



Advancing Regulations and Harmonizing Laws to Ensure Fair and Transparent Legal Certainty in Bribery and Gratification Cases

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Abstract: This study aims to analyze the application of laws and regulations relevant to the topic discussed by employing a normative legal research method. Normative legal research is a method focused on the study of legal norms, doctrines, and principles found in legislation and scholarly writings. In this study, two main approaches are applied: the statute approach and the conceptual approach. The statute approach involves a systematic examination of legal provisions found in various legal instruments, including laws, government regulations, ministerial regulations, and other related legal sources. By analyzing these written norms, the research seeks to identify the legal basis that governs the issue under study. This approach enables the researcher to determine the extent to which existing regulations are relevant, consistent, and effectively implemented in addressing the legal problem. Meanwhile, the conceptual approach is used to explore the legal theories, principles, and definitions that underlie the legal rules being analyzed. This approach allows the study to go beyond the textual interpretation of law and delve into the conceptual framework that gives meaning to legal provisions. It includes an analysis of key legal doctrines, theoretical perspectives, and fundamental legal concepts such as justice, legal certainty, and legal responsibility. Combining these two approaches provides a comprehensive understanding of how the law is both applied and interpreted in the context of the research topic. It helps uncover inconsistencies, gaps, or overlaps in the regulatory framework, and also facilitates a deeper reflection on the rationale behind the law. Moreover, this methodology allows for the formulation of constructive legal arguments and recommendations, based on a sound interpretation of legal norms and principles.

Keywords: Bribery, Gratification, Legal Certainty, Law Enforcement

1. INTRODUCTION

The criminal acts of bribery and gratification have different meanings, although both often occur together in corrupt practices. Based on Article 605 of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the Criminal Code), bribery is a gift or promise given to civil servants or state administrators with the intention that they act or not act in their positions that are contrary to their obligations or duties (Wibowo, 2024). Gratification according to Article 12B of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (hereinafter referred to as Law Number 20 of 2001) is a gift in any form received by a civil servant or state administrator related to his position and contrary to his obligations or duties, where if the value is IDR 10,000,000.00 or more, proof that it is not a bribe is the responsibility of the recipient (Mauliddar et al., 2017). The main difference lies in the acceptance without any specific intention to influence the decision or action of an official, while bribery always involves the intention to influence a decision (Hafrida, 2013).

Law Number 20 of 2001 regulates in detail the criminal acts of bribery and gratification, especially in Articles 12B and 12C which stipulate that gratification to civil servants or state administrators is considered a bribe if it is not reported to the KPK, and the sanctions can

include life imprisonment or between 4 to 20 years in prison and a fine of between IDR 200 million and IDR 1 billion (Razak et al., 2023). Meanwhile, Articles 605-606 of the Criminal Code (KUHP) regulate the crime of giving bribes to civil servants or state administrators, with a minimum prison sentence of 1 year and a maximum of 5 years, and a fine of category III to category V. Article 606 of the Criminal Code regulates giving gifts or promises to state officials with a specific purpose, where the perpetrator can be sentenced to imprisonment of up to 3 years and a fine of category IV (T. R. Saputra et al., 2019).

The latest legal developments, especially with the ratification of the new Criminal Code (KUHP) through Law Number 1 of 2023, have introduced changes in perspective on the crime of bribery and gratification. Previously, in Law Number 20 of 2001, the regulation on gratification tended to refer to stricter limitations in terms of reporting to the KPK (Milono, 2014). With this change, sanctions against the crime of bribery and gratification have been further aggravated and are more focused on prevention by introducing reverse proof for gratification. This change strengthens efforts to eradicate corruption in Indonesia, having an impact on reducing the level of corruption by increasing the authority of law enforcement and transparency (Halipah et al., 2022).

The legal loophole in the regulation of criminal acts of bribery and gratification lies in the inconsistency of the rules regarding the reporting of gratification received by civil servants or state administrators (Kresna, 2022). Article 12B of Law Number 20 of 2001 requires recipients of gratification to report it to the Corruption Eradication Commission (KPK), but if it is not reported, the gratification can be considered a bribe, which can result in heavier sanctions, namely imprisonment and higher fines (Irfan, 2014). This creates a legal loophole that opens up the potential for unreported gratification to potentially become bribery, with the threat of greater penalties in accordance with Articles 605-606 of the Criminal Code. This interconnectedness makes law enforcement more difficult, as law enforcement officers must verify whether the gratification is intended to influence actions or decisions, which can make it difficult to apply fair and consistent sanctions. This loophole also increases the potential for manipulation in the reporting process, making the challenges in law enforcement even more complex.

