

THE URGENCY OF CRIMINAL SANCTIONS RENEWAL FOR CRIMINAL ACTS OF GRATIFICATION IN INDONESIA

I Dewa Gede Dana Sugama

Program of Doctor in Law, Faculty of Law, Universitas Udayana, Denpasar, Bali,
INDONESIA.

dewasugama_s3@yahoo.com

ABSTRACT

This study examines criminal sanctions for criminal acts of gratification in Indonesia. Criminal acts of gratification are regulated in Article 12B of Act Number 20 of 2001 which is an amendment to Act Number 31 year 1999 concerning Eradication of Corruption Crimes. In this Act, public servants or state administrators who accept gratification that are contrary to their obligations or duties can be subject to a life imprisonment or a minimum of 4 years and a maximum of 20 years and a minimum fine of IDR. 200,000,000,- and a maximum of IDR. 1,000,000,000,-.

In this Act, regarding the system of proof of the value of gratification received is regulated. However, criminal sanctions that can be imposed on civil servants or state administrators who accept the gratification that are contrary to their obligations, have not been clearly distinguished, namely between the value of gratification received, the value of Rp. 10,000,000, or more, and the value which is less from IDR 10,000,000. On this matter, a study for a legal renewal so that legal certainty and justice in law enforcement is created must, by all means, be conducted.

Keywords : Criminal Santicns, Criminal Acts of Gratification, Renewal of Law

INTRODUCTION

One of the recent matter that has been highlighted in the renewal of the Act on eradicating criminal acts of corruption is criminal acts of gratification. The term "gratification" is derived from the Dutch "gratikatie" which is adopted in English into "gratification", which means "giving a gift or something". In *Black's Law Dictionary* the notion of gratification is defined as "a voluntarily given reward or recompense for a service or benefit."²⁶

Regarding the gratification is stipulated in Article 12B paragraph (1) of Act Number 20 of 2001 concerning Eradication of Corruption Crimes which prescribes that "every gratification accepted by a civil servant or state administrator is considered as granting bribes if it is in relation to his or her position and contrary to his or her obligations or its duties", under the following conditions:

- a. Gratification with a value of IDR. 10,000,000,- (ten million rupiah) or more, and proving that the gratification is not a bribe is executed by the recipient of gratification;
- b. Gratification whose value is less than Rp 10,000,000 (ten million rupiah), and proving that the gratification is a bribe is executed by the public prosecutor.

The criminal threats that can be imposed according to the provisions in Article 12B paragraph (2) are: criminal sanctions for civil servants or state administrators as referred to in paragraph (1) are imprisonment for life or imprisonment for a minimum of 4 (four) years and a

²⁶ Henry Campbel Black, 1968, Black's Law Dictionary 4th Edition, West Publishing Co, Minnesota, p. 829.

maximum of 20 (twenty) years, and a minimum fine of IDR. 200,000,000.00,- (two hundred million rupiahs) and a maximum of IDR. 1,000,000,000.00,- (one billion rupiah).

Gratification to civil servants is elaborated in the explanation of Article 12B of Act Number 20 Year 2001 which states that "what is meant by gratification in this paragraph is a giving in the broadest sense, which includes giving money, goods, discounts, commissions, loans without interest, travel tickets, lodging facilities, travel, free medical treatment, and other facilities. The gratification includes both which are received at home and abroad, and which are carried out using electronic means or without electronic means."²⁷

Criminal acts of gratification are criminal acts committed by public servants or state administrators relating to their positions and that are contrary to their obligations. Therefore, criminal acts of gratification are included in special delicts or also called *delicta propria*. Special delicts (*delicta propria*) is interpreted as an offense that can only be committed by the parties who have certain qualities, such as position offenses, military offenses, and so on.²⁸

In essence, the Article 12B of the Corruption Act regulates the criminal acts of gratification acceptance committed by civil servants or state administrators, especially those relating to their positions or authorities which are in the form of gifts or promises. Legislators determine how to prove the number of gratification received. However, the legislators do not distinguish between criminal sanctions that can be imposed on the recipients of the gratification, that is between the value of gratification received which are less than IDR. 10,000,000,- and the value of which are more than IDR. 10,000,000,-.

Formulation of Problem

Grounded by the elucidation above, the following issue arises:

1. What are the threats of criminal sanctions against criminal acts of gratification in the perspective of *ius constituendum* in Indonesia?

