



Legal Analysis of the Impact of Elements of Bribery and Giving Gratification in the Perspective of Anti- Corruption Law in Indonesia

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Abstract *The rampant corruption that continues to be demonstrated by public officials makes it seem as if the law has run out of ways to overcome it. And corruption is a type of crime that is only committed by people who have high intellectual capacity and ability. They continue to try how to avoid corruption crimes, so one of the methods they use is the pattern of giving gifts which is actually intended as a form of bribery. This study analyzes the concept of bribery and gratification and the parameters that differentiate between the two as regulated in several Articles of the Corruption Eradication Law. This involves the application of normative legal research supported by court decisions to clarify the differences. The results of this study indicate that bribery requires a meeting of minds between the bribe giver and the bribe recipient which is not found in the decision. The reporting mechanism and reversal of the burden of proof do not apply to bribery while the sting operation does not apply to gratification because it cannot meet the provisions of Article 1 number 19 of the Criminal Procedure Code. Criminal sanctions are also imposed on both the giver and the recipient of the bribe, while the act of the giver of gratification is not a criminal act.*

Keywords: *Legal Analysis, Bribery, Gratification, Corruption*

1. INTRODUCTION

Law Number 31 of 1999 and 20 of 2001 concerning Corruption (hereinafter referred to as the Corruption Eradication Law) regulates 7 types of criminal acts of corruption including those related to state financial losses, embezzlement in office, bribery, extortion, procurement conflicts of interest, fraud, and gratification. Compared to others, the formulation of bribery as a criminal act in the Corruption Eradication Law is mostly regulated in Articles 5, 6, 11, 12 a, b, c, and d as well as Article 13. Moreover, data released by the Corruption Eradication Commission (KPK) 2014-2019 shows that 65% of corruption cases in Indonesia are bribery.¹ The 87 sting operations (OTT) carried out by the KPK from 2016-2019 were also all related to bribery.

The Corruption Eradication Law does not specifically regulate the meaning or clear parameters related to bribery, even though it occurs frequently and is regulated in several violations. Therefore, this affects the handling of bribery cases by both the KPK, the police, the prosecutor's office, and the courts.³ It also shifts the stance of legal norms from lawmakers to law enforcers by giving them the power to declare an act as bribery.

Therefore, this study was conducted to explore the general concept and parameters that define an act as bribery and to analyze the differences between the concept and gratification. This is necessary due to the fact that the Corruption Eradication Law also

prohibits the acceptance of gratuities. Several court decisions related to bribery and gratification cases were also reviewed and the results of this study are considered crucial and important for law enforcement officers in implementing bribery legal norms when handling corruption cases.

2. METHOD

The normative legal research method is used to specifically examine the legal norms on bribery and gratification in the Anti-Corruption Law as enacted in Law Number 31 of 1999 and 20 of 2001 on the Eradication of Corruption, Indonesia. These provisions are used as the main source of this research using laws and conceptual approaches. Literature studies as well as court decisions are also used to collect data based on the assumption that the nature and essential parameters between bribery and gratification as defined by scholars need to be clearly distinguished. The data are analyzed qualitatively through data reduction by focusing on the articles on bribery and gratification in the Anti-Corruption Law, after which the findings are presented and conclusions are drawn.

3. RESULTS AND DISCUSSION

Regulation of Bribery in the Corruption Crime Law

Bribery is generally defined as ‘the abuse of public office for private gain’. It specifically means giving or promising a state administrator or civil servant certain privileges⁶ because of the favors that can be obtained from the position⁷ and has also been equated with abuse of position. This study, however, is limited to public positions without the inclusion of the private sector⁹ due to the fact that the Corruption Law does not include bribery in the private sector as a criminal act of corruption¹⁰ in line with the 2003 UN Convention Against Corruption ratified by Indonesia with Law Number 7 of 2006.

The crime of bribery in the Corruption Law is characterized by several characteristics such as a meeting of minds between the giver and the recipient of the bribe. This means that bribery is not established unless both parties have the will and are aware of their actions. This, in economics, requires supply and demand activities between them.

This means that bribery cases require the use of Article 55 paragraph (1) of the Criminal Code specifically on participation in a crime (*medeplegen*) which requires two pieces of evidence of intent; deliberate cooperation to commit a violation and the performance of a joint violation committed internationally.¹² Therefore, it is not appropriate to only punish the giver or receiver of the bribe. For example, in the Century Banking scandal

corruption case, the panel of judges sentenced Budi Mulia, former Governor of the Central Bank of Indonesia, for his participation in the a quo case based on Article 55 paragraph (1) of the Criminal Code while Boediono, former Vice President of Indonesia and senior Governor at that time, was not suspected or even convicted even though the verdict proved that the Century bailout decision could only be taken collectively and collegially.

