

Jurisdictional Analysis Of The Decision Of The Supreme Court Number 2205/K/Pid.Sus/2022 On The Delict Of Gratification In The Perspective Of Legal Enforcement Of Corruption In Indonesia

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Abstract

Corruption in Indonesia remains a significant impediment to national development and social justice, with gratification as one of its pervasive forms. The Supreme Court Decision Number 2205/K/Pid.Sus/2022 acquitted the defendant, Samin Tan, despite evidence of gratuities given to public officials. This research analyzes the legal considerations behind the ruling and evaluates the implementation of Law Number 48 of 2009 on Judicial Power in handling corruption cases. Using a normative juridical approach with statutory and case-based analysis, the study finds inconsistencies in the legal application of gratification offenses, particularly concerning the liability of gratification givers. The results highlight legal uncertainties, where the absence of explicit evidence of a formal agreement between giver and receiver allowed the defendant to evade legal consequences. Additionally, comparisons with previous cases reveal inconsistencies in judicial decisions regarding gratification offenses. This study underscores the need for regulatory revisions to ensure that both gratification givers and recipients are held accountable under the Corruption Eradication Law. Strengthening the implementation of beneficial ownership principles and reverse burden of proof mechanisms is recommended to enhance legal certainty, deter corrupt practices, and uphold justice in Indonesia's legal system.

Keywords: *Gratification, Supreme Court Decisions, Corruption Crime, Law Enforcement, Legal Certainty, Justice*

INTRODUCTION

Corruption is a global problem that undermines political, social and economic stability in many countries. According to a report by Transparency International (2023), corruption has created social injustice, widened economic disparities, and slowed development in many developing countries, including Indonesia. One form of corruption that often occurs is graft, which is considered a form of disguised bribery (Shilby, 2021). In the global context, developed countries have tightened regulations on gratuities through transparency and accountability policies. However, in developing countries, regulations related to gratuities still have many loopholes that allow public officials and private parties to take advantage of their positions illegally.

Indonesia, as one of the countries with a relatively high level of corruption, is still struggling to improve its legal system and supervision of gratuities (Kusumaatmadja, 2000). One of the cases that highlighted this issue was the Supreme Court decision No. 2205/K/Pid.Sus/2022 that acquitted Samin Tan, a businessman charged with providing gratuities to state officials. This decision has led to widespread debate regarding the effectiveness of law enforcement against gratification perpetrators in Indonesia.

There are several factors that influence the high number of gratuities in Indonesia. First, the weak internal control system in government institutions and the private sector. Public officials often have great authority without adequate control mechanisms, thus opening up opportunities for gratuities. Second, a bureaucratic culture that still views gratuities as something commonplace and difficult to eliminate. Third, the lack of clarity of regulations regarding the definition and sanctions against gratification givers. Law No. 20/2001 on the Eradication of

Corruption focuses more on the recipient of gratuities, while the giver is often not punished accordingly. (Number, 31 C.E.)

The impact of the high number of gratuities is very significant on national development. First, gratuities weaken public trust in the government and law enforcement agencies. This distrust can trigger political and social instability (Yahya et al., 2023). Second, corruption in the form of gratuities causes inefficiencies in the use of the state budget, thus slowing down the development of infrastructure and other public sectors (Prayoga & Yuhertiana, 2021). Third, gratuities create economic injustice, where only certain parties have access to large projects, while small and medium-sized businesses are often marginalized.

Gratuities in the context of corruption are defined as gifts in a broad sense that includes money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, and other facilities received by public officials (Kirana, 2018). Based on Article 12B of Law Number 20 of 2001, any gratuity that is related to the position and contrary to the obligations or duties of the recipient is considered a bribe. In practice, the application of the law against gratuities still faces many challenges, especially in terms of proof and the application of sanctions to the giver. (Ritonga & Gani, 2024)

The Samin Tan case is a clear example where the lack of clarity of regulations led to the gratification giver being acquitted. This shows that there is a legal loophole that allows the perpetrators of gratuities to escape the law, even though their actions have been materially proven.

This research has novelty in two main aspects. First, this research focuses on the juridical analysis of gratuity givers, which has received less attention in the study of corruption law in Indonesia. Most previous studies have highlighted the recipients of gratuities and have not provided in-depth analysis of the givers. Second, this research uses a case study of Supreme Court Decision Number 2205/K/Pid.Sus/2022 as the main material, which is expected to provide concrete recommendations for future regulatory improvements.

The urgency of this research lies in the urgent need to improve the legal system and regulations related to gratuities in Indonesia. The acquittal of Samin Tan sets a bad precedent that can be exploited by other perpetrators of corruption. If there are no concrete steps to close this legal loophole, it is feared that there will be more graft cases that are not handled properly, thus worsening the image of law enforcement in Indonesia.

