

Gratification In Promotion In View Of The Law

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Abstract

Many cases of corruption by state officials are increasingly systematic and widespread, one of which is the existence of gratification. Therefore, gratuity should have its own meaning in the law if the definition or understanding of gratuity has not been included in the general provisions, it will be very likely that there will be ambiguity in the interpretation of the criminal act of gratuity. In Article 12 B Of The Corruption Eradication Act No. 20 of 2001 that a gift that is related to his position and contrary to his obligations or duties is considered an act that has an indication of gratuity. Legal norms in this article raises the ambiguity of the norm (Vague Norm), the juridical indication that someone has done the crime of gratuity is not clear, because the definition of gratuity itself is not written in the legislation so that Article 12 B still needs to be touched to be seen clearly.

Keywords: *Legal, Law, Gratification*

1. INTRODUCTION

One type of corruption offense is gratification. The many cases of corruption by state officials are increasingly systematic and widespread, one of which is the existence of gratification. The crime of gratuity can already be interpreted as unlawfully giving and receiving gifts that cause their actions to conflict with their obligations as officers or state officials. Therefore, gratification should have its own meaning separately in the act if the definition or understanding of gratuity has not been included in the general provisions it will be very likely there is ambiguity in the interpretation of the crime of gratuity. The number of modus operandi or ways that are carried out in giving gratification to state officials, will be very difficult if the gratification does not have its own definition, especially in terms of proof.

The Modus operandi is the mode used by criminals to commit criminal acts. In criminal cases, before making an arrest or ambush, law enforcement officers will examine the modus operandi of the criminals targeted to facilitate the arrest process. The Modus operandi is repetitive. Individual criminals commit their crimes not only using the usual way, but they in their operations usually use their own special ways.

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It is very clear that in Article 12 letter (A) is addressed to the recipient of gratuities or gift recipients while in Article 12B of Law Number 20 of 2001 on amendments to Law Number 31 Year 1999 on the eradication of corruption article 12b paragraph (1) which reads as follows : “(1) any gratification to a civil servant or state administrator is considered bribery, if it is related to his position and the opposite with its obligations or duties, with the following conditions:

1. Whose value is IDR 10,000,000. 00 (ten million rupiah) or more, proof that the gratification is not a bribe made by the recipient of the gratification;
2. Whose value is less than IDR 10,000,000.00 (ten million rupiah), proof that the gratification is a bribe made by the public prosecutor.”

The above article is addressed to the giver of gratification or the giver of gifts in this case is the perpetrator. If the gratification given to civil servants or state officials is related to the position they hold and affects the condition or obligation or duty, the act is considered bribery which must meet two conditions as follows : if the value exceeds ten million rupiah, proof that the the gratuity is not a bribe made by the recipient of the gratuity. The second if it is less than ten million rupiah or below ten million rupiah then the one who proves that the gratification is not an act of bribery is carried out by the public prosecutor.

However, what is blurred about this norm is between the norm of gratification and the norm of bribery. Both do tend to have similarities but actually between the two is very different gratification have in common the act of bribery, which is based on or based on an intention contrary to the law, is to facilitate its main purpose. Such purposes contrary to what should be done in office for civil servants or officials of the country but that becomes different between both of them are if the gratification does not have the nature of consensuality. from the brief description above, the author is interested in studying the gratification made by officials in obtaining positions.

2. RESEARCH METHOD

The research method in this paper is juridical normative, the approach used in this study is a statutory approach (Statue Approach). Collection of legal materials using techniques or methods of Library Studies (Library Research) through deductive analysis.

3. RESULT AND ANALYSIS

Giving gifts is a very common thing especially in Indonesia which has an Eastern culture. This is considered as a manifestation of brotherly relations and a sign of gratitude to someone who has helped him but to

address this should not be excessive because it can be considered or should be suspected if the gift is not reasonable let alone the gift is of fantastic value and unnatural. A reward can be given to someone because of an achievement or something he has done to himself. There is also the Giving of gifts because of the desire to achieve something, so that the gift can trigger a person to achieve the expected desire.

To find out whether the act of gratification or gift giving in this is through the mode of promotion included in the category corruption must be met with elements of corruption. Elements of corruption can actually be seen from the understanding of the act criminal corruption or formulation of offenses contained in the provisions of regulations legislation in force, and some understanding and formulation of delict corruption as can author inventoried under the Act Law No. 20 Of 2001 On Amendments To Law No. 31 In 1999 on the eradication of corruption is :

- a) actions of a person or legal entity against the law;
- b) the Act is an abuse of authority;
- c) with a view to enrich oneself or others;
- d) the Act is detrimental to the state or the economy of the state or is allegedly detrimental to the financial and economic State;
- e) Giving or promising something to a state employee or state officials with the intention of civil servants or organizers the state does or does not do anything in his office, which contrary to its obligations;
- f) give something to the public servant or state organizer because or in connection with something that is contrary to the obligation, done or not done in his office;
- g) Giving or promising something to the judge with the intention of affect the decision of the case submitted to him for trial;
- h) Giving or promising something to someone who, according to the provisions of the laws and regulations, is determined to be an advocate to attend court hearings with the intention of influencing the advice or opinion that will be given in relation to the matter submitted to court for trial;
- i) The existence of fraudulent acts or deliberately allow the occurrence of fraudulent acts;
- j) Public servants or persons other than public servants who are assigned to carry out a public office continuously or temporarily, deliberately embezzling money or securities deposited because office, or allowing such money or securities to be taken or embezzled by others, or assisting in the commission of such acts;
- k) Intentionally misappropriating, destroying, damaging, or rendering unusable any item, deed, letter, or list used to convince or prove in front of an authorized official, who is controlled by reason of his position and allowing others to eliminate, destroy, damage, or render

unusable any such item, deed, letter, or list and helping others to eliminate, destroy, damage, or render unusable any such item, deed, letter, or list; and

- 1) Civil servants or state officials who receive a gift or promise when it is known or reasonably suspected that the gift or promise is given because of the power or authority associated with their position, or who according to the mind of the person giving the gift or promise there is a connection with his position.