Method

The design of this study makes use of a type of normative legal research. In this legal research the law is often conceptualized as what is written in legislation (law in books). Normative legal research method is a method or technique used in legal research by examining existing library materials.²⁹

The approach used in this study is the *statute approach*. This approach is carried out by examining all laws and regulations relating to the problems (legal issues) that are being examined.³⁰

DISCUSSION

A. Elements of Criminal Acts of Gratification

Criminal acts of gratification are regulated in the formulation of Article 12B of Corruption Act. To conclude whether an act is a criminal offense of gratification, the following elements shall be met:

²⁷ R. Wiyono, 2005, Pembahasan Undang-Undang Tindak Pidana Korupsi, *Sinar Grafika, Jakarta*, p. 107.

²⁸ Andi Hamzah, 2017, Hukum Pidana Indonesia, *Sinar Grafika, Jakarta Timur*, p. 101.

²⁹ Soerjono Soekanto dan Sri Mamudji, 2009, Penelitian Hukum Normatif Suatu Tinjauan Singkat, *PT Raja Grafindo Persada, Jakarta*, p. 13-14.

³⁰ S. Nasution, 2011, Metode Research (Penelitian Ilmiah) usulan Tesis, Desain Penelitian, Hipotesis, Validitas, Sampling, Populasi, Observasi, Wawancara, Angket, *PT. Bumi Aksara, Jakarta*, p. 16.

1. Civil Servants or State Administrators

As stated in Article 1 number 2 of Act Number 31 of 1999 in conjunction with Law Number 20 of 2001: In this provision, what is meant by Civil Servants includes the following:

- a) The Civil Servants as referred to in the employment law;
- b) The Civil Servants as referred to in the Criminal Code;
- c) The People who receive salaries or wages from a corporation that receives salaries or wages from state or regional finances;
- d) The People who receive salaries or wages from a corporation that receives assistance from state or regional finance;
- e) People who receive salaries or wages from corporations that use capital or facilities from the state or society. From the provisions of Article 1 point 2 of the Act Number 31 of 1999 in conjunction with Number 20 of 2001, it can be concluded that Civil Servants or State Administrators have a very broad definition, namely "Every person who receives a salary or wage from the State Revenue and Expenditure Budget (*Anggaran Pendapatan dan Belanja Negara* or *APBN*), Regional Revenue and Expenditure Budget (*Anggaran Pendapatan dan Belanja Daerah* or *APBD*), from Corporations that receive *APBN*, *APBD* assistance, state or community capital and facilities".

2. Accepting Gratification

In Article 12B paragraph 1, what constitutes a Criminal Act is not about the "Gratification", but concerning the "Acceptance of Gratification". Based on the formulation of the Article, a concept can be grasped that gratification is not a type or qualification of offenses, but an element of offense. The thing that is claimed to be an offense (an act that can be convicted) is not the gratification, but the act of accepting the gratification. Therefore, it cannot be concluded that all who receive gratification can be qualified as criminal acts of corruption. It is because to be considered a criminal act of corruption, several elements formulated by Article 12B Paragraph (1) and Article 12C number 2 and 3 of Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 shall be met.

3. Related to position and contrary to the obligations and duties;

- a) The giving of the gratification is "in relation to the position" of the Civil Servant or State Administrator who accepts it. It can be interpreted that the giver has an interest in the position of the Civil Servant who receives the gratification which later will sooner or later affect the decision making by the Civil Servants or the Officials of the State concerned.
- b) The giving of the gratification is "contrary to the obligations or duties" of the Civil Servant or State Administrator who accepts the gratification. It can be interpreted that all actions or policies undertaken by the Civil Servants or the State Administrators have been affected by the acceptance of gratification.

4. The acceptance of gratification is not reported to the Corruption Eradication Commission (*KPK*) within 30 days of the acceptance of the said gratification.

In the provisions of Article 12 C Paragraph (1) above, it can be understood that not every gratification received by a Civil Servant or State Administrator is always a criminal act of

corruption regarding gratification, especially if the Civil Servant or State Administrator, the recipient of the gratification, has reported to the Corruption Eradication Commission (KPK) within a maximum of 30 working days from the acceptance of the gratification. Within 30 days, the KPK must repute and determine the gratification as an act of bribery or not.

