

**JURIDICAL ANALYSIS IN REVERSE PROOF OF
GRATUITIES CASE ACCORDING TO LAW NO. 20 OF 2001
ABOUT CRIMINAL ACTS OF CORRUPTION
(Verdict Study No. 86/Pid.sus-TPK/2019/PN MDN)**

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ABSTRACT

The Legal Regulation on Gratification in Law No. 20 of 2001 on Combating Criminal Acts of Corruption is Article 12 B paragraph 1, namely for recipients of gratuities worth Rp 10,000,000 that the burden of proof on the recipient, while more than Rp 10,000,000 the burden of reversal of proof to the Public Prosecutor. The Method used in this paper is normative juridical legal research. The result of this paper, The application of Reverse Proof on The Handling of Gratuity Cases 86/Pid.sus-TPK/2019/PN MDN is money amounting to Rp 530,000,000 given to Dzulmi Eldin as Mayor of Medan and the use of money needed operational funds of the Mayor of Medan is used for the purposes of Dzulmi Eldin as Mayor of Medan. The judge in handing down the verdict of Article 5 paragraph 1 of Law No. 31 of 2001 juncto Article 64 paragraph 1 of the Criminal Code is for 2 years and a fine of Rp 200,000,000 with the provision that if the fine is not paid it is replaced with a criminal cage for 4 months. Constraints in the Application of Reverse Proof in The Case of Gratification 86/Pid.sus-TPK/2019/PN MDN do not apply the reverse proof system.

Keywords: *Gratification, Criminal Acts of Corruption.*

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INTRODUCTION

To obtain the goods / services needed, users of Government goods / services that begin with the process of planning needs until the completion of all activities to obtain goods / services according to their needs through the Implementation of government procurement activities determine and determine the Government's Provider of goods / services, namely Business Entities or Individuals who provide Goods / Construction Work / Consulting Services / Other Services and Providers through Self-management, specifically for procurement activities of goods / services whose work is planned, done, and / or supervised by K / L / D / I as the

person in charge of budget, other government agencies and / or community groups (vide: Article 1 number 12 and 20 Perpres No. 70 in 2012). Article 1 number 1 perpres Procurement of Government Goods / Services, which is meant by Procurement of Government Goods / Services is: "Activities to obtain Goods / Services by the Ministry / Institution / Regional Device Work Unit / Institution (K / L / D / I) whose process starts from planning needs to the completion of all activities to obtain Goods / Services."¹

Article 1 number 2 states that the Ministry / Institution / Regional Device Work Unit / Institution, hereinafter referred to as K / L / D / I is: "Agencies / institutions that use the State Revenue and Expenditure Budget (APBN) and / or the Regional Revenue and Expenditure Budget (APBD). Legal subjects who have equal standing by having the same rights and obligations, namely:

- a. Users of goods / services represented by the Commitment Making Officer (PPK), namely the government / agency that needs goods / services.
- b. Providers of Goods / Services are Business Entities or Individual Persons who provide Goods / Construction Work / Consulting Services / or Other Services, or also Providers through self-management.

In the provisions of Article 11 letter "d" perpres Procurement of Government Goods / Services, it is stipulated that the Commitment Making Officer (PPK) carries out the Contract with the Provider of Goods / Services. This means that in the procurement of government goods / services there is a civil legal relationship between the User and the Government Provider of goods / services based on the implementation of the contract to meet the needs of the User of goods / services carried out by the Provider of goods / services.

METHOD

Research in this juridical normative authorship is legal research conducted by researching the library or through legislation related to research.² Namely Article 12 B of Law No. 20 of 2001 on Changes to Law No. 31 of 1999 on Combating Criminal Acts of Corruption. Data Source, Judging from the literature research (*library reach*), it can be divided into 3 (three) groups, namely:

- a. The primary legal materials, namely binding legal materials, consist of laws and regulations related to the subject matter, namely Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 on Combating Corruption.
- b. Secondary Legal Materials, such as Journals of Law, Thesis and research related to reverse proof in the case of gratification.
- c. Tertiary Law Materials, which are materials that can support premier and secondary legal materials, including legal dictionaries, Indonesian dictionaries, magazines, scientific journals and so on.

¹ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 1998).

² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2005).

