



## Sexual Gratification in Indonesia's Criminal Law

Wahidah Azahrah<sup>1\*</sup> Hari Sutra Disemadi<sup>2</sup>, Nyoman Serikat Putra Jaya<sup>3</sup>

<sup>1</sup> Faculty of Law, Indonesia Islamic University, Yogyakarta, Special Province of Yogyakarta, 55584, Indonesia

<sup>2,3</sup> Faculty of Law, University of Diponegoro, Semarang, Central Java, 50275, Indonesia

\* corresponding author: [wahidaazahrah@gmail.com](mailto:wahidaazahrah@gmail.com)

| Article Info  | Abstract   |
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| <p><b>Keywords:</b><br/>Criminal Law; Gratuity Section; Indonesia</p> <p><b>Article History</b><br/>Received: Nov 24, 2019;<br/>Reviewed: Dec 11, 2019;<br/>Accepted: Feb 29, 2020;<br/>Published: Mar 31, 2020.</p> <p><b>DOI:</b><br/>10.22219/ljih.v28i1.10375</p> | <p><i>Corruption in Indonesia is currently increasing and widely modification with any type and terms. The Corruption Crime Act has the term "gratification" as part of a criminal act of corruption. Gratuities are regulated in Article 12B (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. But now a new type of gratification is emerging, sexual gratification. The research method used in this paper is normative research, which is the statutory approach (statue approach), historical approach and the conceptual approach. The specifications of this study include analytical descriptive research, which illustrates the applicable laws and regulations and is related to legal theories and everything related to the topic. Overall regarding sex gratification, there is still a lack of norms, which can be classified into acts of sexual gratification because the Corruption Crime Act does not regulate gratification using sexual services accompanied by sanctions. Moreover, there are no provisions regarding sanctions given to women who provide sexual services.</i></p> |

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### INTRODUCTION

Corruption in Indonesia is currently increasing. Corruption is no longer done individually but also collaboratively so that corruption is considered as something that often happens (Isra & Hiariej, 2009). Corruption is a serious crime so it is categorized as an extraordinary crime because the impact is very large, which is not only detrimental to state finances but also disturbs the stability and security of the community, weakens democratic values, ethics, justice, and legal certainty (Disemadi & Roisah, 2019).

Criminal law which is part of public law is one of the tools used to protect the public or public interest. This the state as a law enforcement tool has a primary role.

This is reinforced by the opinion of Moeljatno which states that criminal law is classified in the public law group, namely regulating the relationship between the state and individuals or regulating the public interest (Moeljatno, 2008).

One of the concerns at the moment in the reform in the Corruption Eradication Act is the term "gratification" as part of corruption (Akbar, 2016). Gratification is an activity of giving something to someone based on the intentions and intentions that have the aim to get benefits for themselves. Besides, this gratification is usually also known as a thank you given to someone for doing something (Akbar, 2016).

Gratuities are regulated in Article 12 B (1) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Eradication of Corruption Crimes. The gratification element is different from the bribery element. Gratuity is often understood as a gift made to law enforcement officials or officials, where the gift can influence the decision or policy to be taken. The gift is made with the main objective to seek benefits, such as economic benefits (Santoso, 2013).

Gratification comes from the Dutch, gratification which was later adapted into English gratification, which means gift. This term then appeared in Anglo Saxon countries and continental Europe. Gratification arises because of the difficulty in proving bribery. Previously gratification was better known as the word gift (gift) (Santoso, 2013).

Along with the development of the times that are increasingly advancing, this gratification is also experiencing development. At present gratuity does not only include giving money and valuables but now a new type of gratification is emerging, sexual gratification. Sexual gratification in question is the use of women who are used as tools or bribes to facilitate the process of a project agreement for someone who has a strategic position.

Until now, Indonesia does not yet have provisions or regulations which explain the problem of bribery and gratification in the form of sex services. The Constitutional Court has received a report on the number of sex gratuities and to date, it has been difficult to reveal. Not only the Constitutional Court but the KPK were also asked to immediately make rules regarding gratification in the form of sexual services (Sari, 2013). In fact, if necessary the rules regarding gratification are made in the form of laws.

Sexual gratification cases began to be discussed frequently when some time ago there were many cases of alleged sexual gratification such as the cases of judges of Setya Budi and Lutfi Hasan which relate to the existence of criminal acts of gratification in the form of receiving gifts in the form of sexual services.

Cases of gratification of sexual services are widely discussed because they have not been able to ensnare perpetrators from giving gifts in the form of sexual services because there is still no clear regulation that states that a sexual service is a form of

gratification, so that it causes legal uncertainty which makes it difficult for law enforcement officials to follow up on gratification cases sexual.