The evil intent to commit a prohibited act usually occurs before the crime of bribery is committed through the use of an object such as a gift or a promise. The author, however, finds it inappropriate to describe a gift as an object of bribery due to the fact that it is permissible but proposes the use of the term 'something' instead which is further defined as something of economic value. He does not require that the recipient has the object of the bribe in his possession before a case is established as long as the individual has sufficient control over the item. The promise is not in the form of an item but generally relates to the act of the giver in response to an activity carried out by the recipient.

The giver of a bribe can be anyone including individuals, corporations, civil servants, advocates, judges, or even state administrators while the recipients are limited to civil servants, state administrators, advocates, and judges.¹³ This is necessary considering the fact that bribes are related to the position of the recipient which is usually public as observed with public servants or state administrators doing nothing in their positions or being found using their authority or position to carry out some activities.

Prohibited acts committed by bribe givers include 'giving or promising something to public servants or state officials (Article 5 paragraph 1 letter a), 'giving something to civil servants or state administrators' (Article 5 paragraph 1 letter b), 'giving 'or promising something to an advocate' (Article 6 paragraph 1 letter a), 'giving or promising something to a judge' (Article 6 paragraph 1 letter b)', and 'giving gifts' or promises to civil servants bearing in mind their power or authority which is attached in his position or position' (Article 13).

Meanwhile, the prohibited acts for the recipient are 'receiving gifts or promises' (Article 5 paragraph 2), 'judges or advocates who receive gifts or promises' (Article 6 paragraph 2), 'civil servants or state administrators' receiving gifts or promises even though they know they are provided to influence their decisions or actions contrary to their obligations' (Article 12 letter a), 'civil servants or state administrators receiving gifts even though they reasonably suspect that the gift is intended to influence their professional behavior contrary to obligations' (Article 12 letter b), 'judges who receive a gift or promise' (Article 12 letter c), and 'advocates' receiving gifts or promises' (Article 12 letter d). Article

12 letter a focuses on bribes given to civil servants or state administrators to carry out certain actions while letter b emphasizes those given after the action has been carried out.

The reversal of the burden of proof does not apply in bribery cases and this means that neither the bribe giver nor the recipient is required to prove that the gift or promise has nothing to do with the recipient's public position because it is the responsibility of the public prosecutor. However, there is a possibility of catching red-handed / operation caught (OTT) in bribery violations as observed in the KPK where they are applied in several corruption cases that are almost impossible to solve using conventional methods. Although it is possible to have an OTT in a bribery crime carried out by the KPK does not really violate the four criteria for being caught red-handed as stated in Article 1 number 19 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). The criteria include arresting a person, when committing a crime, immediately after the crime is committed, third, based on confirmation from the general public, and the moment an object suspected of being used in committing a crime shows the perpetrator participated or assisted in the process.

In the case of criminal acts of bribery, OTT takes the form of a promise to a civil servant or organizer to receive assistance based on the individual's position which is contrary to obligations. For example, a defendant promises the judge an amount of Rp. 2 billion to free the person in the corruption case, the bribe is determined when there is an agreement between them. It is important to note that the violation was completed on the day the agreement was made, assuming March 30, 2020, whereas the promise was fulfilled on July 23, 2020, after the defendant had been released by the judge, and the KPK carried out an OTT against the defendant and the judge. The four criteria for being caught red-handed in Article 1 number 19 of the Criminal Procedure Code have not been met, therefore, the process was declared an illegal OTT because there were 4 months between the period when the violation was committed and the OTT was carried out by the KPK.

Gratification in the Corruption Crime Law

Gratification is defined as a crime in Article 12B of the Corruption Eradication Law, which is formulated to include the following:

1. Any gratification to a civil servant or state administrator is considered a bribe as long as it is related to the position and is contrary to the obligations or duties of the individual with the following conditions:
 - a. Amounting to Rp. 10,000,000.00 (ten million rupiah) or more with evidence that the gratification is not a bribe according to the recipient;

- b. Value less than IDR 10,000,000.00 (ten million rupiah) with evidence of bribery carried out by the public prosecutor.
2. The criminal penalty for civil servants or state administrators as referred to in paragraph (1) is life imprisonment or a minimum of 4 (four) years and a maximum of 20 (twenty) years imprisonment, and a fine of at least IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

This article defines 'gratification' as a gift in the broadest sense including the provision of money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, accommodation facilities, tours, free medical treatment, and other facilities received both domestically and abroad or carried out electronically or non-electronic means. Receipt of gratification by civil servants or state administrators based on their position and their obligations or duties is known as gratification. Usually there is no meeting of minds between the giver of gratification and the civil servant or state administrator as the recipient. The existence of a meeting of minds makes the gift of bribery the object of gratification in general as previously explained in Article 12B paragraph (1).