DISCUSSION

Legal Arrangements On Gratification In Law No. 20 Of 2001 On Combating Criminal Acts Of Corruption

Nomoi as one of Plato's books states that good governance of the country is based on the institution of good law, Aristotle further adds that a good rule of thumb, if it is governed by the constitution and various degradation. Shahrani Law pointed out that civil protection is given when the administrative action affects the loss. The legal protection of the citizens is a universal concept adopted and diversified by different countries.³

In Law No. 31 of 1999, the provisions of these articles are not detailed in accordance with the elements of criminal acts in the formulation of articles, but only refer to the related articles. While in Law No. 20 of 2001, which is a law amending and adding Law No. 31 of 1999, then the appointed or related articles, the elements of criminal acts in those articles are detailed in the new articles of criminal acts of corruption. Of the designated or related criminal acts it can be grouped as follows:

1. Bribery criminal group.
2. Criminal group of fraudulent acts.
3. Criminal groups Falsify books or lists of bookers.
4. Embezzlement criminal group.
5. The criminal group receives gifts or promises.

In Article 11 and Article 12 of Law No. 20 of 2001 regulates the receipt of gifts or promises, namely:

Convicted with a prison sentence of at least 1 (one) year and a maximum of 5 (five) years and or a fine of at least Rp. 50,000,000,- (fifty million rupiah) and at most Rp. 250,000,000,- (two hundred and fifty million rupiah) Civil Servants or state organizers who receive gifts or promises, when it is known or expected, that the gift or promise is purchased because of the power or authority related to his office, or that according to the mind of the person giving gifts or promises is related to his position.

For an official or civil servant if someone gives a gift or promises something, then it can be expected that the gift or promise is related to the interests of the office he is in, or according to the person who gave the gift or promise has something to do with his position. The gift is various forms, can be in the form of goods, money or in the form of service. So without any connection to a position or the authority of an official, it is impossible for a gift or promise to be given. Article 12 of UUPTPK determines: Convicted with imprisonment for life or at least 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000,- (two hundred million rupiah) and at most Rp. 1,000,000,000,- (one billion rupiah).

³ Eka N.A.M. Sihombing and Cynthia Hadita, "Administrative Measures Problems in Medan Mayor Regulation Number 11 of 2020 Concerning Health Quarantine in the Accelerated Handling of Covid-19," *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)* 549, no. 11 (2021): 444–452..

Civil Servants or state organizers who receive gifts or promises, when known or suspected of the gift or promise are given to move to do or not do something in his office, which relates to his obligations.⁴

Civil servants or state organizers who receive gifts, when it is known or suspected that the gift was given as a result or caused by having done or not done something in his office that is contrary to his obligations. The judge who receives a gift or promise, when it is known or known, suspects that the gift or promise is given to influence the verdict of the case submitted to him for trial.⁵

A person who according to the provisions of the laws and regulations is determined to be an advocate to attend a court hearing. Accepting a promise or gift, when it is known or foreseeable that, such gift or promise to influence the advice or opinion to be given, in relation to the case submitted to the court for trial.

A civil servant or state organizer who with the intention of benefiting himself or others unlawfully, or by abusing his or her power compels a person to give something, pay, or receive payment by deduction, or to hold something for himself or herself. Civil servants or state organizers, at the time of carrying out duties, requesting or receiving, or cutting payments to civil servants or other state organizers or to public coffers, as if the civil servant or other state organizer or public treasury had a debt to him, when it was known that it did not constitute debt. Civil servants or state organizers who at the time of carrying out duties, asking for or accepting jobs, or the delivery of goods, as if it were a debt to him, when it is known that the right is not a debt.⁶

Civil servants or state organizers who at the time of carrying out their duties, have used state land on which there is a right to use, as if it were in accordance with the laws and regulations has harmed the entitled person, when it is known that the act is contrary to the laws and regulations; or Civil servants or state organizers either directly or indirectly deliberately participate in the distribution, procurement or rental, which at the time of the deed, for all or part is assigned to take care or supervise. This article basically regulates the actions of civil servants who are contrary to their duties or obligations. As for the duties and obligations of each civil servant or panyelenggara of the country various and actions that are contrary to the duties and obligations are diverse, for example some intend to enrich themselves or others.

In addition, although not a civil servant, the duty of an advocate who gives advice that can influence the decision of the court, while he knows the act is contrary to the prevailing laws and regulations. For civil servants or state organizers and advocates who commit acts contrary to their duties and obligations are threatened with criminal law as referred to in this article. In the framework of the amendment and addition of Law No. 31 of 1999, then between Article 12 and Article 13 inserted 3 (three) new articles namely Article 12a, Article 12b, and

⁴ N. Nuriyanto, "Penyelenggaraan Pelayanan Publik Di Indonesia, Sudahkah Berlandaskan Konsep 'Welfare State'?", *Jurnal Konstitusi* 11, no. 3 (2014): 428–453.