Based on the description above, the formulation of the problems that need to be studied are, first, What is the regulation of gratification in the Corruption Crime Act; and second, is Sex Gratification regulated in the Law on Corruption in Indonesia. Contribution of this research is very important and urgent to give criminal sanctions imposed on perpetrators of sexual gratification. This formulation is urgently needed as an effort to prevent the occurrence of these criminal acts further and can be used to ensnare the perpetrators.

## **METHOD**

The research method used in this paper is normative research, namely the statutory approach (statue approach), the historical approach and the conceptual approach (Disemadi & Jaya, 2019). The types and sources of legal materials used in this study were obtained from library materials (primary legal materials) consisting of statutory regulations, specifically Law No. 31 of 1999 concerning Amendment to Law No. 20 of 2001 concerning the Eradication of Corruption and other relevant laws, literature books, papers from seminars, journals, newspapers, internet. The specifications of this study include analytical descriptive research, which illustrates the applicable laws and regulations and is related to legal theories and everything related to criminal law policy on the eradication of criminal acts of corruption in the form of gratification.

## **RESULTS AND DISCUSSION**

### **Arrangement of Gratification in Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption.**

Gratuities are regulated in Article 12 B of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption in which the definition of gratification is: "Any gratuity to a civil servant or a state official is considered giving a bribe, when it relates to his position and which is contrary to his obligations or duties." From the article above it can be understood that gratification is giving something in the form of money or goods which are gifts for a specific purpose given to civil servants or state administrators who have positions, where the gift has an influence on decisions made by employees or state administrators who have positions and those decisions benefit the giver of money or goods.

Article 12 B paragraphs (1) of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption, "gratification" is not a qualification of a criminal act of corruption regarding gratification, but only an element of a criminal act of corruption regarding gratification. In developed countries, gratuities to these officials are strictly prohibited and the perpetrators are

given severe sanctions because they will affect the officials in carrying out their duties and decision-making which can cause imbalances in public services. However Article 12 C of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption has in fact provided an exception regarding the offense of gratuity itself, which emphasizes that: The provisions of each gratuity are considered to be bribery not valid, if the recipient reports the gratification received to the Corruption Eradication Commission (Syafira, 2015).

Gratuity is different from a gift even though both are equally gifts. The prize is given not because there is an intention or interest to obtain certain decisions that benefit the gift giver. Gratuity is a gift in which the purpose of the gift is to obtain a certain benefit through a decision made by the recipient of gratuity. A gratuity is a form of corruption that often occurs in bureaucracy by state employees and administrators. What often happens in people's lives is giving thanks in the form of money or valuables, where the gift is based on services that have been provided by civil servants or state officials who have positions, so according to Robert Klitgaard who states that: "The main cause the crime of corruption is the gift-giving which is already a custom"(Kristian & Gunawan, 2015).

Civil servants referred to in Article 1 paragraph (2) of Law Number 31 of 1999, namely (Lalu, 2019) :

- a. civil servants as stated in the Law on Personnel.
- b. civil servants as referred to in the Indonesian Criminal Code.
- c. people who receive salaries or wages from state or regional finances.
- d. people who receive salary or wages from a corporation that receives assistance from state or regional finances.
- e. people who receive salaries or wages from other corporations that use capital or facilities from the state or society.

State Administration qualifications, which include (Lalu, 2019) :

- a. State official at the State's Highest Institution. At present, based on the 4th Amendment of the 1945 Constitution there is no longer known term for the highest state institution. The institution referred to here is the People's Consultative Assembly (MPR)
- b. State Officials at State Higher Institutions
- c. Minister
- d. Governor.
- e. Judge
- f. Other State Officials by the provisions of the applicable laws and regulations, for example, the Head of Indonesian Representative Overseas having the

- position of Ambassador Extraordinary and Plenipotentiary, Deputy Governor and Regent / Mayor
- g. Other officials who have strategic functions with state administrators by applicable laws and regulations, including directors, commissioners, and other structural officials in State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD).
  - h. Head of Bank Indonesia and Head of the Indonesian Bank Restructuring Agency.
  - i. Leaders of State Universities.
  - j. Echelon I officials and other officials who are equal in the Civil, Military, and Indonesian National Police circles
  - k. Prosecutors, Investigators, and Court Clerks
  - l. Project Leader and Treasurer. In the current context, Commitment Making Officials (PPK), Procurement Committee, Goods Recipient Committee

