

GRATIFICATION OF TICKETING AND ACCOMMODATION FACILITIES BY THE FORMER DEPUTY CHAIRMAN OF THE KPK REVIEWED LAW NUMBER 19 OF 2019 CONCERNING THE SECOND AMENDMENT TO LAW NUMBER 30 OF 2002 CONCERNING THE CORRUPTION ERADICATION COMMISSION

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ABSTRACT

Not enough with one ethical violation, KPK leader Lili Pintauli again acted and again dealt with the KPK Supervisory Board (Dewas) over the alleged receipt of gratuities in the form of hotel accommodation to tickets to watch the Mandalika MotoGP. This study aims to find out and analyze the regulation of gratification as one of the criminal acts of corruption. And knowing and analyzing about gratification can be classified as a criminal act of bribery corruption. This research belongs to the normative type of research. So it can be known that the regulation of gratification as one of the criminal acts of corruption in accordance with the value of life in Indonesia, that gratification is not essentially a criminal act. Because gratification is inseparable from the habits of people who have been cultured. In addition, gratuities can be classified as criminal acts of bribery corruption, if the gratuities are given to civil servants / State administrators/officials related to their positions. The receipt of such gratuities is contrary to the obligations or duties of the state administrator.

Keywords: *Gratuities, Facilities, Corruption Eradication Commission*

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INTRODUCTION

Not enough with one ethical violation, KPK leader Lili Pintauli again acted and again dealt with the KPK Supervisory Board (Dewas) over the alleged receipt of gratuities in the form of hotel accommodation to tickets to watch the Mandalika MotoGP. However, instead of being severely sanctioned, Dewas' move was lost quickly to Lili's maneuver to resign as head of the KPK.

Ironically, the President prematurely signed the Presidential Decree on Lili's dismissal so that the KPK Dewas did not continue the process of handling the ethics report. This is not the first time the public has witnessed Lili's controversial maneuvers, at least four times the community has reported her to Dewas for alleged ethical violations. Finally, in August 2021, the KPK Dewas stated that Lili was proven to have committed serious violations for communicating with litigants, even though the sanctions imposed were not commensurate with the actions.

The last case that finally made him withdraw was the allegation of receiving gratuities from PT Pertamina during the Mandalika MotoGP event, last March. It is estimated that the total value of the gift is Rp 90 million from Pertamina. This latest incident needs to be examined critically, first, the behavior of the KPK leader led by Firli Bahuri with his new law often ignores the code of ethics.

Whereas previously the KPK was known for a long time to have very high ethical standards. Second, the termination of Lili Pintauli's ethics hearing by the KPK Dewas should be suspected to be part of a strategy to avoid severe sanctions that led to dismissal so as to further damage the image of the KPK under Firli Bahuri. This indication is clearly visible considering the resignation letter submitted by Lili Pintauli to President Jokowi, a copy of which was received by Dewas on June 30, 2022. However, at that time, Dewas insisted on continuing the process of summoning the court on July 5, 2022.

However, when the decision to dismiss Lili came out on July 11, 2022, the ethics hearing also stopped immediately, so that the handling of alleged violations of ethics was anti-climax. That is why Dewas' move is considered an effort to wash hands just so that the image of the KPK looks clean.

Third, the investigation of the alleged criminal act of receiving Lili Pintauli's gratification should run parallel to the handling of her ethical violations. Although ethical violations have been stopped for reasons that have been issued by the Presidential Decree, Dewas can actually delegate data about alleged gratuities owned to be delegated to the Police or Prosecutor's Office.

Gratification is clearly regulated in Article 12 B of Law No. 20 of 2001 jo Law 31 of 1999 concerning the Eradication of Corruption so that the alleged receipt of graft should also be actionable as long as there are criminal provisions violated without waiting for whichever comes first.

