

## INCONSISTENCY OF CRIMINAL ELEMENTS IN THE ARTICLE ON GRATIFICATION COMMITTED BY CIVIL SERVANTS IN RELATION TO THE LAW ON CRIMINAL ACTS OF CORRUPTION

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### ABSTRACT

*Law No. 20 of 2001 Amending Law No. 31 of 1999 on the Eradication of Corruption still contains inconsistencies in its provisions, particularly regarding gratification, specifically in Article 5(2) and Article 11, which share the same elements as Article 12(a) and (b), as well as Article 6(2), which shares common elements with Article 12(c); However, each is subject to different criminal penalties, thereby creating legal uncertainty and opening the door to abuse of authority by law enforcement officials in the application of these provisions. This study employs a normative legal method through a legislative, theoretical, and legal conceptual approach to analyze the offense of gratification committed by civil servants, the application of its criminal sanctions, and the reformulation of legal provisions regarding gratification in corruption-related criminal offenses. The research findings indicate that the offense of gratification consists of four main elements: the perpetrator being a civil servant or public official; the act of receiving gratification; the existence of a relationship with an official position that conflicts with duties or obligations; and the failure to report the gratification to the Corruption Eradication Commission (KPK) within 30 working days of receipt. Various obstacles were identified in the enforcement of sanctions, including internal legal system obstacles—such as legal substance, institutional issues, and legal culture—as well as external obstacles in the form of sociological factors, technical challenges in law enforcement, and overlapping regulations.*

**Keywords:** *Inconsistency, Gratification, Corruption Offense.*

### INTRODUCTION

Action criminal corruption in essence Now Still become problem Serious in system enforcement law in Indonesia because his actions No only harm state finances , but also damage trust public to government and officials enforcer law . Corruption Alone interpreted as related actions with corruption, deviatio, dishonest, and abuse position For get profit personal and group certain. In particular etymological, term corruption originate from Latin *corruption* or *corruptus* which means depravity and moral deviation , corruption is actions bad like embezzlement

and receipt of money bribery. In addition, in *Black's Law Dictionary* corruption interpreted as something actions taken For get profit with method abuse position or authority held and conflicting with obligation official and right other parties.<sup>1</sup>

Development system law in Indonesia after amendment the constitution also gave birth to various new state institutions that aim strengthen supervision to organization government , one of them is Commission Eradication Corruption that is formed based on Constitution Number 30 of 2002 and later updated through Constitution Number 19 of 2019. The presence of the Corruption Eradication Committee is intended as institutions that have task do prevention and eradication action criminal corruption based on principle certainty law , transparency , accountability , proportionality , and respect to right basic human . Action criminal corruption if seen in in practice , in general done by people who have it position or position certain , so that deviation the become very dangerous Because carried out by the party who has authority in operate government . action criminal corruption committed apparatus civil servants can cause loss big to state finances due to existence abuse authority and position.<sup>2</sup>

Enforcement law to action criminal corruption in Indonesia is also frequent experience obstacle even stagnation so that cause image negative to apparatus enforcer law and system justice criminal in a way overall . Condition the be one of reason formation various commission in system justice criminal law to strengthen enforcement law to action criminal corruption.<sup>3</sup> Law Number 31 of 1999 in conjunction with Law No. Number 20 of 2001 explains various type action criminal corruption , such as loss state finances , bribery bribery , embezzlement in position, blackmail, deeds cheating, collision interest in procurement, up to gratification . Some form action criminal said, gratification be one of common problems cause debate Because own relatedness with action criminal bribery is giving unearned profits proper to officials or civil servants with objective influence action or related decisions with his position.<sup>4</sup>

Deeds corrupt in Islamic perspective itself including actions prohibited falsehood as explained in QS Al-Baqarah verse 188 which prohibits take or eat

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<sup>1</sup> Adi Mansar, dkk, *Buku Ajar Pengantar Pendidikan Anti Korupsi*. (Medan: Umsu Press, 2023).

<sup>2</sup> Zainab Ompu Jainah, dkk. 2021. "Analisis Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Korupsi Yang Dilakukan Oleh Aparatur Sipil Negara (Studi Putusan Nomor 23/Pid.Sus-Tpk/2021/Pn.Tjk)." *Indonesia Journal of Law and Social-Political Governance*, Vol. 1 No. 3, September–Desember 2021.

