
SEXUAL GRATIFICATION AS AN EXPANDED FORM OF CORRUPTION CRIME UNDER INDONESIAN POSITIVE LAW

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ABSTRACT

KEYWORDS

Sexual Gratification,
Corruption, Evidence

Along with its development, the category of sexual gratification emerged which received a lot of attention from the public and law enforcement officials. This sexual satisfaction is different from the satisfaction we know in general. The difference lies in the object. Sexual gratification is a form of degrading women's dignity. In Indonesia, sexual gratification has not been explicitly regulated. Therefore, this research will discuss the regulation of sexual gratification based on positive law in Indonesia and the evidence. From the results of the analysis it is known that sexual gratification can be included in the provisions of Article 12 B paragraph 1 of Law 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. This can be found in the phrase "other facilities" where "facilities" themselves are defined as the means used to facilitate an implementation. Therefore, the use of sexual service facilities with the aim of achieving all desires is the intention of the party providing satisfaction. Proof of the existence of sexual gratification in eradicating corruption in Indonesia is based on criminal procedural law which refers to the Criminal Procedure Code (KUHAP) in Article 184 paragraph (1) and Article 26A of Law Number 20 of 2001 Jo. Law Number 31 of 1999 uses a reverse or balanced evidentiary system where the burden is on the Public Prosecutor and the defendant to provide evidence of the criminal act of sexual gratification for which the defendant is charged.

INTRODUCTION

Indonesia, which is a nation of laws, is interpreted that all acts that include the implementation of the government or the state society must be based on the regulations contained in Indonesia. The stipulation of Indonesia as a legal nation is explained in Article 1 paragraph 3 of the 1945 Constitution. Constitution 45 is a reference for the Indonesian state in action. The emergence of the 1945 Constitution is an effort to stipulate in each authority and responsibility that each individual has. The authority and responsibilities contained in the 45th Constitution have the purpose of preventing any misappropriation of authority that causes harm to other individuals. The violations in question include violations that cause losses to the public and the nation, namely Corruption Criminal Acts with gratuities.

In the life of the public, gratuity is easily recognized as an activity through the method of giving something to an individual intending to bring benefits to himself. Then, the following gratuity is generally recognized as a thank you that is conveyed to the individual for carrying out something (Chandra Darusman, 2023). Talking about gratuities, of course, we then think about exchanging gifts. The gratuity has caused many problems in the implementation of the state, state apparatus and the public, such as what is meant by gratuity and whether it is true that gratuity is similar to giving gifts that are usually carried out by the public or each gratuity obtained by the state apparatus is an act that is against the law, then what is the form of gratuity that is not allowed or that is allowed. All of these are problems that are often encountered in every problem related to gratuities (Dodi Muhardiansyah, 2010).

In line with its development, there is a classification of sexual gratuities that has received a lot of attention from the public or law enforcement officers. The sexual gratuity is not the

same as the gratuity that is generally recognized. The thing that makes the gratuity not the same is based on the side of the object. As we understand, usually the object of gratuity is money, but nowadays it is a form of sexual service. Sexual gratification is a form of lowering the dignity of women. This is like returning to the old days, where women were gifts for kings and rulers (Firman Wahyudi, 2023).

In Indonesia, the incidence of sexual gratuities can be likened to an iceberg, which means that many problems are assessed in which there are elements of sexual gratuities but only a few are raised on the surface. Regarding sexual gratuities, we can know, for example, in the case of the criminal act of corruption Setyabudi Tejocahyon in which there is an element of sexual gratification related to the Misappropriation of Banskons Banskons of Bandung City in the 2009 to 2010 Budget period (Muhammad Ikhwan, 2022). In Indonesia, it is not clearly regulated regarding sexual gratuities in the Corruption Criminal Acts Law, giving the opportunity to determine sexual services for acts of gratuities to avoid criminal penalties (Regina Pramesti et al., 2021).

Based on the explanation above, this study aims to find out the regulation of sexual gratuities reviewed in positive law in Indonesia and its proof.

RESEARCH METHOD

This study uses a normative juridical law research method that examines the law from an internal perspective where the object of research is on legal norms. This research is intended to look at developments related to gratuities as a form of Corruption.

The data of this research is sourced from secondary data where this secondary data consists of primary, secondary and tertiary legal materials. Primary legal material is the main material that will be used as a guideline in answering the problem formulation in this study. The primary legal material is supported by secondary legal material which is a supporting legal material or provides an explanation of the primary legal material. Secondary legal materials in this case are in the form of journals, articles, research results and others that are relevant to the topic discussed. Primary and secondary legal materials will be clarified with tertiary legal materials such as magazines, data from the internet and others.