Once again, the alleged receipt of gratuities by Lili Pintauli while serving as Deputy Chairman of the KPK is not only an ordinary ethical violation but also contains a criminal act of corruption. Law enforcement officials, both police and prosecutors, actually do not need to wait for a report, because the crime of corruption is not a complaint. So it could have gone directly to the KPK to ask for a file on the alleged receipt of gratuities which, if proven could ensnare the former KPK leader, Lili Pintauli Siregar (<https://antikorupsi.org/id/jerat-pidana-mantan-pimpinan-kpk>, accessed on November 3, 2022).

The purpose of this study is in accordance with the formulation of the problem that has been put forward. Therefore, the purpose of the research is to find out and analyze the regulation of gratification as one of the criminal acts of corruption and to find out and analyze about gratification can be classified as bribery corruption.

METHOD

The research method used in this study is the normative legal research method. Normative legal research is legal research conducted by examining library materials or secondary data (Soekanto, 2007).

According to Marzuki (2017), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced. In this type of legal research, often the law is conceptualized as what is written in laws and regulations or the law is conceptualized as rules or norms that are a benchmark for human behavior that is considered appropriate (Amiruddin, 2012).

RESULTS AND DISCUSSION

Regulation of Gratification as One of the Criminal Acts of Corruption

In Article 12 B Paragraph (1) of Law Number 31 of 1999 Jo Law Number 20 of 2001 concerning the Eradication of Corruption Criminal Acts, it is affirmed that what is meant by "gratuity" is a gift. In a broad sense which includes giving money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free treatment, and other facilities.

Judging from the formulation of the provisions contained in article 12 B paragraph (1), "gratification" is not a qualification of the criminal act of corruption regarding gratification, but only an element of the criminal act of corruption concerning gratification. In developed countries, gratification to these officials is strictly prohibited and the perpetrators are given quite severe sanctions, because it will affect the official in carrying out his duties and decision-making which can cause imbalances in public services.

However, Article 12 C of Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Criminal Acts has actually provided an exception regarding this gratification offense itself, where it is affirmed that: The provision of each gratuity is considered a bribe not applicable, if the recipient reports the gratuity received to the Corruption Eradication Commission.

Submission of the report must be carried out by the recipient of the gratuity no later than 30 (thirty) working days from the date the gratuity is received. The Corruption Eradication Commission within no later than 30 (thirty) working days from the date of receiving the report must determine the gratification can be the state (Law Number 31 of 1999 Jo Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption).

The regulations regarding this gratification in Law Number 20 of 2001 concerning the Eradication of Corruption are:

a. Philosophical Foundations

The general explanation of Law Number 20 of 2001 concerning the Eradication of Corruption states that the purpose of the insertion of article 12 B in Law Number 31 of 1999 concerning the Eradication of Corruption is to eliminate the sense of injustice for perpetrators of corruption in terms of relatively small corrupt values (Wiyono, 2005).

Article 12 B of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning the Eradication of Corruption reads: "Any gratuity to a civil servant or state administrator is considered a bribe, if it is related to his position and which is contrary to his obligation or duty".

Judging legally, there is actually no problem with gratuities (Setiasih, 2021). This act is simply an act of someone giving a gift or grant to another person (WARSIDIN, 2020). Of course this is allowed. However, over time, culture, and lifestyle, giving which is often called gratification began to experience dualism of meaning.

Giving to government officials or state administrators is always accompanied by the hope of obtaining ease in reaching agreements with the government generally in the field of procurement of goods and services (Arsyad & Karisma, 2022).

Here, the party that benefits later in life is the gift giver. At the time of tendering, for example, tender participants who have given gratuities certainly have more or even the highest points than other tender participants.

b. Sociological Foundation

Corrupt practices today are experiencing development with the emergence of new practices that seek to exploit loopholes or weaknesses in various existing laws and regulations (SH & Puspitosari, n.d.). Gift giving is often thought of simply as a thank you or congratulations to an official (Amrani, 2020).

But what if the gift comes from someone who has an interest in the decision or policy of the official, what if the value of the gift is above the fair value and whether the gift will not affect integrity, independence and objectivity in decision making or policy, so that it can benefit other parties or oneself .