<sup>3</sup>Romli Atmasasmita, *Reformasi Hukum, Hak Asasi Manusia dan Penegakan Hukum*. (Bandung: Mandar Maju, 2001)

<sup>4</sup> Muladi, *Kapita Selekta Sistem Peradilan Pidana*. (Semarang: Badan Penerbit Universitas Diponegoro, 2010)

other people's property with the way that is not true . The problem that becomes focus in study This is existence inconsistency element offense in a number of chapter gratification in the Law Eradication Action Criminal Corruption. Inconsistency the as seen in Article 5 paragraph (2) and Article 11 which have the same elements with Article 12 letters a and b, and Article 6 paragraph (2) which has the same elements with Article 12 letter c, however threat the penalties applied different . Condition the cause uncertainty law Because to element the same act precisely implemented sanctions different crimes, so that potential cause abuse authority by the authorities enforcer law in determine articles used to perpetrators . In addition , the law positive in Indonesia is also considered Not yet provide clear boundaries between gratuities and bribes Because gratification can considered as bribe if giving the related with position or authority recipient .

Difference main between bribery and gratuities lies in the goal and time the gift, where the bribe given before action done For influence decision officials, while gratification given after action done as form award or saying accept love.<sup>5</sup> Proof in action criminal gratification also becomes problem Because existence mechanism proof backwards to reception gratification with a value of more than IDR 10,000,000.00, so that recipient must prove that giving the No related with position or authority . Mechanism the often cause difficulty in determine whether something giving can categorized as gratification or not.<sup>6</sup> Research This confirm the need reformulation rule law about gratification so that there is clarity element offense , suitability threat criminal law and certainty law in implementation sanctions to government employees or state administrators who carry out action criminal corruption in the form of gratification .

## METHOD

This study uses normative juridical research with a statutory and conceptual approach to examine the legal regulation of gratification in corruption crimes.<sup>7</sup> The research is descriptive and analytical in nature using secondary data in the form of primary, secondary, and tertiary legal materials obtained through library research.<sup>8</sup> The data is then analyzed qualitatively to examine the offense of gratification, the application of criminal sanctions to civil servants, and the reformulation of legal regulations on gratification in the corruption eradication system in Indonesia.

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<sup>5</sup> Diana Kusumasari. 2025. "Klinik Hukum Online." Diakses pada 12 Maret 2025 pukul 17.00 WIB.

<sup>6</sup> Mohammad Fatih dan Ibre Dewa Agung. *Kajian Gratifikasi dan Pembuktian Terbalik dalam Tindak Pidana Korupsi* (Jakarta: Prenadamedia Group, 2026).

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*. (Jakarta: Kencana, 2017)

<sup>8</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*. (Jakarta: UI Press, 2014)

## DISCUSSION

### **Offense About Gratification Carried Out Government Employees According To Constitution Action Criminal Corruption**

Offense about gratification carried out by civil servants according to Constitution Action Criminal Corruption is basically born from the country's need for strengthen eradication corruption , in particular to practice giving present or facility to potential civil servants and state administrators influence implementation duties and authorities . Regulations about gratification Actually has known before birth Constitution Number 20 of 2001, namely through Article 1 paragraph (1) letter e of the Law Number 3 of 1971 concerning Eradication Action Criminal Corruption that requires civil servants report every reception present or related promises with Articles 418, 419, and 420 of the Criminal Code. In provision said , the gift that is not reported new considered as action criminal if all over element bribe fulfilled . However after change Constitution Corruption through Constitution Number 20 of 2001, concept gratification expanded and emphasized through Article 12B and Article 12C, where acceptance gratification that is not reported to the Corruption Eradication Committee in term 30 days Work can direct considered as action criminal corruption.<sup>9</sup>

Formation chapter gratification No can released from idea implementation system reversal burden evidence presented by Andi Hamzah to the Minister of Justice and Human Rights at that time that, Baharuddin Lopa. System This considered important Because proof action criminal corruption with system normal often experience difficulty consequence perpetrator corruption the more advanced hide results his crimes . The former Constitution adopt system proof backwards in a way limited , especially to reception related gratification with position . Prosecutor general Enough prove existence reception gratification , whereas recipient gratification must prove that giving the No related with position and not contradictory with obligation or his duties.<sup>10</sup>