B. Limitation of gratification value in various countries:

No	Country	Limitation	Annotation
1	Hong Kong	USD 386	A gift by close friends in relation to traditional events
		USD 64.3	A gift by close friends in relation to other events
		USD 386	Loan money from close friends
		USD 193	A gift from other parties in relation to customary tradition
		USD 32	A gift from other parties in relation to other events
2	Brazil	USD 193	Money loans and fair parties
		USD 48	This rule applies to Senior Government Officers
3	China	RMB 200 or equivalent to USD 32	This rule applies to employees in foreign public services. While for Domestic Public Services it is forbidden to accept anything
4	Taiwan	TWD 3.000 or equivalent to USD 90	This rule applies to one time of the administration of a government employee when receiving a gift on a social (traditional) event.
		TWD 10.000 or equivalent to USD 300	This rule applies to gifts from the same source within 1 year (for several times).
5	Thailand	THB 3.000 or equivalent to USD 90	This rule applies to gifts from people other than relatives / family
6	Vietnam	VND 500.000 or equivalent to USD 25	This rule applies to all governmental employees.
7	US	USD 20	This rule applies to 1 time giving to government employees.
		USD 50	This rule applies to the accumulation of gifts to governmental employees from the same source within 1 year
8	New Zealand	NZD 500 or equivalent to USD 415	This rule applies to ministers for receiving gifts that source not from family
9	Kenya	KES 20.000 or equivalent to USD 232	This rule applies to gifts related to the position of the recipient's job
10	South Africa	ZAR 350 or equivalent to USD 40.70	This rule applies to members of the Senior Management Service.

Source: Pocket book for gratification of the Corruption Eradication Commission (KPK)

Comparing the rules of other countries with Indonesian state regulations, especially regarding gratification, is a step in conducting a study of legal reform. Legal reform is defined as a process of examining various formulations of applicable legal and regulatory provisions, and for them a number of changes are implemented so that efficiency, fairness and also the opportunity to obtain justice according to applicable law can be achieved.

In general, it is understood that the actual legal renewal occurs when the governing bodies of law, namely the judiciary, and the establishment of laws and regulations, which are the government and legislative power bodies that have power or authority in a country, take a number of necessary steps to examine the law and the provisions of the laws and regulations that apply in that country. The hope in doing this is to be able to determine whether the rules and legal principles contained in the laws and regulations in the country have adequately been able to fulfill their respective objectives and in terms of a system, whether or not there gaps in still exist, whether the laws and regulations that apply in the system have certain undesirable consequences, and whether applicable laws and regulations are consistent with international standards that bind the State, for example, including the human rights, and make necessary changes to it.³¹

According to Barda Nawawi Arief, the meaning and nature of renewal of criminal law are as follows:

1. As a part of social policy, the renewal of criminal law is essentially part of efforts to overcome social problems (including humanitarian issues) in order to achieve or support national goals (community welfare).
2. As a part of national policy, the renewal of criminal law is essentially part of efforts to protect the community (especially crime prevention efforts).
3. As a part of law enforcement policies, the renewal of criminal law is essentially part of an effort to renew legal substance in order to make law enforcement more effective.³²

In the renewal of criminal law in Indonesia, the main problem in criminal law, shall first be understood. This is important, because the national criminal law is a reflection of a society that reflects the values that are the basis of that society. If the values change, criminal law shall also change.

CONCLUSION

Article 12B of Act Number 20 Year 2001 which is a change to Act Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption should be renewed by adding the formulation of the limits on the value of gratification that can be accepted by civil servants and state administrators in carrying out their duties and authorities like those that have been made in several other countries. Hence, with the concept of strict gratification value limits in the current Act on Corruption Crime, legal renewal of criminal sanctions for the gratification is expected to better guarantee legal certainty and justice for all parties.

³¹ Teguh Prasetyo, 2017, Pembaharuan Hukum Perspektif Teori Keadilan Bermartabat, *Setara Press, Malang*, p. 5-6.

³² Barda Nawawi Arief, 2010, Bunga Rampai Kebijakan Hukum Pidana, *Prenada Madia Group, Jakarta*, p. 29-30.

REFERENCES

- [1] Black, Henry Campbel (1968). *Black's Law Dictionary 4th Edition*. Minnesota: West Publishing Co,
- [2] Wiyono, R, (2005). *Pembahasan Undang-Undang Tindak Pidana Korupsi*. Jakarta: Sinar Grafika,
- [3] Hamzah, A.(2017). *Hukum Pidana Indonesia*. Jakarta Timur: Sinar Grafika,
- [4] Soekanto, Soerjono, dan Sri Mamudji, (2009). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: PT Raja Grafindo Persada,
- [5] Nasution, S. (2011) *Metode Research (Penelitian Ilmiah) usulan Tesis, Desain Penelitian, Hipotesis, Validitas, Sampling, Populasi, Observasi, Wawancara, Angket*, Jakarta: PT. Bumi Aksara,
- [6] Prasetyo, T.(2017). *Pembaharuan Hukum Perspektif Teori Keadilan Bermartabat*. Malang: Setara Press.
- [7] Arief, B.N.(2010). *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Prenada Madia Group,