

## **Criminal Law Reform in Addressing the Gratification Loophole Disguised as Grants**

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### **ABSTRACT**

*This study aims to analyze the legal loopholes that exist in the regulation of gratification and grants in Indonesia, as well as the implications of these loopholes for the integrity of the legal system and public trust in the government. Using a normative legal approach, this study explores the definition, scope, and fundamental differences between gratification and grants under the provisions of applicable laws. The results of the study indicate that the ambiguity in these regulations has facilitated the practice of gratification disguised as grants, thereby reducing the effectiveness of law enforcement. This study recommends reforming the criminal law that includes a clearer and more comprehensive definition as well as a stricter oversight mechanism to prevent abuse and create a more transparent and accountable legal system.*

**Keywords:** *Gratification, Grants, Legal Loopholes, Corruption*

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### **INTRODUCTION**

Gratification refers to a gift in the form of money, goods, or facilities received by someone, especially a public official, which can influence their decisions or actions in carrying out their duties. In law, gratification is often considered a form of corruption if it is related to certain interests that conflict with the duties and obligations of the official (Muhardiansyah, 2010). Meanwhile, a grant is a gift given voluntarily without expecting anything in return, which is generally altruistic. Grants can be given in the form of money, goods, or services and are often made for social or humanitarian purposes. However, the fundamental difference between gratification and grants lies in the intention and context of the gift; grants should not expect reciprocity, while gratification is often related to efforts to influence or gain benefits from the recipient. Gratification can be divided into two categories: legitimate and illegitimate. Legitimate gratification is a gift given within ethical and legal boundaries. For example, gifts are given in the context of certain celebrations unrelated to certain interests, such as awards for good performance. Meanwhile, illegitimate gratification occurs when the gift is intended to influence the decisions or actions of public officials in carrying out their duties, for example, the giving of money by a contractor to a government official to win a certain project. In many cases, illegitimate gratification is often disguised as a grant to avoid legal scrutiny, which makes it a serious challenge in law enforcement.

One example of a case that illustrates gratification disguised as a grant occurred in the infrastructure development sector. In this situation, a project developer made a large donation to a foundation established by a government official. The donation was advertised as a grant to support the foundation's social activities. However, further research showed that the real

purpose was to gain better access and influence in the bidding process for an upcoming infrastructure project. In this case, the donation that appeared to be a grant was an attempt to bribe the official in the hope of gaining benefits from the ongoing project. This case highlights the importance of strict supervision and the need for reform in criminal law to identify and stop the practice of gratification disguised as a grant.

Various forms of crime, including corruption, are now increasingly diverse and carried out with various complex modus operandi (Hartanti, 2005). This has resulted in gaps and gaps in the law, both in terms of substance and structure. The positive legal products that exist in Indonesia today are mostly a legacy from the colonial era, especially from the Dutch East Indies (Suherman, 2020). One example of this legal legacy is the Criminal Code (KUHP). Without relevant and appropriate legal updates, the Indonesian legal system will have difficulty facing future challenges, especially with the rapid development of technology. This developing technology not only opens new legal loopholes but also complicates the handling of corruption cases whose modus operandi is increasingly difficult to detect and overcome.

Along with the progress of the times, technology is also used by perpetrators of corruption crimes to smooth and hide their actions. This makes law enforcement face a major challenge in catching and uncovering corruption cases. This type of crime is often classified as white-collar crime because the perpetrator is high position people or has great influence, and tends to use very sophisticated and organized methods (Indriati, 2014). Indonesia faces a major challenge because corruption does not only occur among high-ranking officials, but also permeates almost all levels of society, creating a phenomenon that is like an epidemic that is difficult to stop (Hidayat, 2016). Corruption has become part of the culture embedded in everyday life, where people's lifestyles and behavior are influenced by officials who abuse their authority to enrich themselves.

Corruption in Indonesia has reached a critical level, especially in the political and economic spheres. Many officials use their power to commit political corruption, transact with conglomerates, and take personal advantage of the power they have. This phenomenon further worsens the economic and political conditions in the country. One of the most fundamental elements of corruption is the existence of "state losses." However, until now, there has been no clear and consistent definition of what is meant by "state finances" in law (Fatkhuri, 2018). This inconsistency opens opportunities for different interpretations regarding state losses, which in turn creates legal uncertainty.

One of the biggest challenges in law enforcement related to corruption is the difficulty in distinguishing between gratification and grants. Gratuities are a form of corruption regulated in criminal law, while grants fall into the realm of civil or private law (Iskandar, 2013). Corruptors often exploit this loophole by disguising gratification as a grant. Because grants are regulated by civil law, such actions are not easily prosecuted by criminal law provisions. This condition makes it even more difficult for law enforcement officers to find criminal elements, especially when there is no real evidence of misuse of state funds that causes losses.