Article 12B of the Law Corruption arrange that every gratification to civil servants or state administrators are considered as bribe if relate with his position and opposite with obligation or his/her task . If the value gratification amounting to Rp. 10,000,000.00 or more , then recipient gratification must prove that giving the No bribery . On the other hand , if the value is below Rp . 10,000,000.00, then prosecutor prosecutor general public who are obliged prove that gratification the is bribery . Provisions This show existence implementation system reversal burden proof in a way limited in law criminal corruption in Indonesia.<sup>11</sup>

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<sup>9</sup> Andi Hamzah, *Pemberantasan Korupsi*. (Jakarta: RajaGrafindo Persada, 2017)

<sup>10</sup> Adi Mansar, *Op.Cit*

<sup>11</sup> Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana*. (Jakarta: Kencana, 2010)

Gratification Alone interpreted as giving in a broad sense which includes money, goods, discounts or discounts, commissions, loans interest-free tickets travel, facilities accommodation, travel tourism, medical treatment free of charge, and facilities others, both those received in and abroad as well as done in a way direct and through means electronics. A very broad definition shows that gratification is not always meaningful negative. Gratification is basically nature neutral, but changed become action criminal when related with position recipient and conflicting with obligation or his duties as civil servants or state administrators.<sup>12</sup>

Difference main between gratuities and bribes lies in the existence of a meeting of minds or agreement between giver and receiver. In action criminal bribery, since beginning has there is agreement or intention wicked between second split parties. Meanwhile in gratification, intention wicked Not yet Of course there at the moment giving received. Gratuity new considered bribe if recipient No report it to the Corruption Eradication Committee in 30 days work. Eddy Omar Syarif explained that in bribe there is connection clear transactional, whereas in gratification connection the Not yet Of course there at the moment reception carried out.<sup>13</sup>

Arrangement about gratification has two functions at the same time, namely function repressive and preventive functions repressive seen from threat serious crimes for recipient gratification, namely criminal prison lifetime life or criminal minimum 4 years and maximum 20 years in prison as well as a fine of at least Rp. 200,000,000.00 and a maximum of Rp. 1,000,000,000.00. Meanwhile function preventive realized through obligation reporting gratification to the Corruption Eradication Committee as arranged in Article 12C. Provisions This give chance to civil servants or state administrators for report the gratification he received in order to avoid from threat criminal.<sup>14</sup>

Elements action criminal gratification consists of on subject law in the form of civil servants or state administrators, the existence of reception gratification, gratification the relate with position and conflict with obligation or his duties, as well as No reported reception the to the Corruption Eradication Committee in term 30 days work. Definition civil servants in the Corruption Eradication Law expanded No only ASN employees, but also everyone who receives it wages from state finances or work for a corporation that uses state facilities. Meanwhile state

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<sup>12</sup> Adami Chazawi, *Hukum Pidana Korupsi di Indonesia*. (Jakarta: Rajawali Pers, 2016).

<sup>13</sup> Eddy Omar Sharif Hiariej, *Prinsip-Prinsip Hukum Pidana*. (Yogyakarta: Cahaya Atma Pustaka, 2019)

<sup>14</sup> Indriyanto Seno Adji, *Korupsi dan Penegakan Hukum*. (Jakarta: Diadit Media, 2009).

administrators include officials high state officials, judges, prosecutors , governors , ministers , up to officials other vulnerable strategies to practice corruption.<sup>15</sup>

In in practice , the settings gratification required Because reception present or facilities by officials public can cause collision interest (*conflict of interest*) . Collision interest the can influence independence and objectivity civil servants in operate his duties . Gratuity frequently used as means disguised For influence policy or decision officials public . Because of this that , reporting gratification become important as form transparency and efforts prevention corruption . Reporting the show that recipient gratification No own intention hidden and surrendered determination of gratification status to the state through the Corruption Eradication Committee.<sup>16</sup>

