaction. Gratification in legal terminology is every gift or prize in a broad sense including money, items, travel tickets, sundries other facilities granted because anything to do with the position, power and authority in the possession of a person to do or not to do anything. Gratification is an act that may present a misuse and abuse of power because there is the lure Award.<sup>2</sup>

Meanwhile, according to Andi Hamzah, gratification is a gift, reward, or a gift by a person who received the service or profits, or by people who have or are dealing with a public institution or a government, for example to get a contract. Gratification reporting includes reporting to the administration (in a broad sense) which includes giving money, items, rebate (discount), commissions, interest-free loans, travel tickets traveling, free medical treatment, and other amenities. Gratification includes well received within and outside the country and carried out by using electronic means and without electronic means.<sup>3</sup>

Practice of gratification grow and evolve with the culture that justifies giving gifts to state officials, as a form of gratitude for doing something or not doing something related to his post. To provide an understanding and keep the country free from the organizers of the crime of graft, the Corruption Eradication Commission (KPK) issued guidance on everything related to the gratification, the Letter of KPK No. B.143 / 01-13 / 01 / 2013 dated January 21, 2013 Related appeal case Gratification.

Furthermore, the Circular Letter of KPK No. B.143 / 01-13 / 01/2013 dated January 21, 2013 Related Gratification appeal it was stated that not all gratification should be reported to the KPK. Here are gratification that are not to be reported to the KPK :

- 1). Retrieved from direct gifts / sweepstakes, discounts / rebates, vouchers, reward points, or souvenir of general application and is not associated with official;

<sup>1</sup>Tjandra Sridjaja Pradjonggo, *The nature of the Law Against Corruption*, Publisher Indonesia Lawyer Club, 2010, Pg. 1.

<sup>2</sup>Daniel Kaufmann, "Governance and Corruption: New Empirical Frontier For Program a Design", T. Mulya Lubis, "Anti-Corruption Law Reform", Paper Presented at the Conference Towards a Corruption-Free Indonesia, Depok, 18 September 1998.

<sup>3</sup>Andi Hamzah, *Corruption in Indonesia Problems and Solutions*, Gramedia, Jakarta, 1991, Pg. 216.

- 2). Obtained for academic or non-academic achievements (championships / competition / competition) at their own expense and not associated with official;
- 3). Retrieved from profit / interest from the placement of funds, investments or private ownership of general application and is not associated with official;
- 4). Retrieved from compensation for professions outside the office, which is not related to the duties of a public servant or State administrators, do not violate the conflict of interest and code of ethics of employees, and written permission from the immediate supervisor;
- 5). Retrieved from family relationship in direct lineage to two degrees or in the line of descent to the side of the degrees all has no conflict of interest with gratification receiver;
- 6). Retrieved from a family relationship by marriage in direct lineage in one degree or lineage to one degree along side has no conflict of interest with gratification receiver;
- 7). Retrieved from those who have family ties as the letters f and g associated with the gift of marriage, circumcision of children, birthday, activities of religious / customs / traditions and is open from parties who have conflicts of interest with gratification receiver;
- 8). Retrieved from other parties associated with calamity or disaster, and not of the parties who have a conflict of interest with gratification receiver;
- 9). Retrieved from kedianasan official activities such as meetings, seminars, workshops, conferences, training, or other such activities that apply generally in the form of seminar kits, certificates and plaques / souvenirs; and
- 10). Retrieved from official event in the form of meal / grain / banquet in the form of food and drink generally accepted.

Furthermore, juridically in the perspective of the Indonesian criminal code, the crime of graft stipulated in the Law on Corruption Eradication. In the Act referred to, in essence, that the offenses outlined gratification is part or any form of corruption. The notion of gratification, described in the Company Law on Corruption Eradication, that is the gratification is the provision in a broad sense, including money, goods, rebate (discount), commissions, interest-free loans, travel tickets, lodging , travel, free medical treatment, and other amenities. Gratuities are well received at home and abroad and carried out by using electronic means or without electronic means. Gratuities criminal offense provided for in Article 12 B of Law on Corruption Eradication, which is more outlined that:

Article 12 B

- (1) Every gratification to an official or state officials considered bribery, as they relate to the position and contrary to the obligation or duty, to the following provisions:
  - a. which is worth Rp. 10,000,000.00 (ten million) or more, proving that the gratification is not a bribe done by gratification receiver;
  - b. of less than Rp. 10,000,000.00 (ten million), proving that such gratification bribery carried out by the public prosecutor.
- (2) Criminal for civil servants or state officials 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 fined at least Rp. 200,000,000.00 (two hundred million) and Rp. 1,000,000,000.00 (one billion).

Legally Historically, criminal gratification initially arranged in the Code of Penal (Penal Code). Within the umbrella of national criminal law Dutch colonial legacy that, the crime of gratification derived from the crime of bribery (*omkoping*) that exist within the Criminal Code, where the Criminal Code itself distinguishes two (2) groups in the crime of bribery, namely the crime of accepting bribes and criminal offenses to give bribe.