Reference used to analyze whether the act of gratification prohibited in this case the Giving of gifts to state officials or civil servants through the mode of giving a promotion, including corruption or not. So when viewed from the elements of criminal acts both elements subjective and objective elements of the act of gratification found in Article 12b Paragraph 1 of Law No. 20 of 2001 on amendments to Law No. 31 Of 1999 On The Eradication Of Criminal Acts Corruption is a type of corruption.

Although not all elements are met as a result of adverse state finances or the state economy, if the article about the gratuity Article 12b paragraph (1) analyzed by type of corruption offense in Article 2 Paragraph (1) Law No. 31 Of 1999 On The Eradication Of Criminal Acts Corruption, gratification can be classified into corruption. Because follow criminal corruption is a formal offense, which was found separation between the act and the consequences of such criminal medicine.

When the action is completed, then the crime that has been completed depends on what the formulation is. Unlike the case with material offense where the formula is mixed is certain prohibitions are followed by the consequences of the criminal act. Up to the point severity is a prohibition that gives rise to the consequences of certain criminal acts if a crime is not tangible in action but depends on such prohibited consequences have arisen or have not yet arisen. In other words it can be said that delict / starbaar feit it consists of objective elements in the form the existence of a behavior contrary to law (onreematig or wederrechtelijk) and subjective elements in the form of a maker/dader capable of being responsible or culpable (toerekeningsvatbaarheid) conduct contrary to that law.

If the act of gratuity is included in the criminal offense, it must meet the elements of a criminal offense so that a person involved in gratuitous acts may be held criminally liable. Because the element – elements in corruption are not cumulative, meaning that each the violated element stands as a separate sense. If yes cumulative, meaning that a violation of one of the elements cannot yet be sanctioned. Conversely, if the elements in question are part can not be separated from each other, simply breaking one of the elements of the substance can already be subject to legal threats.

Any gratification to state employees or state officials are considered bribery when related to his position and contrary to duty or duty. Thus, gratification is an extension of the term of awarding a prize received by a civil servant or organizer state while performing their duties. This understanding is obtained from the explanation Article 12b paragraph (1) of Law No. 20 of 2001 on amendments to Law No. 31 Of 1099 On The Eradication Of Criminal Acts Corruption so that based on the understanding of the article does not distinguish there is an understanding between bribery and gratification. The difference between bribery and gratuities are very different. There is a consensus among the acts of bribery it is very noticeable that both sides want equally. Temporary if in bolting gratuity is not necessarily the recipient of the gratuity realize that the gift is to do something or do not do anything that is contrary to the department or its interests.

Based on Article 12 letter (a) of Law No. 20 of 2001 On Amendments To Law No. 31 Of 1999 On Eradication of corruption which reads as follows :“Sentenced to life imprisonment or imprisonment most short 4 (four) years and a maximum of 20 (twenty) years and a fine at least Rp 200,000,000 .00 (Two hundred million rupiah) and at most Rp 1,000,000,000 .00 (one billion rupiah):

For civil servants or state administrators who receive a gift or promise, when it is known or reasonably suspected that the gift or promise is given to move them to do or not do something in their position, which is contrary to their obligations;”. So in the article addressed to the recipient of the gift, the gift referred to in this case is gratuity. So in this article 12 letter (a) if there is a civil servant or state administrator who receives gratification or gifts when it is known or suspected to move what is desired either in doing or not doing something related to his position and contrary to its obligations, the civil servants or state officials shall be sentenced to life imprisonment or imprisonment of at least 4 years and a maximum of 20 years and a criminal fine of at least Rp.200,000,000 and most a lot of Rp 1,000,000,000.00 (one billion rupiah).

Article above is addressed to the giver of gratification or gift giver in this is the perpetrator. When a warrant is issued to the employee or State administrators associated with the position he held and affect the conditions or obligations or duties of the act is considered the provision of bribes which must meet two conditions as first, if the value exceeds ten million rupiah, then proof that the gratification is not a bribe made by gratuity recipients.

Second, if less than ten million rupiah or under ten million rupiah, which prove that the gratification is not is an act of bribery committed by the public prosecutor. In the sense that both sides the parties do not necessarily know each other because they are considered to know only the giver of gratification while the recipient of gratification is not necessarily

know the purpose and intent of the giver of gratification. Because usually the tend to be done in the gift is not overtly or sometimes they just give. But behind all that they have more expectations from the Giving of this unnatural gift.

4. CONCLUSION

The granting of a promotion is included in one of the acts of gratification which is forbidden. Because the promotion is a mode operandi for the giver of gratification to achieve its goals. Gratification it self included in the offense of corruption because it has met the elements of corruption offense it involves state officials and the abuse of their authority. To the act by which a state official or civil servant doing something in his position that is contrary to its obligations then article used to sanction the perpetrators of criminal acts gratification not only based on Article 12b Paragraph 1 of Law Number 20 year 2001 On Amendments To Law No. 31 Of 1999 On The Eradication Of Corruption. Moreover, article 12b paragraph (1) is still blurred between bribery and gratuity because the definition of gratuity itself there is still no separate definition in the general provisions of the law Corruption. Whereas the norms in gratification and bribery are very different because this depending on the element of consensus in the act of gratification and bribery.

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