⁵ Muhammad A.S. Hikam, *Deradikalisasi: Peran Masyarakat Sipil Indonesia Membendung Radikalisme* (Jakarta: PT Kompas Media Nusantara, 2016).

⁶ Teguh Prasetyo, "Membangun Sistem Hukum Pancasila Yang Merdeka Dari Korupsi Dan Menjunjung Ham," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 1 (2014): 19–26.

Article 12c. Procurement activities of goods and services become one of the vulnerable points in acts of corruption, namely:

1. In the system the planning process begins with a feasibility study
2. In the system used;
3. In the tender process;
4. On the use of official authority;
5. On filling out the project table of contents (DIP) and disbursement of dip targeted circumcision.

The causes of corruption in the procurement of goods and services are:

1. Weak legal and institutional framework
2. Weak capacity of financial management and procurement of goods and services in the public sector

The management of state finances as a legal payung for the basis of its implementation of the purpose of state distribution is money, employees and goods, namely Law No. 17 of 2003 on State Finance and Law No. 1 of 2004 on State Treasury and staffing affairs regulated by Law No. 8 of 1974 jo Law No. 43 of 1999 on Personnel Matters. Meanwhile, for the procurement of goods and services until now there is no legal umbrella in the form of legislation.

The arrangement of procurement of goods and services for public services aims so that the parties concerned can know accurately the processes and procedures and various requirements in the procurement of goods and services. The procurement arrangement of goods and services is intended as a preventive measure against corrupt and colutive practices.⁷

Application Of Reverse Proof On The Handling Of Gratuities Case Number 86/Pid. Sus-Tpk/2019/Pn Mdn On Behalf Of Defendant Isa Ansyari

To be able to find out the application of reverse proof in cases of corruption to receive gratification we can see in case Number 86 / PID. SUS-TPK/2019/PN-Medan on behalf of Defendant Isa Ansyari who was tried in medan court. Case Analysis Number 86/PID. SUS-TPK/2019/PN-Medan on behalf of Defendant Isa Ansyari. Corruption case on behalf of Isa Ansyari, the job of the Head of Public Works Office (Kadid PU) medan city. Isa Ansyari was involved because he had received a gift related to the management of the permit.

Position Case, The point of the case is the defendant Isa Ansyari from the period of March 2019 until october 15, 2019, located at the Office of the Office of PU Kota Medan JL Pinang Baris No. 114 C Bank Sumut Kampung Baru Branch of Medan City, the house of the accused Jl STM Gg Persatuan No. 25 Village Sitirejo Medan Amplas District or at least in the legal area of the Corruption Criminal Court which is seen as a continuing act has given or promised something that is giving money amounting to Rp. 20,000,000 (twenty million rupiah) as much as 4 times so that the amount is Rp 80,000,000, amounting to Rp 200,000,000 and rp 50,000,000 so that the total amount is Rp 530,000,000 (five hundred and thirty million rupiah) to civil servants namely Dzulmi Eldin as Mayor of Medan period 2016-2021.

⁷ Romli Atmasasmita, *Pengantar Hukum Pidana Internasional* (Jakarta: Refika Aditama, 2003).

Public Prosecutor's indictment, In the case of the accused on behalf of Isa Ansyari is charged with committing a criminal offence compiled in the cumulative-subsidair indictment, namely: Primair: The actions of defendant Isa Ansyari as regulated and threatened criminally in Article 5 paragraph 1 letter e of Law No. 20 of 2001 on Combating Criminal Acts of Corruption juncto Article 64 paragraph 1 of the Criminal Code; Subsidair: The actions of defendant Isa Ansyari as regulated and threatened with criminal Article 13 of Law No. 20 of 2001 on Combating Criminal Acts of Corruption juncto Article 64 paragraph 1 of the Criminal Code;

About the description of criminal acts in the indictment, The first charge, The accused has been proven legitimately and convincingly according to the law guilty of committing The Crime of Corruption Article 5 paragraph 1 of Law No. 31 of 1999 on Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 on Eradication of Criminal Acts of Corruption Jo. Article 64 paragraph (1) of the Criminal Code. In principle, it is a provision that prohibits a civil servant or state organizer from receiving anything from others. In addition, there is a conflict with the obligations of state organizers.