RESULTS AND DISCUSSION

Sexual Gratuity Arrangements Reviewed in Positive Law in Indonesia

As we know, corruption is a crime called a *white collar crime*. The term *white collar crime* is synonymous with position (Ni Wayan Suartini, 2019). According to Lerry J. Siegel, the form of criminal code violations is divided into two, namely white collar crime and organized crime (I Dewa Made Suartha, 2015). White collar crime is a term invented by Hazel Croal to refer to various crimes in government institutions that occur, both structurally involving a group of people and individuals. Hazel Croal defines white-collar crime as an abuse of legitimate office as stipulated by law. White-collar crime is generally nonviolent and includes public corruption, health care fraud, mortgage fraud, securities fraud, and money laundering, among many others (Federal Bureau of Investigation, 2023).

In Indonesia, gratuities are regulated in Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption. Based on Article 12 B paragraph (1) of the Corruption Law, it is stated that gratuity is a gift to a civil servant or state administrator related to his position and contrary to his obligations or duties.

Based on these provisions, it can be known that there is a phrase "other facilities". Based on the Great Dictionary of the Indonesian Language, facilities are defined as means used to facilitate an implementation (Regina Pramesti et al., 2021). So if referring to this explanation, sexual gratuities can be included in the phrase. This is appropriate because the use of sexual

service facilities can achieve any purpose for the purpose of giving gratuities (Regina Pramesti et al., 2021).

Every person who commits gratuities in this case is further regulated in Article 12 B of the Corruption Law which states as follows:

- (1) Any gratuity to a civil servant or state administrator is considered to be a bribe, if it is related to his position and contrary to his obligations or duties, with the following provisions:
 - a) The value of Rp 10,000,000.00 (ten million rupiah) or more, proof that the gratuity is not a bribe made by the recipient of the gratuity.
 - b) The value is less than Rp 10,000,000.00 (ten million rupiah), proving that the gratuity is a bribe carried out by the public prosecutor.
- (2) Criminal penalties for civil servants or state administrators as referred to in paragraph (1) are life imprisonment or a minimum sentence of 4 (four) years and a maximum of 20 (twenty) years, and a fine of at least Rp 200,000,000.00 (two hundred million rupiah) and a maximum of Rp 1000,000,000.00 (one billion rupiah).

Proving Sexual Gratification in Corruption Crimes

The proof of sexual gratuities in the eradication of corruption in Indonesia based on the criminal procedure law refers to the Criminal Procedure Code (KUHAP) in article 184 paragraph (1) and Article 26A of Law Number 20 of 2001 Jo. Law Number 31 of 1999 by using a reverse or balanced proof system in which the Public Prosecutor and the defendant are burdened to prove the criminal act of sexual gratuity that charged against the defendant (Beniharmoni Harefa, 2022).

The reversal of the burden of proof of sexual gratuities in Indonesia in this case will refer to article 12 B of Law No. 20 of 2001. Therefore, the government must make a government regulation on the price of sexual services, which will later be used as the basis for the reversal of the burden of proof as regulated in article 12 B which is worth Rp. 10,000,000.00 (ten million rupiah) or more, proving that the gratuity is not a bribe committed by the recipient of the gratuity whose value is less than Rp. 10,000,000.00 (ten million rupiah), proving that it was not a gratuity that the bribe was carried out by the Public Prosecutor (Dewi Novita Sari, 2013).

As we know that gratuities are part of corruption, the evidence used is also the same as the evidence used in corruption crimes. The evidence referred to in this case as stated in Article 184 of the Criminal Procedure Code (KUHAP) is witness statements, expert statements, letters, instructions, and statements of the defendant. Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes and its Explanation; In Article 26, letter A expands the meaning of the source of acquisition from things as mentioned in Article 188 paragraph (2) of the Criminal Code. According to Article 26 letter A, evidence of clues can also be obtained from materials produced by electronic means or optical devices such as data recordings or other information (Gandes Candra Kirana, 2018). Based on the KPU said that providing evidence related to sexual gratuities is not easy, except for the matter of being caught committing. Caught is the perpetrator caught while carrying out gratuities. So in the following matter, all parties to the following transaction which include the gratuity giver, the recipient, and the woman who gave the gratuity service were caught simultaneously carrying out the transaction. Proof of sexual gratuities is not the same as proof carried out on other gratuities. Sexual gratuities can be shown if individuals who provide sexual "services" to state officials confess, and are also strengthened through interaction relationships such as SMS or other digital media (Gandes Candra Kirana, 2018).

CONCLUSION

An explanation related to sexual gratuities can be included in Article 12 B paragraph (1) of Legislation No. 20 of 2001 related to Amendments to Legislation No. 31 of 1999 related to the Eradication of Corruption Criminal Acts. This can be reviewed in the "other facilities" clause where it can also be defined that the use of sex service facilities can achieve any goal for the purpose of giving gratuities. This is also in line with the elaboration of KBBI which conveys that the means are defined as facilities used to facilitate the implementation of a facility.

The proof of sexual gratuities in the eradication of corruption in Indonesia based on the criminal procedure law refers to the Criminal Procedure Code (KUHAP) in article 184 paragraph (1) and Article 26A of Law Number 20 of 2001 Jo. Law Number 31 of 1999 by using a reverse or balanced proof system in which the Public Prosecutor and the defendant are burdened to prove the criminal act of sexual gratuity that charged against the defendant.

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