Legal uncertainty in enforcing criminal acts of bribery and gratification in Indonesia arises due to overlapping regulations between the Corruption Eradication Law (Law Number 20 of 2001) and the Criminal Code (KUHP), especially in terms of the definition and sanctions related to gratification and bribery (Audy & Firmansyah, 2023). For example, Articles 12B and 12C in the Corruption Law regulate gratification that has not been reported as bribery, while

Articles 605 and 606 of the Criminal Code contain provisions related to giving and receiving bribes more generally. This discrepancy creates confusion in law enforcement because law enforcement officers may have difficulty distinguishing whether an act is a bribe or a gratification, which has the potential to cause indecisiveness in the judicial process. It has an impact on corruption prevention policies which may be less effective because there is no consistent clarity regarding the regulation and implementation of sanctions against perpetrators of corruption (Danil, 2014).

2. RESEARCH METHODOLOGY

The normative legal research method with a statute approach and a conceptual approach is used to analyze the applicable laws and regulations related to the research topic. The statute approach focuses on the study of legal norms written in laws, government regulations, and other regulations to understand how the law is applied in the criminal acts of bribery and gratification being studied. Meanwhile, the conceptual approach focuses on understanding relevant legal concepts, such as definitions, principles, and theories underlying legal rules, to provide a basis for thinking in resolving the legal problems raised. The combination of these two approaches provides a comprehensive picture in examining, analyzing, and finding solutions to the legal issues faced.

3. RESULT AND DISCUSSION

Legal Uncertainty in Enforcement of Bribery Law with Gratuities in Indonesia

A clear definition in law is essential to ensure fair and consistent law enforcement, especially in cases related to corruption crimes, such as bribery and gratification (Siagian et al., 2024). The ambiguity of this definition can create legal uncertainty, which in turn makes it difficult for law enforcement officers to take appropriate action and leads to unequal treatment of perpetrators. In efforts to eradicate corruption in Indonesia, the crimes of bribery and gratification are crucial issues because the two are often interrelated and have the potential to damage the integrity of the government system (E. F. Saputra & Firmansyah, 2023). Therefore, a proper and consistent understanding of these two terms is an important basis for more effective efforts to eradicate corruption.

The variation in the definition of bribery in existing regulations, such as in Law Number 20 of 2001 concerning the Eradication of Corruption and the Criminal Code (KUHP), shows the ambiguity in the interpretation of this crime. In Law No. 20 of 2001, bribery is defined as a gift or promise to a civil servant or state administrator with the intention of influencing a

decision in his/her position, but there is no more detailed explanation of the form or characteristics of a more complex bribe (Chazawi, 2003). Meanwhile, in the Criminal Code, the regulation on bribery is more limited and tends to be more general, without containing the deeper aspects contained in the Corruption Eradication Law. This difference causes uncertainty in law enforcement because law enforcement officers are often faced with different interpretations between one regulation and another.

The unclear definition of bribery affects law enforcement practices because law enforcement officers such as the police, prosecutors, and judges have different views in assessing and deciding whether an act is a criminal act of bribery. Law enforcement practices that rely on varying interpretations have the potential to cause inconsistencies in law enforcement, which can harm parties who should receive fair legal protection (Arnanto & Puspitosari, 2024). Without a clear and consistent definition, prosecution of bribery crimes could be at risk of unequal treatment of the perpetrators, as well as potential abuse of authority by law enforcement officers themselves.

The definition of bribery in Law Number 20 of 2001 and the Criminal Code shows that although both regulate the crime of bribery, the approaches used are different. In Law Number 20 of 2001, the regulation focuses more on acts of giving that lead to abuse of power by civil servants or state administrators, with an emphasis on the motive to influence their decisions or actions (Atmoko & Syauket, 2023). Meanwhile, the Criminal Code focuses more on sanctions against the giver and recipient of bribes in general without considering a more specific context, such as the relationship between bribery and official authority or public interest (Aziza, 2018). This difference adds to the complexity of assessing and determining an action as a crime of bribery, given the limited definition in the Criminal Code which could lead to a narrower interpretation compared to Law No. 20 of 2001.