This research is expected to be a reference for the government, academics, and legal practitioners in formulating more effective policies to eradicate gratuities.

This research aims to analyze the legal considerations in Supreme Court Decision Number 2205/K/Pid.Sus/2022 concerning the offense of gratification. It seeks to evaluate the role of judges in enforcing laws related to gratuities in Indonesia, highlighting the judicial perspectives and interpretations applied in such cases. Additionally, the study intends to provide recommendations to improve existing regulations and law enforcement mechanisms against individuals involved in giving gratuities. By addressing these objectives, the research aspires to contribute to the enhancement of legal frameworks and the development of more effective measures to combat corrupt practices in Indonesia.

Various studies have highlighted legal inconsistencies and challenges in law enforcement of corruption crimes in Indonesia, especially related to gratuities. (Windiarti, 2024) emphasized that the burden of proof in gratuity cases is often more favorable to the giver, as the legal provisions focus more on the recipient. Similarly (Alkostar & di Indonesia, 2019) argued that the absence of explicit legal sanctions for gratuity givers creates legal loopholes that allow corrupt practices to continue. (Ardiansyah, 2017) It also highlights disparities in sentencing for corruption cases, which shows that similar offenses often result in different legal decisions due to the discretion of judges. Meanwhile, (Willyams & Yusuf, 2024) discussed the need to

strengthen the reverse proof system in corruption cases to close existing legal loopholes. These studies provide a solid basis for understanding the legal uncertainty in the Supreme Court Decision Number 2205/K/Pid.Sus/2022, as well as strengthen the urgency of legal reform in the eradication of corruption in Indonesia.

This research is expected to provide several significant benefits. Theoretically, it aims to enrich the legal literature on gratuity offenses by offering a fresh perspective on the role of gratuity givers in corruption cases. Practically, the findings can serve as valuable input for the government and law enforcement agencies in revising existing laws and regulations related to gratuities, ensuring a more comprehensive and effective legal framework. From a societal perspective, this research seeks to raise public awareness about the importance of monitoring and reporting graft, thereby fostering greater community involvement and encouraging active participation in efforts to eradicate corruption.

RESEARCH METHODS

This research uses a normative juridical method with a descriptive approach and qualitative analysis. The normative juridical method was chosen because this research aims to examine the applicable laws and regulations and the relevance of their application in gratification cases as stated in Supreme Court Decision Number 2205/K/Pid.Sus/2022 (Prayitno, 2020). The main focus of this research is to understand how the legal rules related to gratuities are applied and analyzed in the Indonesian judicial system, as well as to evaluate the consistency of the decision with the principles of justice and legal certainty.

Research Approach

This research uses a statute approach and a case approach. The statutory approach is used to examine Law No. 31/1999 on the Eradication of Corruption and its amendment in Law No. 20/2001, as well as Law No. 48/2009 on Judicial Power. The case approach was conducted by deeply analyzing Supreme Court Decision Number 2205/K/Pid.Sus/2022 which is the main focus of this research. (Sasuang et al., 2024)

Data Source

The data used in this research consists of primary and secondary data. Primary data is in the form of court decisions related to gratification cases and corruption crimes, while secondary data comes from scientific journals, law books, academic articles, as well as interviews with legal practitioners and academics who have expertise in the field of corruption crimes. The researcher also used a document study covering the first level court decision (Central Jakarta District Court Number 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst) to the Supreme Court cassation decision.

Data Collection Technique

Data collection was done through:

1. **Documentation Study:** Collecting and analyzing court decision documents that have relevance to graft cases, as well as related laws and regulations. (Sanjaya & Erny, 2024)
2. **In-Depth Interview:** Conducted with criminal law experts, judges, and advocates with experience in handling corruption cases. These interviews aimed to gain a broader understanding of the interpretation of laws related to gratuities and the challenges faced in implementing the law.
3. **Participatory Observation:** Observations were made during the trial process to understand first-hand the dynamics and court processes that take place in graft cases.

Data Analysis Technique

Data were analyzed using a qualitative analysis method with a triangulation approach. The triangulation technique was carried out by combining data from various sources (court decisions, interviews, and literature studies) to ensure the validity and reliability of the research results. The analysis was conducted by categorizing the data in several themes, such as:

1. Judge's Consideration: Analysis of the legal basis and logic used by judges in deciding graft cases.
2. Legal Certainty: Evaluation of the consistency of decisions with the principles of legal certainty and justice.

Legal Gap: Identification of legal gaps related to gratuities in applicable regulations, as well as their impact on court decisions.