Second charge, Violating Article 13 of Law No. 31 of 1999 on Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 on Eradication of Criminal Acts of Corruption Jo. Article 64 paragraph (1) of the Criminal Code. The word promising something about what is promised can not be realized before the bribed civil servants do the deed or do not do the deed as the will of the maker. Understanding something given or promised is the object of this crime. Considering, that before handing down a verdict against the accused then first considered: Incriminating things: The defendant's actions do not support the government in realizing a clean government and collusion, corruption and nepotism.

1. The accused as the head of the service should be able to give transparency to his subordinates.
2. Things that lighten up
3. The defendant was polite in the trial
4. The defendant has never been convicted.
5. The defendant is the backbone of his family.

Judge's Verdict, Medan District Court"

- a. The judge's ruling concluded: (1) Defendant Isa Ansyari has been found to have lawfully "committed a criminal act of corruption on an ongoing basis"as in the first indictment.
- b. Dropping the criminal against Defendant Isa Ansyari in the form of imprisonment for 2 years and a criminal fine of Rp 200,000,000 with the provision that if the criminal fine is not paid by the defendant it is replaced with a prison sentence for 4 months.
- c. Establishing the period of arrest and detention that has been served by the Defendant is deducted entirely from the sentence imposed.
- d. The defendant remains in custody.

The verdict is supported by considerations & arguments of proof, namely:

1. The accused as the state organizer in this case the head of the Medan City PU Office together with Samsul Fitri as the Head of the Sub-Section of the Medan City Government Protocol;
2. Giving a gift, namely to Dzulmi Eldin as Mayor of Medan for the period 2016 to 2021 amounting to Rp.530,000,000 with the intention that Dzulmi Eldin as mayor of Medan as the organizer of the State and as the superior of the accused has the authority and authority to maintain the position of the accused as the head of the Medan city PU office by receiving unauthorized rewards for the purposes of the mayor's quarantine, The needs of the mayor's operational costs that are not borne by apbd are contrary to Dzulmi Eldin as mayor;
3. The defendant knew that Dzulmi Eldin's intention as Mayor was to reward unauthorized money for the benefit of the mayor in contravention of his obligation not to commit corruption and collusion.

Legal Analysis, in general, the legal considerations of the Panel of Judges are quite comprehensive in the sense that they have sufficiently considered all the facts revealed at the trial. As a knife of legal analysis at the judgment of the judge are as follows:

In this case the judge has given the defendant Isa Ansyari the opportunity to prove the reverse. But the defendant himself could not prove with sufficient evidence that the transaction to account No. 102-0209-0015-236 Bank Sumut Kampung Baru Medan Branch amounted to Rp 200,000,000 and handed it to Mahyudi to be stored to the prokoler safe as a non-budgeter fund operational mayor in the city government office of medan is then the object of suspicious transactions.

From the legal consideration arguments put forward by the Panel of Judges of the case, it can be concluded that the Panel of Judges argued that the defendant as the state organizer had given a bribe of Rp. 530,000,000 (five hundred and thirty million rupiah) and had violated the obligation to report the property of the state. However, the panel of judges did not attempt to break the new law, that criminal acts like what the defendant Isa Ansyari had committed. Because in his position or authority as the Head of The City of Medan, the accused has the right to conduct financial review of each regional district that enters into the realm of his duties.

The Panel of Judges should explain in its legal considerations the description of considerations regarding the application of Article 69 jo Article 78 of Law No. 8 of 2010 on Combating Money Laundering Crimes in the context of reverse proof of the amount of money owned by defendant Isa Ansyari which is not yet clear proof.

The public prosecutor was less careful in drafting the indictment and did not include the indictment of Article 12 B of Law No. 20 of 2001 concerning the criminal act of gratification. Therefore, the accused is free from the charge of receiving gifts (gratuities). Therefore, the panel of judges is required only Article 5 jo Article 64 of the Criminal Code and the Judge has the right to reprimand the charges made by the public prosecutor.

Although the consideration and verdict in this case is a relatively appropriate and correct verdict, the number of sentences for 2 years against the accused has not sufficiently fulfilled the sense of justice in society and reflects corruption is an extraordinary crime (extra ordinary crime).

For each prosecutor to be able to make an indictment in accordance with Article 143 of the KuHap and the prosecutor has knowledge of the search for the handling of property proceeds of crime in the Guidebook for the Indonesian Public Prosecutor in handling the proceeds of crime. Where asset tracing techniques can be done in 3 ways, namely:

- a. Bookkeeping/Asset Acquisition
- b. Cost of living expenses: sources of income, the amount of living expenses and what about the income that can survive.
- c. Looking for reasons for the acquisition of assets, such as grants, inheritance and others, requires the foresight of the analysis of financial details in each case.