Article 12B of Law No. 20 of 2001 provides ambiguity in determining the criteria for gratification, especially regarding the nominal value that distinguishes between gratification that must be proven as a bribe or not. In this article, if the gratification is worth IDR 10,000,000 or more, then the recipient of the gratification must prove that the gift is not a bribe, while if the value is less than that amount, then the public prosecutor must prove that the gratification is a bribe (Pardede & Suartha, 2022). This ambiguity can cause misunderstandings in the legal process because the criteria used to determine whether a gift falls into the category of gratification or bribery depend on a fairly arbitrary value, thus increasing the burden on law enforcement officers in proving criminal acts of corruption.

The unclear legal formulation in Article 12C of Law No. 20 of 2001 also provides room for different interpretations in practice. This article states that the provisions in Article 12B do not apply if the recipient of the gratification reports the gift to the Corruption Eradication Commission (KPK). However, there is no detailed explanation regarding the reporting procedure or the criteria for whether the reported gratification can be considered valid. This can cause uncertainty regarding the legal status of the reported gratification and confuse law enforcers in determining whether the gratification received can be considered a bribe or not. This ambiguity creates the potential for inconsistent practices in implementing the reported gratification cases.

The uncertainty in proving gratification as a bribe can be seen from the provisions in Article 605 of the Criminal Code (KUHP) which regulates the giving or promising to civil servants or state administrators with the intention of influencing decisions in their positions. Meanwhile, in Article 12B of Law No. 20 of 2001, the formulation stating that gratification above Rp10,000,000 is considered a bribe that must be proven by the recipient provides room for doubt in the proof, especially in determining whether the gratification is related to the obligations or duties of the position or not (Paruntu, 2014). The difference in these provisions can confuse law enforcement officers, because the overlapping definitions of bribery and gratification have the potential to complicate the proof process, so that it can affect inconsistent examination and prosecution results.

The importance of consistency in legal sanctions lies in efforts to create legal certainty and justice in every judicial process. Consistency in the application of sanctions also serves as a basis for ensuring that the law applies fairly and non-discriminatory. In eradicating corruption, the comparison of sanctions between those regulated in the Corruption Eradication Law (UUTPK) and the Criminal Code (KUHP) is crucial because both regulate the criminal acts of bribery and gratification with different penalties. This difference creates ambiguity and difficulty in the consistent application of the law to perpetrators of corruption.

The variation in criminal sanctions between bribery and gratification based on related articles in Indonesian legal regulations shows significant differences. Article 12B of Law No. 20 of 2001 states severe sanctions for civil servants or state administrators who receive gratification, with the threat of imprisonment of up to 20 years and a considerable fine. Meanwhile, Articles 605 and 606 of the Criminal Code regulate lighter sanctions for the crime of bribery with the threat of a shorter prison sentence. This difference reflects the inconsistency in the way the law views bribery and gratification, even though both are part of the crime of corruption that damages the integrity of the government system.

The difference in sanctions between reported and unreported gratification, as regulated in Article 12C of Law No. 20 of 2001, also creates legal injustice. Gratification that is not reported by the recipient can be punished more severely, while if reported, the recipient is free from criminal sanctions. It creates an imbalance in the legal treatment of gratification cases, which can harm recipients of gratification who may not be aware of their obligation to report. This difference in sanctions affects the effectiveness of the law in handling gratification cases and can lead to potential misuse or manipulation of gratification reporting.

The impact of differences in the threat of punishment on the effectiveness of law enforcement is very significant, especially in creating justice and legal certainty. If sanctions are not applied consistently and fairly, this can reduce the effectiveness of eradicating corruption (Hariwangsa & Yuningsih, 2024). For example, inconsistencies in the imposition of penalties for reported versus unreported gratification can damage the integrity of law enforcement and create the impression that the law can be manipulated by certain parties. Imbalances in the threat of punishment can also weaken the expected deterrent effect in efforts to prevent corruption.