The first group is called the active bribery (*actieve omkoping*), legal subject is a bribe giver. Loaded and become part of the public authorities of crimes contained in Chapter VIII of Book II, Article 209 and Article 210 Penal Code. The second group is called passive bribery (*passive omkoping*), legal subject dalah civil servants who accept bribes. Loaded and become part of malversation as set forth in Chapter XVIII Book II, namely Article 418, Article 419, and Article 420 Criminal Procedure Code.

To understand the meaning of the crime of graft and arrangement of gratification in the Law on Corruption Eradication, pulled the sense that the act gratification, is a form of new criminal offenses, which is sharpening or special formulation of one form of corruption earlier, the act of bribery , Legally Historically, criminal gratification initially arranged in the Code of Penal (Penal Code). Within the umbrella of national criminal law Dutch colonial legacy that, the crime of gratification derived from the crime of bribery (*omkoping*) that exist within the Criminal Code, where the Criminal Code itself distinguishes two (2) groups in the crime of bribery, namely the crime of accepting bribes and criminal offenses to give bribe.

Referring to the statutory provisions governing criminal acts of bribery and gratification above, we could conclude that the formulation of the provisions of the act of bribery in the Law on Corruption Eradication is the sharpening of the formulation of bribery in the Criminal Code. While provisions of the act of gratification contained in the Act No. 20 of 2001 on the Amendment of Act No. 31 of 1999 on Corruption Eradication, a

sharpening and / or branching of the provisions governing bribery in the Act number 31 Year 1999 on Eradication of Corruption.

#### **b. Implementation of Criminal offense Gratification.**

With special formulation which acts giving to state officials more specifically in the act gratification, can be perceived clearly how the state through the Law on Corruption Eradication, eagerly anticipate the birth of a new mode for acts of corruption.

In the midst of tighter oversight of corruption crimes, the offender will further increase its ability to disguise acts of corruption, one of them by giving gratification, previously not perceived as a criminal act. In addition, the public mindset that justifies the tradition of gift giving, lack of moral commitment to officials, boost economic factors bureaucracy as revenue less viable, it is possible to onset widespread practice of gratification. Therefore, after the gratification arranged in different chapters with bribery and stands as the act itself, the gift-giving habits that has lasted longer in the community otherwise prohibited.

Normatively, the application of Article 12B paragraph (1) of the Law on Corruption Eradication, which stated clearly and unequivocally that any gratification to an official or state officials considered bribery, as they relate to the position and contrary to the obligations of these duties, are expected to be capable of being an effective legal means to deter the offender to give or receive something that meets offense gratification, as the embryo erosion of state finances.

On the other side, the formulation of the offense gratification as a form of corruption, are the best proof of the desire of countries to further strengthen law enforcement against corruption, such that no perpetrators of acts detrimental to the finances of the state in all its forms, which can escape the Law OF Eradication of Corruption. However, despite the normative raised hopes of Article 12B potentially facing obstacles in its application in the field. After looking at the criminal provisions in the Law on Corruption Eradication, especially the criminal provisions relating to acts gratification and bribes, obtained by the fact that there are two (2) things that could potentially weaken the application of Article 12B of Law on Corruption Eradication, the first , the existence of a number of new provisions in the Law on Corruption Eradication, which regulates criminal acts with criminal elements that are similar to the criminal provisions of Article 12B gratification. Secondly, the provisions of Article 12C which is contrary to the provisions of Article 12B.

#### **c. Criminal offense Concepts Gratification Should be Better regulated under the Law on Corruption Eradication**

Prior to the discussion of the conception of criminal offense gratification should be regulated in the Law on Corruption Eradication in the future, it would need to put forward in advance the impact of the criminal act of gratification to the performance of eradication of corruption crimes.

According to the KPK gratification module, if the gratuity is the embryo of a bribe, the bribe is the fetus of corruption. That is, if the gratification failed prevented constitute the offense of bribery, then this will have implications for the vulnerability of success of the prevention of corruption. If the gratuity is already difficult to control and turn into a bribe, then the criminal offense of bribery will continue to advance and grow, no longer in order to give, but it will be the efforts of making the country's wealth unlawfully.<sup>1</sup>

At this level of corruption began to be born. Briefly, chronological onset of graft, bribery, and finally corruption, can be described as follows: gratification - bribery - corruption. One thing to remember is that the embryo gratification of all forms of crime related to the power, position, the economy, the country's wealth, and many others.<sup>2</sup>

Someone who is already accustomed to giving and receiving gratification, then he will get used to bribe and be bribed. If a regular already bribed and bribed, then he will not hesitate to commit criminal acts of corruption. So be careful with gratuities, donations, and other administration, because it can lead to jail.<sup>3</sup>

Based on the above, the sense that the gratification is the entrance to the embryo or corruption. Gratuity is not just a culture of giving gifts as a token of gratitude, but a forerunner of the ongoing effort by the country's financial meggerogoti state officials. Allowing the practice of gratuities, the same breed bribery and corruption. Therefore, in the midst of the fight against corruption, the strengthening of the provisions governing the criminal act of gratification in the Law on Corruption Eradication, are urgently required.