Although so , no all gratification can punished . Gratuities that are not related with position and not contradictory with obligation or task recipient No fulfil element action criminal . In addition , some type gratification certain are also excluded from obligation reporting , such as present from family , gifts wedding within certain limits , seminar souvenirs , discounts general , and awards on achievements obtained in a way valid . Terms This arranged more carry on in various internal regulations of ministries and institutions , including Minister of Finance Regulation Number 7/PMK.09/2017 concerning Guidelines Control Gratification in the Ministry of Finance.<sup>17</sup>

Arrangement action criminal gratification in the end is form policy law criminal offenses aimed at create clean and free government from corruption . Through arrangement this , the country is trying limit practice giving to officials the public can influence integrity and professionalism state administration . However Thus , the implementation chapter gratification still must done in a way be careful not to cause uncertainty law , considering the boundaries between gratification , gift ordinary , and bribes in practice often very thin and cause multiple interpretations.<sup>18</sup>

### **Implementation Of Criminal Sanctions For Gratification Carried Out By Civil Servants**

Enforcement law to action criminal gratification still face various obstacles, especially Because low understanding public about gratification as part from action criminal corruption.<sup>19</sup> Gratification often considered as form present or saying

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<sup>15</sup> Ibid

<sup>16</sup> Adi Mansar, *Op.Cit*

<sup>17</sup> Barda Nawawi Arief, *Op.Cit*

<sup>18</sup> Sudarto, *Hukum dan Hukum Pidana*. (Bandung: Alumni, 1986)

<sup>19</sup> Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. (Jakarta: RajaGrafindo Persada, 2008).

accept reasonable love, even though in in practice can become means corruption if related with position and conflict with obligation recipient.<sup>20</sup> Because that, is necessary effort prevention and action taken in a way integrated by the authorities enforcer law and state institutions .

Enforcement law influenced by five factors, namely factor law enforcement law, means or facilities, society, and culture.<sup>21</sup> Legal factors related with existence regulation legislation that regulates gratification, especially in Constitution Eradication Action Criminal Corruption.<sup>22</sup> Although regulations about gratification has available , practice gratification still happen with various modes that are increasingly complex , including through digital media or difficult cyberspace supervised by the authorities enforcer law.<sup>23</sup>

Enforcement factors law also becomes obstacle Serious Because Still there is the officers involved in practice gratification.<sup>24</sup> Condition the cause low trust public to institution enforcer law. Therefore that, is necessary strong internal oversight as well as support from agency place government employees or state administrators work to ensure that practices gratification can prevented since early.<sup>25</sup>

In addition, the facilities and infrastructure support enforcement the law also holds role important. Development technology demand apparatus enforcer law own ability as well as adequate equipment For detect and prove practice gratification, especially that which is done through transaction electronic or other digital facilities.<sup>26</sup> Without support technology and resources sufficient power, investigation and inquiry process will experience difficulty.

Social and cultural factors participate influence effectiveness enforcement law action criminal gratification. Society still own culture give present to officials or government employees as form respect or reply services.<sup>27</sup> Culture the cause gratification often considered as something that is commonplace. In fact, a person government employees has accept salary and benefits from the country so that No justified accept related gifts with his position.<sup>28</sup> Therefore that , is necessary change

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<sup>20</sup> Adami Chazawi, *Op.Cit*

<sup>21</sup> Soerjono Soekanto, *Op.Cit*

<sup>22</sup> Leden Marpaung *Tindak Pidana Korupsi: Pemberantasan dan Pencegahan*. (Jakarta: Sinar Grafika, 2011).

<sup>23</sup> Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer*. (Jakarta: Kencana, 2010)

<sup>24</sup> Andi Hamzah, *Pemberantasan Korupsi*. (Jakarta: RajaGrafindo Persada, 2017)

<sup>25</sup> Marwan Effendy, *Pemberantasan Korupsi dan Good Governance*. (Jakarta: Referensi, 2012)

<sup>26</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. (Jakarta: Kencana, 2011).

<sup>27</sup> Soerjono Soekanto, *Op.Cit*

<sup>28</sup> Adami Chazawi, *Op.Cit*

pattern think society and improvement awareness law for culture giving present to officials can stopped.