Regulations regarding gratification in Indonesia are regulated in several laws and regulations, namely, the Law on the Eradication of Corruption and the Law on Corruption Eradication Commission. The regulation on gratuity is very much needed as an effort to prevent the occurrence of criminal acts of corruption committed by state administrators or civil servants, with the gratuity regulation it is expected that state administrators or public servants and the public can reject or immediately report the gratuities it receives (Gubali, 2013). Specifically, this gratification is regulated in:

- a. Law of the Republic of Indonesia Number 20 of 2001, concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption. Article 12B:
  1. Any gratuity to a civil servant or state administrator is considered to provide a bribe, if it relates to his position and is contrary to his obligations or duties, with the following conditions:
    - 1) whose value is Rp. 10,000,000.00 (ten million rupiahs) or more, the evidence of gratuity is not a bribe carried out by the recipient of gratuity.
    - 2) whose value is less than Rp. 10,000,000.00 (ten million rupiahs), the evidence of gratuity is bribed by the public prosecutor
    - 3) Criminal punishment for civil servants or state administrators as referred to in paragraph (1) shall be a minimum of 4 (four) years imprisonment, 20 (twenty) years at the maximum, a minimum of Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000 (one billion rupiah)

For the recipient of gratuity to be imprisoned, elements must be fulfilled (by taking into account the formulation of Article 12B and Article 12C paragraph (1)) as follows (Chaerudin, Dinar, & Fadhillah, 2008) :

- a. Recipients must qualify as "Civil servants" or as "state administrators".
- b. Receiving "gratuity" from someone who is "giving bribes" according to Article 12B paragraph (1). According to Article 12B paragraph (1), i.e. if the gift is "related to the agreement and contrary to its obligations
- c. Recipients do not report the gratuities they receive to the Corruption Eradication Commission

Article 12 B states that if a gratuity is received by a civil servant in the amount of Rp. 10 million or more, then prove that it is not a bribe is carried out by the recipient of the gratuity. However, if the value of gratification received is less than Rp. 10 million, then the evidence that it is not a bribe is carried out by the public prosecutor. There are several elements that form the first form of corruption, there is an abuse of power or authority. Second, power and trust are related to financial or material access. Third, the actions carried out benefit oneself and harm the state (Pope, 2003).

According to Article 12 C of the Corruption Act, the gift-giving is not always a gratification which is a criminal offense, as long as the agreement has several elements, namely (Paruntu, 2014) :

- a. If the provisions in Article 12B paragraph 1 do not apply if the gift recipient reports gratuities to the Corruption Eradication Commission (KPK).
- b. Reporting as referred to above is done no later than 30 (thirty) days from the date the item is received.
- c. Corruption Eradication Commission (KPK), for 30 days after the reported gratification goods stipulates that the goods belong to the state or the reporter.
- d. Regulations regarding how to submit reports and determine the status of gratuities are regulated in the Law on Corruption Eradication Commission.

Gratuities in any form that have the objective of obtaining self-serving services from civil servants or state apparatuses who have positions and have authority must be prevented because they have the same huge impact as the impact of other criminal acts of corruption. Even the impact of gratification is more severe because it will lead to new gratifications in a new way because to eradicate corruption that often occurs this should be decisive action.

### **Arrangement of Sexual Gratification in Criminal Law in Indonesia**

At this time bribery or sexual gratification is no longer a common thing, the gratification that is happening right now is not the only gratification in the form of money or goods along with the development of the times and the increasing need for gratification when it has a new mode of gratification in the form of sexual services. Sexual gratification uses beautiful women as its main object to facilitate a project or

business that is being undertaken by the grantor of sexual gratuity to civil servants or state officials who have positions.

The provision of sexual services cannot only be provided free of charge to civil servants or the state apparatus without any specific purpose and purpose. Sexual services provided must have a purpose in which these objectives relate to positions held by sexual service recipients, namely civil servants or state apparatus so that the public servants or state apparatus concerned do something that benefits the sexual service provider.

Sex gratification must be eradicated because sex gratification has the same bad effects as other corrupt acts. Even sex gratification has a more severe impact because it does not only concern politics but also concerns economics and moral values that exist in society. Sex gratuities or sexual services, when viewed from the moral side of the act, is very insulting to the dignity of a woman. In addition, the act of using a woman's body or a woman as a reward for someone is a violation of women's bodily rights as personal property. Women's bodies are seen as "things" or "things" that have economic value (Hardy, 1998).

At present, there is no regulation regarding sexual gratuity in Indonesia where norms still occur in the sense that they do not yet have strict rules in the Corruption Act in handling cases of sexual gratification. The Corruption Crime Act does not clearly regulate gratification using sexual services accompanied by sanctions, and there are no provisions regarding sanctions given to women who provide sexual services. This is the reason why the practice of sexual gratification is often used and so difficult to follow up. Thus, many sex gratuities offenders are free from the law and tend to repeat these acts (Husin, Rifai, & Rosidah, 2014).