Giving gifts as an act or action of someone who gives something (money or objects) to another person is of course permissible. But if the gift is in the hope of influencing the decision or policy of the official being gifted, then the gift is not just a congratulatory or a sign of gratitude.

However, as an attempt to obtain benefits from officials or inspectors that will affect their integrity, independence and objectivity, is an act that is not justified and this is included in the definition of gratification.

Examples of gifts that can be classified as gratuities include:

1. Giving gifts of goods or money as a thank you for being helped;
2. Gifts or donations from associates received by officials at the time of their child's marriage;
3. Provision of travel tickets from partners to officials/civil servants or their families for personal use free of charge;
4. Provision of special discounts for officials/civil servants for the purchase of goods or services from partners;
5. Provision of fees or costs for Hajj from partners to officials/civil servants;
6. Giving birthday gifts or on other personal occasions of associates;
7. Giving gifts or souvenirs from partners to officials/civil servants during work visits;
8. Giving gifts or parcels to officials/civil servants during religious holidays, by associates or subordinates;

Based on the example above, a gift that can be categorized as gratuity is a gift or promise that has a connection with an employment or official relationship and / or solely because it is related to the position or position of officials / civil servants with sipemberi.

Seeing that these conditions are real in society, and have become social problems, then in Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, it is considered necessary to regulate the gratification. Where in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, regulations regarding gratification do not yet exist.

c. Juridical Foundation

At the time the entire Republic of Indonesia was declared in a state of war on the basis of Law Number 74 of 1957 Jo Law Number 79 of 1957.

In order to eradicate corruption, the Regulation of the Central War Authority/Chief of Army Staff dated April 16, 1958 No prt/peperpu/013/1958 and its implementing regulations and the Regulation of the Central War Authority/Chief of Naval Staff dated April 17, 1958 Number prt/Z/I/7 (Lilik Mulyadi, 2007: 1).

Because the regulation of the central war authority is only valid temporarily, the government of the Republic of Indonesia considers that the regulation of the central war authority in question needs to be replaced with legislation in the form of a law.

"Given the urgency and the need to immediately regulate the criminal act of corruption, on the basis of Article 96 paragraph (1) of the 1950 Constitution, the replacement of the regulation of the central war authority is determined by legislation in the form of government regulations in lieu of law, namely by Perpu Number.

24 of 1960 concerning the Prosecution, Prosecution, and Examination of Criminal Acts of Corruption, which was then based on Law Number. 1 Year 1960 concerning Prosecution, Prosecution, and Investigation of Criminal Acts of Corruption".

In its implementation, it turned out that Law Number 24 Prp of 1960 still did not achieve the expected results so it was forced to be replaced again by Law Number 3 of 1971 concerning the eradication of criminal acts of corruption.

After more than two decades of enactment, it turns out that Law Number 7 of 1971 is no longer in accordance with the development of legal needs in society, especially with the occurrence of corruption, collusion and nepotism practices involving state administrators with businessmen.

Therefore, it is natural that then the MPR as the highest institution of the State stipulates MPR Tap Number XI / MPR / 1998 concerning Clean and KKN-Free State Administrators which, among others, stipulates that it should be further regulated by law on efforts to eradicate criminal acts of corruption which are carried out firmly, by consistently implementing the Corruption Law.

On the basis of TAP MPR Number XI / MPR / 1998, then stipulated Law Number 31 of 1999 concerning the eradication of corruption which came into effect on August 16, 1999, and was published in the State Gazette of the Republic of Indonesia of 1999 Number 140 Law Number 3 of 1971 concerning the Eradication of Corruption is no longer valid.

However, later changes were made to Law Number 31 of 1999 with the enactment of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption and contained in the State Gazette of the Republic of Indonesia of 2001 Number 134 which came into effect on November 21, 2001.