Action criminal in aspect proof gratification own characteristics special compared to action criminal normal. System proof in the Criminal Procedure Code (KUHAP) basically adhere to principle that the accusing party must prove error defendant.<sup>29</sup> However, in action criminal corruption, in particular gratification, known existence system proof backwards as arranged in Article 12B and Article 38B of the Law Eradication Action Criminal Corruption.<sup>30</sup>

If mark gratification reach Rp. 10,000,000.00 or more , then defendant must prove that gratification the No is bribery.<sup>31</sup> On the other hand , if mark gratification not enough from Rp. 10,000,000.00, then burden proof still be on the prosecutor general in accordance system proof normal in the Criminal Procedure Code.<sup>32</sup> In addition , regarding proof treasure riches defendant , wife or husband , and other related parties with case , used system semi- reverse proof as arranged in Article 37A of the Law Corruption.<sup>33</sup>

In system semi- reversed proof , defendant required explain origin treasure his wealth . If defendant No can prove that his wealth obtained in a way legitimate and balanced with his income , then condition the can used For strengthen tool evidence that has been owned prosecutor general.<sup>34</sup> However thus , the prosecutor prosecutor general still obliged prove his charges .

System proof in action criminal gratification in essence divided become three form. First , the system proof backwards pure , namely proof fully charged to defendant in case gratification worth Rp. 10,000,000.00 or more.<sup>35</sup> Second, system semi -reverse proof, namely defendant must explain origin his wealth For strengthen tool evidence held prosecuto general.<sup>36</sup> Third, the system proof balanced conditional, namely distribution burden proof based on mark gratification receive<sup>37</sup>. Enforcement law to action criminal gratification need support clear regulations , integrity apparatus enforcer law , adequate facilities , and awareness society and

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<sup>29</sup> M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP*. (Jakarta: Sinar Grafika, 2016)

<sup>30</sup> Indriyanto Seno Adji, *Op.Cit.*

<sup>31</sup> *Ibid*

<sup>32</sup> M. Yahya Harahap, *Loc.Cit*

<sup>33</sup> Adami Chazawi, *Loc.Cit*

<sup>34</sup> Lilik Mulyadi. *Tindak Pidana Korupsi di Indonesia*. (Bandung: Citra Aditya Bakti, 2015).

<sup>35</sup> Indriyanto Seno Adji, *Op.Cit*

<sup>36</sup> Lilik Mulyadi, *Op.Cit*

<sup>37</sup> Adami Chazawi, *Loc.Cit*

culture good law.<sup>38</sup> Without existence synergy between factors said , efforts eradication gratification will difficult reach objective law in the form of justice , certainty and benefit law .

Implementation sanctions criminal to action criminal gratification that is done government employees Still face various obstacles , good from aspect juridical, sociological, cultural, and technical enforcement law.<sup>39</sup> Barriers the cause enforcement law to action criminal gratification Not yet walk optimally. In constitutional, Indonesia is a country based on law as confirmed in Article 1 paragraph (3) of the 1945 Constitution.<sup>40</sup> Consequently, all form enforcement law must implemented based on principle justice, certainty law and benefits law. However in in practice, implementation enforcement law often experience various obstacles that hinder effectiveness implementation sanctions criminal gratification.<sup>41</sup>

Obstacle First originate from aspect juridical or normative. Many regulations legislation that is still overlapping overlapping, multiple interpretations, and not yet capable answer development of modus operandi criminal gratification.<sup>42</sup> Ambiguity regulations the cause apparatus enforcer law experience difficulty in apply law in a way consistent. In addition, there are still there is weakness in structure law, substance law and culture law as proposed by Lawrence Friedman.

In aspect structure law, various institution enforcer law like police, prosecutors, ourts and advocates Still face problem integrity and professionalism.<sup>43</sup> Bad image apparatus enforcer law consequence practice corruption, bribery, judicial mafia, and abuse authority cause low trust public towards the enforcement process law . Conditions the weaken effectiveness eradication gratification.

In this aspect substance law , product regulation legislation often influenced interest politics and not fully reflect a sense of justice society.<sup>44</sup> Many provisions ambiguous and problematic laws multiple interpretations so that make things difficult implementation law in the field. As a result, certainty law become disturbed and open opportunity abuse authority.