The recipient of the gratification is required to prove that the gift received is not a bribe and has nothing to do with the position and does not conflict with the obligation if the value is IDR 10,000,000 or more. Such cases also involve provisions or reporting mechanisms as stated in Article 12C paragraph (1), (2), and (3) that the criminal act in Article 12B paragraph (1) does not apply if the recipient reports the gratification received to the Corruption Eradication Commission (KPK) no later than 30 (thirty) working days from the date of receipt of the gratification until determining the gratification belongs to the recipient or the state.

The provisions of Article 12C remove criminal prosecution against civil servants or state administrators who receive gratification. This means that receiving gratification itself is a violation but the prosecution process depends on whether or not there is a report submitted by the recipient to the KPK no later than 30 working days from the date it is received after the commission determines whether the gratification belongs to the recipient or the state. In fact, the Corruption Eradication Law defines gratification broadly, excluding sexual relations of services provided by someone to a civil servant or state administrator known as sexual satisfaction because of its ability to cause problems and the lack of practitioners determine whether the action belongs to the recipient or the state. Does the inclusion of sexual services in the sense? or form of gratification make the KPK confiscate women and goods as state

property and then auction them , This of course, it is impossible and causes the woman to lose her self-esteem .

Therefore, gratification needs to be limited to the form and type of material. Another sign of gratification is the emergence of evil intentions precisely pursuing civil servants or state administrators receiving gifts because of their positions. The data was processed by the author: In the case of gratification of Nur Alam, the former Governor of Southeast Sulawesi, the first-level court decision, cassation, and cassation stated that Nur Alam was proven to have received gratification which was considered a bribe from Richcorp International Ltd amounting to Rp. 40,268,792,850 from illegal reasons and was not reported to the KPK within the specified time limit. The decision was based on several legal considerations. The money borrowed by the defendant personally from Chen Linze certainly opened up opportunities for interesting conflicts for defendants throughout Southeast Sulawesi Governor. In addition, sending money to the defendant to buy an insurance policy at AXA Mandiri in the name of the defendant using his biological child as the beneficiary also proves that the money was not Chen Linze's investment to advance Southeast Sulawesi but from Richcorp International Ltd for the defendant.

In addition, all cancellations/disbursements of the three AXA Mandiri insurance policies in the name of the defendant have been deposited in the Non-Customer Giro (GNC) account for Rp 30,481,436,261.00. At the defendant's request, the money was transferred to the Timbel Mas Abadi Ltd. account in stages with each transaction below the nominal value of IDR 500,000,000 to avoid suspicion from PPATK. Finally, the money in the Sultra account of Timbel Mas Abadi Ltd., in the name of the defendant at the request of Bank Mandiri, was also transferred in batches with a value of less than IDR 500,000,000 to avoid suspicion from PPATK with the destination accounts being Untung Anaugi Ltd, Gino Valentino Ltd, and Bososi Pratama Ltd.

According to the researcher, the money received by the defendant was not a gratification or bribe and the defendant's actions were purely considered civil law in the form of investment placement and personal loans. This is reinforced by several facts that the investment Agreement No. CI/NA/IA/2010/001 dated 19 August 2010 was carried out by Richcorp International Ltd and the defendant in a personal capacity.

Temporary Funds of Agreement Provisions No. PPDS/RC/NA/2010/002 dated August 19, 2010. Moreover, based on the investment agreement and personal loan of Rp 40,268,792,850, the defendant actually returned the money to Richcorp International Ltd as observed from these two pieces of evidence. First, evidence of money transfer from Giofedi

Rauf to Richcorp International Ltd amounting to Rp 15,000,000,000 dated May 30, 2013, Rp 15,000,000,000 dated June 3, 2013, and Rp 10,750,000,000 dated June 4, 2013. Letter dated June 10, 2013, from Richcorp International Ltd to Geofedi Rauf regarding evidence of receipt of money transferred by the defendant amounting to Rp. 40,750,229,110.

This shows that the defendant returned the money to Richcorp International Ltd before the investigation was conducted by the KPK. The money was also returned in accordance with the contents of the Investment Agreement No. CI/NA/IA/2010/001 dated 19 August 2010, between Richcorp International Ltd and the defendant in a personal capacity and the Temporary Fund Provision Agreement PPDS/RC/NA/2010/002 dated 19 August 2010.¹⁹ Therefore, this means that there is no relationship between the defendant's position as the Governor of Southeast Sulawesi and the transaction. It is important to note that it is only possible to establish satisfaction as long as it relates to the defendant's position.