The unclear distinction between gratification and grants is often exploited by corruptors to avoid the clutches of the law. In many cases, grants are given formally and appear legitimate under civil law, but the intention behind the granting is to influence the decisions or actions of officials. Therefore, there needs to be an update and affirmation in criminal law to make it easier to detect and prosecute corruption cases disguised as grants. With clear and firm rules,

law enforcers can more quickly anticipate and handle corruption cases, especially those involving gratification, and determine whether an action falls into the category of gratification that can be prosecuted under the corruption crime law or is simply a grant regulated by civil law. Clear and structured legal updates are urgently needed to close the loopholes that are often exploited in corruption cases. Thus, law enforcers are expected to be able to handle corruption cases more effectively and ensure that perpetrators, both in the public and private sectors, can no longer use grants as a mode to carry out gratification that is detrimental to the state and the wider community.

## **METHOD**

Normative legal research methodology is an approach used in legal research that focuses on written legal materials, such as laws, regulations, doctrines, and legal principles. In this research, law is viewed as a norm or rule that applies in society, and research is conducted by analyzing these rules from a positive legal perspective. Normative legal research aims to examine how a legal regulation is applied, interpreted, or even changed to resolve the legal problems faced. This method involves studying primary legal materials, such as laws, as well as secondary legal materials, such as legal literature, scientific journals, and the opinions of legal experts. The results of normative legal research provide an in-depth understanding of how the law applies in a particular context and how these legal norms are interpreted and applied.

In normative legal research, the approaches used include the statute approach and the conceptual approach. The statute approach is an analytical technique that examines and studies the rules written in legislation. Researchers identify, review, and analyze various related regulations to understand how they apply and how they relate to each other. For example, in research on gratification, researchers will analyze laws on criminal acts of corruption. The conceptual approach is used to understand and explore relevant legal concepts, such as the concept of gratification and grants, and to explore how these concepts develop in legal theory and practice.

## **RESULTS AND DISCUSSION**

### **Legal Loopholes That Cause Difficulty in Differentiating Criminal Acts of Gratification and Grants in Law Enforcement in Indonesia**

Gratification is one form of criminal act regulated in the corruption law in Indonesia. Corruption crimes, including gratification, are classified as extraordinary crimes. Gratification was only included in the corruption law through Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption. Before this amendment, gratification was not explicitly regulated in Law Number 31 of 1999 (Arief, 2006). Gratification itself can be defined as a gift in a broad sense, including money, goods, discounts, commissions, interest-free loans, accommodation, and travel facilities. The gift is considered a bribe if it is related to the position of a civil servant or state administrator, especially if the value reaches or exceeds IDR 10,000,000. In this case, the recipient of the gratification is required to prove that the gift is not a bribe. However, if the value is below that figure, the public prosecutor must prove that gratification is a bribe.

The most fundamental difference between gratification and grant lies in their legal nature. Grants are regulated in the Civil Code and are private law, unlike gratification which is included

in the realm of public law. A grant is a gift by a person while he is still alive, and the transfer of rights to the property occurs through a legally valid transfer, as stated in Article 1666 of the Civil Code (Chazawi, 2016). A grant is an agreement that cannot be revoked after being submitted. Although grants and gratification have similarities as forms of giving, grants are voluntary and given without compensation or conditions related to the position or duties of the recipient, while gratification involves aspects of the position and is often considered a bribe in the context of corruption.

However, in practice, there are major challenges in distinguishing between grants and gratification, especially when involving state officials. Although the gratification rule only applies to civil servants or state administrators, granting grants to them can also cause legal ambiguity. This is because grants, as regulated in the Civil Code, can be given to anyone, including state officials (Chazawi, 2005). Therefore, it is difficult to ascertain whether the grant is a form of personal appreciation or related to their position. This difficulty becomes even more complex when the granting of goods or money is done without clearly written documents, such as in the case of movable goods which are simply handed over without a written deed, as regulated in Article 1682 of the Civil Code.

Articles 12B and 12C in Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 explain that civil servants or state administrators who receive gratification and do not report it to the Corruption Eradication Commission (KPK) can be considered to have committed a criminal act of corruption. Several elements must be met to categorize an action as a gratification according to this provision, namely the recipient must be a civil servant, the gratification is related to his position or duties, and the recipient does not report the gratification to the Corruption Eradication Committee within 30 days of receipt (Effendi, 2011). On the other hand, the provisions regarding grants are explained in Article 1666 of the Civil Code (KUHP<sub>Perdata</sub>), which states that a grant is a unilateral agreement in which one party gives something to another party without compensation. Grants are included in the category of "free" agreements or unilateral agreements, in contrast to reciprocal agreements in which both parties provide performance to each other. This grant is non-commercial, and the provisions regarding grants emphasize the element of freedom and agreement between the giver and recipient without the element of reciprocal obligation.