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<sup>38</sup> Barda Nawawi Arief, *Loc.Cit*

<sup>39</sup> Lawrence M. Friedman, *The Legal System: A Social Science Perspective*. (New York: Russell Sage Foundation, 1975)

<sup>40</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*. (Jakarta: Konstitusi Press, 2006)

<sup>41</sup> Satjipto Rahardjo. *Penegakan Hukum: Suatu Tinjauan Sosiologis*. (Yogyakarta: Genta Publishing, 2009).

<sup>42</sup> Lawrence M. Friedman, *Op.Cit*

<sup>43</sup> Hikmahanto Juwana . *Politik Hukum Undang-Undang Bidang Ekonomi di Indonesia*. (Jakarta: FH UI, 2011)

<sup>44</sup> Satjipto Rahardjo, *Op.Cit*

Next, the obstacles culture law also becomes problem important. Culture giving present to officials or government employees Still considered as form politeness and respect.<sup>45</sup> Culture the cause practice gratification difficult eradicated Because public and government employees often not realize that giving the can categorized as action criminal corruption.<sup>46</sup> In addition, solidarity bureaucracy also often cause existence effort cover error colleague Work or the superior who receives gratification.

Obstacle next originate from external factors system law . Modus operandi of the act criminal gratification the more sophisticated and difficult detected.<sup>47</sup> The perpetrator usually own ability professional and understanding gap law and system bureaucracy so that practice gratification done in a way hidden and neat. In addition, the tool evidence and goods proof in case gratification often difficult obtained Because transaction done without footsteps clear administrative, for example in form facility use vehicles, villas, travel, or service certain.

From the aspect technical enforcement law, limitations source Power humans, means and facilities also become obstacle serious.<sup>48</sup>The apparatus enforcer law Still face limitations technology, personnel, and budget in handle case gratification, especially involving transaction electronics and crime based technology information . Lack of coordination between institution enforcer law also causes the handling process case become slow and not effective.

In addition, the low professionalism and integrity apparatus enforcer law make things worse condition enforcement law.<sup>49</sup> Practice corruption, bribery and abuse authority among apparatus lead to legal proceedings No walk in a way objective and fair . Weakness internal supervision also makes violation ethics and law difficult controlled.

Participation public in eradication gratification is still there low. Many people have not understand rights and obligations the law so that reluctant report action criminal gratification.<sup>50</sup> On the other hand , civil servants often feel Afraid or worry ostracized if report practice gratification in the environment work . Lack of socialization and education law the more make things worse low awareness law public.

With Thus , the obstacles implementation sanctions criminal gratification to government employees originate from various interrelated factors related , starting

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<sup>45</sup> Soerjono Soekanto, *Op.Cit*

<sup>46</sup> Adami Chazawi, *Op.Cit*.

<sup>47</sup> Romli Atmasasmita, 2010. *Sistem Peradilan Pidana Kontemporer*. Jakarta: Kencana.

<sup>48</sup> Barda Nawawi Arief, *Op.Cit*

<sup>49</sup> Andi Hamzah, *Op.Cit*

<sup>50</sup> Setiawan, *Kesadaran Hukum Masyarakat dalam Pemberantasan Korupsi*. (Jakarta: Prenadamedia Group, 2020).

from weakness regulation, low integrity apparatus enforcer law, culture permissive society to giving gifts, up to limitations facilities and technology enforcement law.<sup>51</sup> Therefore that, comprehensive legal reform is needed, increasing professionalism apparatus, strengthening internal supervision, as well as improvement awareness law society so that enforcement law to action criminal gratification can walk in a way effective and provide certainty law and a sense of justice for public.

### **Reformulation of Legal Regulations Concerning Gratuities Carried Out by Civil Servants in Relation to the Corruption Crime Law**

Arrangement sanctions criminal gratification in Constitution Action Criminal Corruption cause ambiguity and disparity. Because there is a number of articles that regulate actions similar but with threat criminal different. Article 5 paragraph (1) regulates giver gratification with threat 1–5 years imprisonment imprisonment and a fine of IDR 50 million – IDR 250 million, while Article 5 paragraph (2) regulates recipient gratification with threat the same crime. However, Article 12 letter (a) also regulates recipient gratification with threat Far more weight, namely criminal lifetime life or criminal 4–20 years in prison as well as fine of Rp. 200 million – Rp. 1 billion.