The reason for the amendment to Law Number 31 of 1999 can be known from the consideration of point b of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, namely (Consideration point b of Law No. 20 of 2001 concerning the Eradication of Corruption Crimes):

1. To further ensure legal certainty;
2. Avoid diversity of legal interpretations;
3. Provide protection of the social and economic rights of the community, as well as;
4. Fair treatment in eradicating corruption.

The government's effort in eradicating corruption is to update the underlying laws and regulations.

It is not complete enough for Law Number 31 of 1999 to eradicate corruption, it is concretely shown by the issuance of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

One of the main things regulated in Law Number 20 of 2001 concerning the Eradication of Corruption is that between Article 12 and Article 13 new articles are inserted, namely Article 12 A, Article 12 B and Article 12 C

In Law Number 20 of 2001 concerning the Eradication of Corruption for the first time, a new corruption crime that was previously introduced was tucked into the articles of bribery corruption regulated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, but there is no mention in detail and clearly (National Legal Development Agency, Department of Law and Human Rights: 15).

Based on the description above, it is known that gratification is not essentially a criminal offense, in this case the qualification of the delict is precisely found in the "recipient of gratuity".

Gratification itself in its formulation is still unclear, because in the Gratification Article there is no mention of the minimum nominal limit a person can be subject to the Gratification Article. Then for the burden of proof of receiving gratuity bribes with a nominal value of Rp. 10 million or more, the proof is carried out by the recipient of the gratuity (reverse proof), while if the receipt of the gratuity bribe is less than Rp. 10 million, then the one who must prove is the Public Prosecutor (ordinary evidence).

Likewise, if a civil servant or state administrator immediately reports the gratification received to the Corruption Eradication Commission no later than 30 (thirty) days from the date of receipt of the gratuity, then the crime will be deleted.

Gratification can be classified as a criminal act of bribery corruption

In the laws and regulations in Indonesia, it is not clear the separation between the criminal act of gratification and the criminal act of bribery. This is different from the arrangement in America where bribery and gratuity are prohibited. The difference is that in a prohibited gratuity, the gratuity giver has the intention that the gift is in appreciation of an official act, while in bribery the giver has the intention (to some extent) to influence an official action.

So it is clear that the difference between bribery and gratification is in the penetration (time) and intention (meaning). In the Pocket Book Understanding Gratification published by the Corruption Eradication Commission (KPK).

In the book on page 19 described several examples of giving that can be categorized as gratuities that often occur and can be classified as bribes, namely: The giving of gifts or parcels to officials during religious holidays, by associates or subordinates, gifts or donations at the time of child marriage of officials by associates of the official's office. Giving travel tickets to officials or their families for personal use free of charge.

Gratification can be considered a criminal act of bribery corruption if the person who receives a gratuity is a public servant / organizer related to his position / position is considered a bribe.

From the provisions of article 12 B paragraph (1) of Law no. 31 of 1999 jo Law no. 20 of 2001, 2 two) conditions, elements or criteria for bribes to receive gratuities, are:

- First, the receipt of gratuities must have something to do with the position, state administrator or, civil servant.
- Second, the receipt of gratuities must be contrary to his obligation or duty. The point is that in receiving gratuities classified as bribery corruption crimes, the motive for the gift is to achieve or there is a certain purpose from the person who gave the gratification. The intention of the gratuity giver is what violates the obligations and duties of an official.

CONCLUSION

Based on the explanation above, it can be concluded that the regulation of gratification as one of the criminal acts of corruption in accordance with the value of life in Indonesia, that gratification is not essentially a criminal act. Because gratification is inseparable from the habits of people who have been cultured.

If a civil servant or state administrator immediately reports the gratuity he received to the Corruption Eradication Commission no later than 30 (thirty) days from the date of receipt of the gratuity, then the crime will be deleted.

In addition, gratuities that can be classified as criminal acts of bribery corruption, if the gratuities are given to civil servants / State administrators / officials related to their positions.

The receipt of such gratuities is contrary to the obligations or duties of the state administrator. This can be seen in article 12 B paragraph (1) of Law no. 31 of 1999 jo Law no. 20 of 2001.

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