As mentioned earlier, the actual provisions of Article 12 B of Law on Corruption Eradication already contains the norms clear and unequivocal about his criminal deeds gratification. But the clear norms and the unequivocal, became blurred because the elements of the crime of graft in article 12 B, also contained in other articles, namely Article 5, paragraph 2 and Article 11, a penalty that is much lower. In addition, there is a chapter called Article 12 C, weakens the rule of law against corruption, because of the article contains a provision that decriminalizing and give impunity to the recipient gratification report within 30 days, so that was obviously

<sup>1</sup><http://kpk.go.id/gratifikasi/index.php/grat-berita/149-gratifikasi>

<sup>2</sup><http://kpk.go.id/gratifikasi/index.php/grat-berita/149-gratifikasi>

<sup>3</sup> <http://kpk.go.id/gratifikasi/index.php/grat-berita/149-gratifikasi>



contrary to the purpose of Article 12 B which criminalizes the act of gratification becomes a crime.

The reality of a number of weaknesses in the formulation of regulations concerning criminal acts of gratification, as described above, may be reconstructed conception of criminal law on offenses gratuities as part of corruption, which should be applied in the Law on Corruption Eradication in the future come. Conception proposed is in the form of revision of the provisions concerning the criminal act of gratification in the Law on Corruption Eradication. Norma gratification vague and contradictory in the Law on Corruption Eradication, should be abolished.

Therefore, the provisions of Article 5, paragraph 2 and Article 11 of the Law on Corruption Eradication, which also contains elements of criminal acts of gratification, but a penalty is much lower than Article 12B, recommended to be abolished. Elimination of these two Articles, would make Article 12B became the only provision that may be imposed against perpetrators of criminal acts gratifikasi. Selanjutnya, the provisions of Article 12 C of Law on Corruption Eradication, which gives impunity to the gratification receiver, must also be abolished. There should not hesitance to fully criminalize the act of gratification into an act of corruption, as an extraordinary crime. Deletion of Article 12C, will necessarily strengthen the criminalization of acts of gratification, which in turn, will strengthen the law enforcement interests of justice, legal certainty and legal expediency. This is the same as the opinion of Romli Atmasasmita :

Taking into considerations developments of corruption, both in terms of quantity and in terms of quality, and after studying it in depth, it is no exaggeration to say that corruption in Indonesia is not an ordinary crime but has an extraordinary crime. Furthermore, if examined in terms of the consequences or negative impact very destructive to the lives of people in Indonesia since the New Order government to date, it is clear that the act of corruption is a deprivation of economic and social rights of the people of Indonesia.<sup>1</sup>

If examined from the formulation of crime (*materiele feit*) these provisions give rise to mistakes and ambiguities norm reversal of the burden of proof. In one sense, the reversal of the burden of proof to be applied to the graft recipient pursuant to Article 12B paragraph (1) letter a, which reads, "...yang worth Rp. 10,000,000.00 (ten million) or more, proving that the gratuity is not a bribe done by gratification receiver ", but on the other hand may not be applied to the recipient gratification because of the provisions of article explicitly include editorial, "Any gratification to an official or State administrators considered bribery when dealing with his position and contrary to the obligation or duty", then the formulation of all the core elements of the offense listed in a complete and clear in an article implications juridical the necessity and obligation of the Prosecution to prove the formulation of offense in the relevant chapter. Strictly speaking, the provisions of that article is wrong stacking so that what is to be proved otherwise nonexistent.

Based on the above discussion, it was concluded that the conception of criminal offense gratification should be regulated in the Law on Corruption Eradication is actually making gratification acts as criminal acts of corruption, the criminal threat is high. It was necessary to remember gratification has a tremendous impact, as the act of beginning or entrance to commit an act of corruption more systemic and detrimental to the state in greater numbers. Therefore, the norms concerning the criminalization of acts gratification as set forth in Article 12B Law on Corruption Eradication, must be strengthened. Strengthening norms gratification is done with the removal of the norm vague and conflicting norms, as set forth in Article 5, paragraph 2, Article 11, and Article 12 C of Law on Corruption Eradication.

### 3. Conclusion.

Gratification as part of a corruption under Indonesian criminal law, stipulated in Article 12 B of Law on Corruption Eradication. In the article in question stated clearly and unequivocally that the administration to an official or state officials is a criminal act, if the administration associated with his post and that Berla-wanan obligations or duties.

In the implementation criminal offense of gratification to the Law Corruption is not maximized applied for, the existing norms have not been clear and unequivocal in other words, there is still a vagueness of the norm, becomes blurred because the elements of the crime of gratification in article 12 B, is also contained in Article 5, paragraph 2 and Article 11 to a penalty that is much lower. The blurring of these norms, are potentially weakened the enforcement of the criminal act gratification. In addition, there is also a chapter called Article 12 C, weakens the rule of law against the criminal acts of gratification, because the article contains a provision that is precisely decriminalize the act gratification and give impunity to the gratification recipient.

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<sup>1</sup> Romli Atmasasmita dalam Lilik Mulyadi, *Corruption in Indonesia; Normative, Theoretical, Practical and problem*, Alumni, Bandung, 2007, Pg. 12.

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