Difference threat criminal to the same act cause uncertainty law and confusion for apparatus enforcer law in determine the applicable article. As a result, the recipient gratification can sentenced punishment light based on Article 5 paragraph (2) or very severe punishment based on Article 12 letter (a). Conditions This assessed open opportunity implementation laws that do not consistent and potential transactional.<sup>52</sup>

Article 12 letter (a) was created more heavy. Because civil servants and state administrators are considered own not quite enough answer big as civil servants and servants society. However, the existence of Article 5 paragraph (2) actually weaken logic the. Because equalize sanctions recipient gratification with giver gratification. Andi Hamzah and Chairul Huda assessed provision the cause injustice. Because allows perpetrator with actions. The same get punishment different.<sup>53</sup>

In addition, the pattern The punishment is also different. Article 5 uses system cumulative-alternative (“and/ or”) so that the judge has flexibility in drop criminal, while Article 12 letter (a) uses system cumulative (“and”) which requires

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<sup>51</sup> Lawrence M. Friedman, *Loc. Cit*

<sup>52</sup> Andi Hamzah, *Delik-Delik Tertentu di Dalam KUHP*. (Jakarta: Sinar Grafika, 2015).

<sup>53</sup> Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*. (Jakarta: Kencana, 2013).

criminal imprisonment and fines dropped simultaneously . Difference the show existence inconsistency formulation law in the Corruption Law.<sup>54</sup>

Policy formulation sanctions criminal gratification in the Corruption Eradication Law assessed Not yet balanced between giver and receiver gratification. Giver gratification only threatened criminal light based on Article 5 paragraph (1), whereas recipient gratification based on Article 12 letter (a) is threatened very serious criminal offense . Even though giver gratification viewed as reason main ( proxima cause ) of occurrence action criminal bribe Because without giver No will There is recipient.<sup>55</sup>

Imbalance This considered No fair Because second party You're welcome play a role in action criminal gratification . The Corruption Eradication Law is also considered more oriented punish recipient bribe compared to giver bribery . On the other hand , Article 5 paragraph (2) actually equalize sanctions between giver and receiver gratification so that cause contradiction with Article 12 letter (a).<sup>56</sup>

Andi Hamzah stated that implementation of Article 5 by the prosecutor's office and police as well as Article 12 letter (a) by the Corruption Eradication Commission shows inconsistency in enforcement law . Chairul Huda also assessed arrangement the give birth to injustice Because perpetrator with actions The same can get punishment different depends the article used.<sup>57</sup> As solutions , settings in the Criminal Code Bill is assessed more balanced . Articles 689 and 690 of the Draft Criminal Code regulate threat criminal maximum 5 years for giver gratification and a maximum of 7 years for recipient gratification . Formulation This considered more proportional Because still differentiate not quite enough answer perpetrator without create too much disparity far away. Dneeded reformulation chapter gratification in the Corruption Law to create certainty law , consistency enforcement law and justice in criminalization.<sup>58</sup>

## CONCLUSION

Government employees is part from action criminal regulated corruption in Constitution Action Criminal Corruption through Article 12B and Article 12C as effort realize clean and free government corruption . Gratification understood as giving in the broad sense that becomes action criminal if related with position and conflict with obligation or task recipient . Settings gratification apply system reversal burden proof in a way limited , especially to gratification worth Rp. 10,000,000.00 or more , so that recipient must prove that giving the No bribery .

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<sup>54</sup> Barda Nawawi Arief, *Loc.Cit.*

<sup>55</sup> Adami Chazawi, *Loc.Cit*

<sup>56</sup> Adi Mansar, *Loc.Cit*

<sup>57</sup> Andi Hamzah, *Op.Cit.*

<sup>58</sup> Adi Mansar, *Op.Cit.*

Enforcement law to gratification Still face various obstacles , good from aspect law , apparatus enforcer law , facilities and technology , culture society , as well as low awareness law public . Apart from that , there are ambiguity and disparity arrangement sanctions criminal between Article 5 and Article 12 letter (a) of the Corruption Eradication Law which gives rise to uncertainty law and inconsistency in implementation criminal .

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