In the context of legislation, grants and gratuities have similarities, namely that both are forms of giving. However, in terms of legal regulation, gratuities more specifically regulate gifts received by civil servants or state administrators, while grants apply to anyone and do not limit the recipient or giver of the grant to the scope of civil servants. Grants are regulated as general agreements in the realm of civil law, while gratuities are part of criminal law relating to corruption. Another difference is that gratuities received by civil servants, especially those relating to their positions or duties, are considered criminal acts if not reported, while grants are legal because there is no element of abuse of power or position in them. Gratuities are seen as actions that have the potential to violate the law because they are related to a person's position and can affect the integrity of a civil servant or state administrator. On the other hand, grants are legitimate acts as long as they fulfill the elements of civil law.

Legal loopholes in the context of gratification and grant law are complex issues and can arise from differences in the interpretation and implementation of regulations in legislation. Legal loopholes usually occur when there is ambiguity in the regulation or imperfection in the

application of regulations, so that this can be exploited by certain parties to avoid legal sanctions. In the case of gratification and grants, legal loopholes can arise from the boundaries between what is considered a legitimate gift (grant) and gratification that is considered a criminal act of corruption. One legal loophole that may arise is related to the definition and scope of gratification itself. Law No. 20 of 2001 concerning the Eradication of Corruption does specifically regulate that civil servants or state administrators who receive gratification related to their position and do not report it within 30 days can be categorized as committing a criminal act of corruption. However, this provision is not always easy to apply in every case. There are situations where a gift can be claimed as a legitimate gift or grant so that it is not included in gratification, even though in practice the gift may be intended to influence the decisions or actions of public officials.

This ambiguity can be exploited by parties who want to give or receive gratification by packaging it as a grant or gift in a personal or social relationship. If the gift is claimed as a grant, the recipient is not obliged to report it to the Corruption Eradication Commission (KPK) (Hafrida, 2013). The loose regulation on grants in the Civil Code can provide space for state administrators to argue that the gift received is a grant or gift, not prohibited gratification. This shows that there is a gap in regulation that can be exploited to avoid accusations of corruption. Another gap can arise in terms of the subjective interpretation of "official interests" or "obligations" of civil servants or state administrators. For example, a gift that is not directly related to a particular task but is given because of closeness or personal relationship with a state administrator, may not be considered a gratification. In a situation like this, a gift that has an ulterior motive to influence a public official can be disguised as a gift or award that does not violate the law. The absence of clear and comprehensive regulations to distinguish between social gifts and gratification related to office allows for a gray area that can be abused.

The process of reporting gratification can also be a source of legal loopholes. According to the regulation, gratification received must be reported within 30 days to the Corruption Eradication Committee (KPK). However, this provision can be ignored or circumvented in various ways. For example, it is possible that the giver and recipient of gratification agree not to report the gift or arrange for the gratification to be received in a context that is not directly related to the recipient's position, thus escaping supervision. A gratification reporting system that relies on the good faith of the recipient without a strict monitoring mechanism can be a loophole that makes it easier for abuse to occur. In addition, the lack of adequate coordination between gratification regulations and provisions in the Civil Code on grants also creates legal loopholes. The Civil Code does not specifically regulate gratification or corruption related to office, so there is room for someone to claim that a gift is only personal and not related to official obligations or duties. In this case, even though in substance there is a motive that violates the law, formally the gift can be considered valid under civil law.

### **Criminal Law Reform to Address Legal Loopholes That Allow Criminal Acts of Gratuity to be Disguised as Grants**

Effective law enforcement is crucial in the context of gratification and grants, especially in Indonesia, where corruption remains a serious issue. Gratuities, which are a form of gift to civil servants or state administrators, can damage the integrity and public trust in government

institutions. Meanwhile, grants as a form of gift that is legitimate under civil law are often misinterpreted or disguised as gratification, creating a confusing legal loophole. This loophole causes difficulties in law enforcement because not all gratification received by civil servants is reported, especially when the recipient believes that the gift is a legitimate gift.

Gratification, as regulated in Law No. 20 of 2001 concerning the Eradication of Corruption, is defined as any form of gift received by a civil servant or state administrator related to his/her position and not reported to the Corruption Eradication Commission (KPK) within the specified time. In contrast, a grant, regulated in Article 1666 of the Civil Code, is an agreement made free of charge in which the grantor transfers ownership of goods to the recipient of the grant without compensation (Maradona, 2021). The fundamental difference between the two lies in the intention and context of the gift; gratification is often related to the intention to influence the actions of civil servants, while a grant is made with good intentions and without expecting compensation.