Constraints In The Application Of Reverse Proof In The Case Of Gratification Number: 86/Pid. Sus/Tpk/2019/Pn Mdn

Karianga in Hadita (2020) Associated with the use of moral responsibility in the office, Roscoe Pound pointed out that in a society which people may assume that people who are on around him are people who civilized, as a result, in the event of an act that deviates would hold accountable the parties that did such acts, as a result, in the view of Roscoe Pound there are four things that become the basis for applying the moral responsibility, namely:⁸

The terms of proof are negatively reversed under the law cannot be applied by the defendant at any trial. The accused can prove his non-involvement in committing a crime of corruption, but the evidence has not been able to guarantee his non-involvement in the alleged corruption because the Public Prosecutor is still obliged to prove his charges.

If the defendant can prove that he is innocent the judge does not just let go because the judge is still contesting in his decision. The application of reverse proof is not easy to apply because so far that proves that the accused is the prosecutor general.

In Indonesia, the criminalization of money laundering takes time, it can be seen by looking at efforts to deal with money laundering in Indonesia, which began since the enactment of Law No. 15 of 2002 concerning Criminal Action of Money Laundering as amended by Law No. 25 of 2003 concerning Amendments to Law No. 15 of 2002 concerning Criminal Action of Money Laundering, which was later also amended by a new law namely Law No. 8 of 2010 concerning the Countermeasure and Eradication of Money Laundering.⁹

⁸ Cynthia Hadita, Regional Autonomy Political Politics Of Regional Liability Reports To Regional Representatives In The Implementation Of Local Government, *Nomoi Law Review*, Volume 1, Issue 1, May 2020, p. 94.

⁹ Ferdy Saputra. The Crime Of Money Laundering With The Origin Criminal Action Of Drug Trafficking In Supreme Court Decision No. 1303 K / Pid. Sus / 2013

In everyday practice, the method of reversal of the burden of proof in Indonesia has not been effective in the trial. Moreover, there are not many cases decided in court that use reverse proof methods, especially money laundering cases. This certainly makes it difficult for law enforcement officials (police, prosecutors and judges) in implementing rules regarding the use of reversal of the burden of proof, especially for money laundering criminal cases.

When reporting the receipt of gifts or gratuities received by civil servants or state organizers to the KPK as stated in Article 12 C of Law No. 20 of 2001 because it is not an act of bribery, the KPK does not give any status regarding its report instead the KPK releases from the penalty demands. And the gift giver is never punished. For this reason, there needs to be a legal status about the provision of criminal sanctions to givers and recipients of gifts. So, there must to an effective authorization from the KPK to attempt the gratification case in Indonesia.

CONCLUSION

The Legal Regulation on Gratification in Law No. 20 of 2001 on Combating Criminal Acts of Corruption is regulated in Article 12 B paragraph (1) of Law No. 20 of 2001 on Eradication of Criminal Acts of Corruption as explained that above Rp.10,000,000 gratuities of proof are carried out by gratuities. The application of the reverse proof system in case No. 86/ Pid.Sus / TPK / 2019 PN Medan in defendant Isa Ansyari is subject to Article 5 paragraph 1 of Law No. 31 of 2001 juncto Article 64 paragraph 1 of the Criminal Code which is for 2 years and a fine of Rp 200,000,000 and the public prosecutor does not include the indictment of Article 12 B of Law No. 20 of 2001 concerning the criminal act of gratification. Therefore, the accused is free from the charge of receiving gifts (gratuities). Reverse proof that the use of money needs operational funds of the Mayor of Medan is used for the purposes of Dzulmi Eldin as Mayor of Medan. Obstacles in the Application of Reverse Proof in The Case of Gratification 86/Pid.sus-TPK/2019/PN MDN that this is not easy to apply because so far that proves that the defendant is guilty is the public prosecutor. With regard to the advantages of applying this reverse proof is the need for the concept of proof of the burden of reversal of proof in the legal system of proof in the future which is in line to facilitate proof in the delik gratification and large cases of corruption. And in the examination process in court can be reviewed again with the existence of the system as embraced in common law system countries as a development pattern of eradication of corruption in the future.

Juncto High Court Decision No. 700 / Pid / 2012 / PT.MDN Juncto Medan District Court Decision No.1234 / Pid.B / 2012 PN. Mdn. *Nomoi Law Review*. Vol. 1. No. 1. (May, 2020).

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