Inconsistent application of sanctions in law enforcement practices creates uncertainty among the public. Cases in which perpetrators of corruption are punished with sanctions that do not comply with existing regulations reduce the effectiveness of law enforcement. This inconsistency also damages public trust in the legal system and reduces the effectiveness of the overall anti-corruption policy. For example, in cases of bribery or gratification, if there are differences in the way law enforcers apply sanctions, the public will feel that the law does not apply fairly to everyone, which ultimately reduces the credibility of the justice system.

The obligation to report gratification according to law is regulated to prevent the potential for corruption. In Law No. 20 of 2001 concerning the Eradication of Corruption, Article 12C emphasizes that civil servants or state administrators who receive gratification are required to report it to the Corruption Eradication Commission (KPK) within a certain time, in order to avoid accusations of bribery. This reporting serves as a mechanism to ensure that the gratification received is not related to violations of obligations or abuse of office, thereby encouraging transparency in the public sector and increasing public trust in the government.

Reporting gratification has a major impact on law enforcement of corruption crimes, especially in determining whether the gratification can be considered a bribe or not. This administrative reporting process serves as the first step in evaluating whether the gift is unlawful or related to an illegitimate obligation or task. In this case, if the gratification is reported, the recipient can be free from criminal penalties related to bribery. Conversely, if it

is not reported, its status will be more difficult to prove as a legitimate gratification, and it can potentially become a criminal act of bribery, which will increase the legal consequences for the recipient.

The difference in sanctions between reported and unreported gratification, as regulated in Article 12C of Law No. 20 of 2001, creates legal injustice. The gratification that is reported within the specified time can prevent the recipient from criminal sanctions, while unreported gratification can be considered a bribe, which leads to more severe sanctions. This injustice can occur if the recipient of gratification who has reported it still does not receive equal treatment as gratification that is not reported, especially if the report is considered inadequate or late. Uncertainty about fairness in the application of this law can reduce public trust in the justice system and provide room for potential manipulation of the gratification reporting process.

Solutions and Improvement Efforts to Create Legal Certainty in Enforcing the Law on Criminal Acts of Bribery and Gratification

Articles 12B and 12C in Law No. 20 of 2001 have weaknesses in their formulation that can cause legal uncertainty, especially related to the definition of gratification and the limits of bribery. The unclear criteria in Article 12B related to gratification linked to the position or obligations of civil servants or state administrators, as well as inconsistent evidentiary regulations, complicate law enforcement. For example, although Article 12B stipulates that gratification of more than IDR 10 million is considered a bribe unless proven otherwise by the recipient, this still leaves room for different interpretations by law enforcement officers. It can lead to inconsistent law enforcement and injustice.

Improvements to the definition and criteria of criminal acts of bribery and gratification in laws and regulations are needed to create legal certainty. The definition of bribery must be clarified by emphasizing that gifts or promises that conflict with the obligations or duties of public officials in all sectors can be subject to bribery. Meanwhile, gratification needs to be explained in more detail so that all gifts related to a person's position or authority can be subject to law, including gifts that cannot be directly proven as bribes but have similar intentions or purposes. The affirmation of this definition will reduce the ambiguity in the law enforcement process.

To clarify the boundaries between gratification and bribery, it is recommended that regulations establish more specific criteria in distinguishing the two, especially in accepting gifts, facilities, or other forms of gifts related to the position. In addition, it is necessary to

further regulate gifts that are not related to obligations or duties but can be considered as gratification that has the potential to become bribes if there is a relationship with decisions taken by public officials. Clearer law enforcement will reduce the uncertainty that has often occurred in practice.

The objects of gratification listed in Law No. 20 of 2001 need to be updated by including broader categories, including gifts or facilities related to government projects or activities that can influence the decisions of public officials. In practice, many gratifications are in the form of goods, services, or facilities that are not directly related to certain decisions but still have the potential to affect the integrity of the officials who receive them. Therefore, regulations must regulate the categories of these gratifications to avoid legal loopholes that allow detrimental gratifications to escape sanctions.