3. CONCLUSION

Criminalization of the crime of bribery has basically been carried out through Article 209 of the Criminal Code which regulates active bribery (active bribery) against civil servants. The counterpart of this article is Article 419 of the Criminal Code which regulates passive bribery (passive bribery), which threatens criminal penalties against civil servants who accept the gifts or promises mentioned above. Furthermore, Article 210 of the Criminal Code regulates bribery of judges and advisors in court. Judges and advisors who accept bribes are threatened with criminal penalties by Article 420 of the Criminal Code. The four articles were then declared as criminal acts of corruption through Law No. 31 of 1999 in conjunction with Law No. 20 of 2001

Gratuities are declared as a criminal act of corruption since the existence of settings inside Corruption Eradication Law Law No. 20 of 2001, although in The history of gratification is implicitly regulated in the Law Code Criminal Code (KUHP) is a legacy of the Dutch colonial era, but there has been legal reform special corruption crime. Gratification is essentially not a criminal act, in this case the qualification of the crime lies in the "recipient of the gratification". Gratification itself in its formulation is still it is not clear, because the Gratuity Article does not mention the minimum limit a person's nominal value can be subject to the Gratuity Article. Then for the burden proof of receipt of bribes of gratification amounting to Rp. 10 million or more then the proof is carried out by the recipient of the gratification (reverse proof), whereas if the bribe received is worth less than Rp. 10 million, then the one who must provide evidence is the Public Prosecutor (evidence) normal).

Likewise, if civil servants or state officials immediately report the gratification received to the Commission Eradication of Corruption no later than 30 (thirty) days from the date of receipt . gratification, then the criminal penalty is erased.

4. BIBLIOGRAPHY

Adalgiza, A. N. (2014). International business, bribery, and criminal liability. *New Jersey Lawyer Magazine*.

Arrieta, L. B. (2016). Attacking bribery at its core: Shifting focus to the bribery demand side of the equation. *Public Contract Law Journal*.

Cahyana, F. (2020). The importance of regulating bribery in the private sector as a corruption offense in Indonesia. *Juris-Diction*.

Central Jakarta District Court. (2017). Decision of the Central Jakarta District Court, 123/Pid.Sus/TPK/2017.

Chaffee, E. C. (2014). From legalized business ethics to international trade regulation: The role of the Foreign Corrupt Practices Act and other transnational anti-bribery regulations in the fight against corruption in international trade. *Mercer Law Review*.

Fuhr, D. M. (2013). Of thieves and oppressors: The interaction between corruption and human rights violations. *Elon Law Review*.

Gerber, M. Z., & Lawson, E. L. (2012). The "Texas style" entertainment business here and abroad: What you need to know. *Texas Bar Journal*.

Indonesian Corruption Eradication Commission. (2018 & 2019). *Annual Report*.

Low, L. A., Lamoree, S. R., & London, J. (2015). The demand side of transnational bribery and corruption: Why leveling the playing field on the supply side is not enough. *Fordham Law Review*.

Mauliddar, N., Din, M., & Rinaldi, Y. (2017). Gratification as corruption in relation to reports of gratification recipients. *Kanun*, 19(2).

Media Indonesia. (2019, November 8).

Ndikumana, L. (2013). The private sector as perpetrator and victim of corruption in Africa. *Political Economics and Research Institute, University of Massachusetts Amherst*.

Oktavianto, R., & Rahadiri Abheseka, N. M. (2019). Evaluation of the KPK's sting operation. *Integrity Journal*, 5(2), 119.

Rommelink, J. (2003). *Criminal law* (T. Tristan, Trans.). Jakarta: Gramedia Pustaka.

Spahn, E. K. (2013). Implementing the global anti-bribery norm: From Foreign Corrupt Practices Act to the OECD Anti-Bribery Convention to the UN Convention against Corruption. *Indiana International & Comparative Law Review*.

Stuntz, W. J. (2001). The pathological politics of criminal law. *Michigan Law Review*.

Supreme Court Decision Number 2933 K/Pid.Sus/2018.

Syahroni, M. A., Alpian, M., & Hadi, S. (2020). Reversing the burden of proof of corruption. *Journal of Legal Studies*, 126-128.

Trautman, L. J., & Altenbaumer-Price, K. (2013). Lawyers, guns, and money: Bribery issues and UK bribery law. *Lawyers International*.