Legal loopholes in the regulation of gratification and grants have a significant impact on the integrity of the legal and governmental systems. When the regulations governing these two forms of gifts are unclear or ambiguous, criminals can easily take advantage of the ambiguity to disguise their corrupt actions. This creates legal uncertainty that is detrimental to parties who are trying to comply with the law and makes it difficult for law enforcers to handle cases related to gratification. Thus, this legal loophole can weaken the existing legal structure, because it provides room for abuse of power and systemic corruption (Suryanto, 2021). If gratification can be easily disguised as a grant, public trust in the effectiveness and fairness of the legal system will be reduced, thus damaging the foundation that should support public trust in the government.

The negative impact of this legal loophole is also seen in the decline in public trust in government institutions. When the public sees that gratification can be disguised as a grant without any clear legal consequences, they will be skeptical of the integrity of public officials and the fairness of the legal system. The public may feel that legal institutions are unable to protect them from acts of corruption committed by civil servants, who are supposed to act as public servants. This loss of trust not only impacts the relationship between the public and the government but can also disrupt active public participation in the democratic process. This dissatisfaction can lead to apathy, where the public feels that their efforts to contribute to development will not bring about significant change.

To address the existing legal loopholes, it is essential to reform the criminal law related to gratification and grants. One of the main proposals is to revise the existing regulations, especially Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and the Civil Code (KUHPerdata). This revision must include a clearer definition of the boundaries between gratification and grants, including a comprehensive definition for each of these terms. With a more explicit definition, it is hoped that all parties—both the public, law enforcers, and business actors—can understand and differentiate these two concepts appropriately, thereby reducing the risk of misuse and confusion in the application of the law (Soekanto, 2011).

A systematic approach is needed to develop a legal model that can help identify and resolve the confusion between gratification and grants. This model should include a clear set of criteria that can be used to determine whether a gift can be categorized as gratification or a grant. For example, these criteria could include the purpose of the gift, the social context, the

relationship between the giver and the recipient, and whether the gift was reported to the authorities or not. In addition, legal education and socialization should also be carried out to the community and public officials to improve their understanding of the boundaries between gratification and grants and the legal implications of their actions. Thus, this reform is not only aimed at improving existing regulations but also at building better legal awareness among the community, thereby encouraging active participation in more transparent and accountable law enforcement.

In this proposed criminal law reform, a stricter reporting and monitoring mechanism is needed regarding gratification received by civil servants and state administrators. One step that can be taken is to introduce an electronic reporting system that makes it easier for employees to report receipt of gratification in real time to the Corruption Eradication Commission (KPK). This system must be supported by strict sanctions for those who do not report the gratification received, while also providing protection for reporters who report gratification with good intentions. Thus, it is hoped that this criminal law reform will not only address existing legal loopholes but also create a conducive environment for integrity and accountability in government, as well as increase public trust in the legal system in Indonesia (Sudarto, 1981).

In the analysis of the legal gap between gratification and grants, it was found that the unclear definition and criteria between the two terms create opportunities for abuse in practice. This gap not only weakens the effectiveness of law enforcement against corruption but also harms public trust in government institutions. The crime of gratification disguised as a grant shows the need for regulatory reform to ensure that the law can function optimally and follow the principle of justice. Therefore, to overcome this problem, systematic efforts are needed to revise the laws governing gratification and grants, to provide clearer boundaries and eliminate ambiguity in legal interpretation.

Concrete recommendations for improving the criminal justice system include several important steps. First, there is a need to revise Law No. 20 of 2001 to include a more detailed definition of gratification and grants as well as clear criteria to distinguish between the two. For example, an explanation regarding the purpose of the gift and the relationship between the giver and recipient can be included as part of the assessment criteria. Second, strengthening the reporting mechanism for gratification received by civil servants and state administrators must be implemented, using information technology to facilitate reporting. This reporting system must be supported by strict sanctions for violations, as well as providing protection for reporters (Thahira, 2020).

## **CONCLUSION**

The analysis of the legal gap between gratification and grants reveals that the vague definitions and regulations surrounding these concepts foster opportunities for abuse, potentially undermining the integrity of the legal system and government. Current regulatory weaknesses have allowed gratification to masquerade as grants, diminishing the effectiveness of anti-corruption law enforcement and creating ambiguity for both offenders and authorities. Therefore, urgent reform is needed to establish a clearer legal framework distinguishing gratification from grants, which should include comprehensive definitions and specific criteria for differentiation. Additionally, enhancing reporting mechanisms and imposing stricter sanctions for violations are essential to promote transparency and accountability. By

implementing these measures, the criminal justice system can operate more effectively, prevent disguised corruption, and bolster public confidence in government institutions, ultimately leading to a cleaner, more transparent, and accountable government aligned with societal expectations of the rule of law.

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