The proposed changes to the gratification reporting mechanism must include improvements in two main aspects: reporting time and reporting method. First, there needs to be an obvious and more realistic time limit for reporting gratifications so that there are no delays that have the potential to worsen the legal impact. Reporting times that are too long can provide an opportunity for perpetrators to hide evidence or manipulate the situation, which will be detrimental to law enforcement. Second, the reporting mechanism must be updated in a more transparent and accessible manner, both through digital channels and direct reporting systems involving institutions such as the Corruption Eradication Commission (KPK). It is significant to provide convenience for civil servants or state administrators to report gratifications without fear or worry, and to ensure that reports received can be followed up immediately.

In addition, adjustments to the sanctions applied to reported and unreported gratifications should be made to create justice. Gratification reported within the right time frame should receive reduced sanctions or even exemption from sanctions, as a form of appreciation for transparency and corruption prevention efforts. Sanctions applied to unreported gratuities need to be stricter, considering that reporting that is not done within the proper time can cause losses to the legal system. Therefore, recommendations should develop simpler and more efficient reporting procedures, as well as ensure that civil servants or state administrators who report gratuities quickly and correctly are not subject to sanctions, encourage more reporting, and strengthen law enforcement in eradicating corruption.

The principle of legality is a basic principle in the legal system that requires that every criminal act must be based on clear and definite legal provisions. Therefore, in enforcing the law against the crime of bribery and gratification, it is important to have a clear and firm

definition of both crimes in the laws and regulations. Ambiguity in defining bribery and gratification can lead to different interpretations by law enforcement officers, which ultimately has the potential to reduce the effectiveness of eradicating corruption. Therefore, efforts are needed to clarify these boundaries so that there is no room for doubt or interpretation that could harm the legal process.

In addition, to increase the effectiveness of law enforcement against bribery and gratification, there needs to be an increase in the standards of evidence and procedures in charging perpetrators of these crimes. Sufficient evidence and clear procedures will help law enforcement officers handle corruption cases more systematically and accountably. On the other hand, uniformity in the definition of criminal acts in various regulations is crucial. Differences in interpretation between one law and another, or between various law enforcement agencies, can create legal uncertainty and slow the law enforcement process. Therefore, to achieve legal certainty, it is highly recommended to draft harmonious and uniform regulations related to the criminal acts of bribery and gratification, so as to minimize differences in interpretation by law enforcement officers.

Harmonization between Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption with other related regulations, including the Criminal Code (KUHP), is important to create legal certainty in eradicating the criminal acts of bribery and gratification. The inconsistency of the articles governing these two criminal acts in various regulations can cause confusion and different interpretations among law enforcement officers, which ultimately hinders law enforcement. Therefore, there needs to be harmonization between the articles governing bribery and gratification in Law No. 20 of 2001 and the Criminal Code, as well as integration of related regulations that allow for the creation of a consistent and efficient legal system. Thus, legal loopholes that can be exploited to avoid sanctions can be minimized, and law enforcement can be more transparent and fairer.

4. CONCLUSION

To improve law enforcement against criminal acts of bribery and gratification, it is crucial to improve the formulation of existing laws, including a clearer definition and strict criteria regarding gratification and bribery. Renewal of the reporting mechanism for gratification and its sanctions is also needed to create a more transparent and fair system and encourage more active reporting from civil servants or state administrators. In addition, strengthening the principle of legality by clarifying the definition of criminal acts in laws and regulations, as well as harmonizing various related regulations, will create better legal

certainty, reduce uncertainty in interpretation, and facilitate law enforcement. With these steps, it is expected that overcoming corruption through criminal acts of bribery and gratification can be done more effectively, fairly, and consistently.

The unclear definition and inconsistency in the application of laws related to criminal acts of bribery and gratification in regulations in Indonesia, as reflected in the differences between Law Number 20 of 2001 and the Criminal Code (KUHP), create legal uncertainty that is detrimental to the law enforcement process and creates injustice. Variations in definitions, evidentiary criteria, and criminal sanctions for bribery and gratification, especially in terms of reporting gratification, complicate efforts to eradicate corruption and have the potential to undermine public trust in the justice system. Therefore, it is necessary to align clearer and more consistent definitions and apply fair sanctions to improve the effectiveness of law enforcement and ensure justice in eradicating corruption.

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