Based on the explanation in Article 12B paragraph (1), giving in the form of sex services has not been regulated in the legislation concerning the eradication of corruption. This means that at the moment there is no regulation or law that provides an explanation that the act of providing a sex service (sex gratification) is a criminal act of corruption.

The current Corruption Crime Act is inadequate because it has not been able to regulate the overall gratification of sex, where there is still a lack of norms, which can be classified into acts of sexual gratification. Resulting in a large influence on the community. One way to do that is "Sex Gratification" (Takasihaeng, 2015) which has an impact on the perpetrators of sexual gratification to date has been difficult to reveal. Until now gratification in the form of sexual services in practice is difficult to prove because it involves the elite and is closed and there are no strict rules in dealing with this.

One of the factors that makes sex gratification difficult to uncover is the issue of proof. The process of proving or proving contains the intention and effort to state the truth of an event so that it can be accepted as the reason for the truth of the event (Mertokusumo, 2006). The proof is a provision that contains inheritance and guidelines on the way that is justified by the law prove the guilt is charged to the defendant. The proof is also a provision governing evidence that is justified by the law and may be used by judges to prove the guilty matter (Harahap, 2006) to prove the existence of giving in the form of sex services, of course, it must be proven that there have been sexual relations between the recipient and the gratuity provider. That is difficult to prove. Because, such gratuity transactions certainly happen in a closed place, where it may not be seen by others.

Sex gratuities in the current reality The Corruption Eradication Act only regulates gratuities in the form of giving money or goods as stipulated in Article 12B, thus Indonesia needs a special regulation that is able to regulate thoroughly aspects of sexual gratification, because it is considered very necessary to regulate the penalties for perpetrators of sexual gratification (Wirautami & Utar, 2019). Criminal sanctions are the most widely used type of sanction in imposing a sentence on someone found guilty of committing a criminal act (Ali, 2012).

Article 12B of the Corruption Crime Act does not regulate sexual gratification because it does not clearly state that sexual services are one form or type that can be categorized as gratification. The non-mention of sexual services as a form of gratification in Article 12 B of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption has caused widespread practices of gratification in the form of sexual services.

The urgency of regulating sexual gratuities is for certainty for law enforcers to impose criminal sanctions on the perpetrators of sexual gratification. The threat of criminal sanctions imposed on perpetrators of sexual gratification is needed as an effort to prevent further occurrence of this crime and can be used to ensnare the perpetrators. Besides, the urgency of the regulation of sexual gratification is also to be able to overcome the difficulties in terms of the evidence faced in investigating cases of sexual gratification (Maryani, 2016).

In the absence of clear rules regarding cases of sexual gratification, this raises a big question whether sexual services provided to civil servants or state officials who have positions can be allowed or not allowed to do with gratification. With this question, it will be very vulnerable to lead to an increase in cases of sexual gratification because as long as there are no regulations or laws governing sexual gratification, irresponsible parties will be freer to commit this crime because they consider it not regulated in existing laws and regulations.

Provisions regarding sexual gratuity both material and the formal criminal will see several criminal law provisions that are strong enough to ensnare the perpetrators of sex gratification, namely, Law No. 31 of 1999 jo. UU no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption consists of 30 articles that prohibit people from committing criminal acts of corruption. The gratification of Article 12B jo. Article 12C. In the articles on bribery, there are the phrases "giving/receiving something" and "Giving / receiving gifts or promises". While in the gratification article, there is the phrase "accepting gratification", of the three phrases, a common thread can be drawn, that the meaning of bribery and gratuity is essentially a gift. It's just that bribery is addressed to a civil servant or law enforcement officer who has positions to do or not does something, while gratuities do not have to do or not do something. However, both are included in a gift that is prohibited in the Anti-Corruption Act. The provision of sexual services can be classified as a gift intended for bribery and gratification which is prohibited in the Anti-Corruption Act. In the elucidation of Article 12B paragraph (1), it is stated that in addition to money, goods, gratuities referred to in the law are also included as other facilities.

## CONCLUSION

The Corruption Crime Act does not regulate gratification using sexual services accompanied by sanctions, and there are no provisions regarding sanctions given to women who provide sexual services. This is the reason why the practice of sexual gratification is often used and so difficult to follow up. Criminal sanctions imposed on perpetrators of sexual gratification are urgently needed as an effort to prevent the occurrence of these criminal acts further and can be used to ensnare the perpetrators.

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