RESULT AND DISCUSSION

Results

This research focuses on Supreme Court Decision No. 2205/K/Pid.Sus/2022, which acquitted the defendant Samin Tan of graft charges despite evidence of money given to Eni Maulani Saragih, a member of the Indonesian Parliament. The results of this study reveal several key findings that reflect problems in the application of gratification law in Indonesia. (Cibro et al., 2022)

Case Profile and Trial Facts

The Samin Tan case stems from the revocation of the mining business license of PT Asmin Koalindo Tuhup (PT AKT) by the Ministry of Energy and Mineral Resources. PT AKT is a subsidiary of PT Borneo Lumbung Energi & Metal Tbk (PT BLEM) which is engaged in the coal mining sector. In an effort to restore the revoked license, Samin Tan established communication with Eni Maulani Saragih, who at that time served as Deputy Chairperson of Commission VII of the Indonesian Parliament. Eni Saragih had a strategic position because Commission VII of the House of Representatives has the authority in the field of energy and mineral resources.

According to the facts of the trial, Samin Tan gave Rp 5 billion to Eni Saragih in stages through Eni Saragih's staff, Tata Maharaya. The money was given as a form of kickback so that Eni Saragih would assist in the process of restoring PT AKT's revoked license. The process of giving this money took place in three stages, namely on May 3, 2018, May 17, 2018, and June 22, 2018.

Despite evidence of transfers and partial confessions from related parties, a trial at the Jakarta Corruption Court in August 2021 cleared Samin Tan of all charges. The judge was of the opinion that there was no agreement or written agreement linking the money to Eni Saragih's position. The court also considered Samin Tan to be a victim of extortion by members of the House of Representatives, which reduced his criminal liability.

This acquittal was later confirmed by the Supreme Court in Decision Number 2205 K/Pid.Sus/2022. In its reasoning, the Supreme Court rejected the appeal from the Corruption Eradication Commission (KPK) on the grounds that there was insufficient evidence to prove a causal relationship between the giving of money and Eni Saragih's position as a state official. The judge stated that the absence of a response from Samin Tan to Eni Saragih's gratitude showed that the giving of money did not have a gratification motive.

This verdict created a polemic among law enforcement and the wider community. One of the main reasons is because this case exposes a legal loophole in the Corruption Crime Law (Tipikor Law), where gratification givers often escape the law. In fact, in several previous cases,

gratification givers such as Simon Gunawan Tanjung and M. Bukhori were successfully charged using the Anti-Corruption Law.

This case underscores the importance of strengthening the regulation and implementation of the Beneficial Ownership (BO) principle in Indonesia. Presidential Regulation No. 13/2018 on the Implementation of the Principle of Recognizing Beneficial Owners of Corporations regulates the obligation to report beneficial owners (BO) by corporations. However, the low level of reporting compliance indicates weak supervision and law enforcement related to gratuities and bribery in Indonesia. Therefore, this thesis recommends that the government and law enforcement officials strengthen the implementation of BO rules and review the legal loopholes in the Anti-Corruption Law related to gratuities.

Uncertainty in the Application of the Law to the Giver of Gratification

Based on the juridical analysis, the main striking finding is the unclear application of the law against gratuity givers in the context of corruption crimes. This research highlights that in many cases, judges tend to focus sanctions on the recipients of gratuities, while the givers are often spared from legal accountability. Supreme Court Decision No. 2205/K/Pid.Sus/2022 is a clear example where Samin Tan, as the giver of gratification to Eni

Maulani Saragih, was acquitted of all charges because she was considered a victim of extortion. This has led to a discourse on the consistency of the application of Articles 12B and 12C of Law No. 20/2001 on the Eradication of Corruption.

Juridically, gratuities are regulated as part of the crime of bribery, which aims to maintain the integrity of public officials and minimize conflicts of interest. Article 12B states that every gratification to a civil servant or state organizer related to their position must be reported to the Corruption Eradication Commission (KPK). However, in practice, proving gratuities is often constrained by the need to show an agreement or meeting of minds between the giver and receiver. This loophole allows gratuity givers to avoid punishment, as long as there is no explicit evidence showing a direct relationship between the gift and the recipient's position.

This analysis shows that in Samin Tan's case, despite evidence of a Rp 5 billion money transfer and partial confessions from related parties, the judge did not find the element of a formal binding agreement between Samin Tan and Eni Saragih. The Supreme Court argued that the absence of a written agreement or recorded communication explicitly proving the intent to bribe made Samin Tan unpunishable. In fact, from the perspective of corruption criminal law, the existence of a flow of funds in the context of a power relationship should be sufficient to establish indications of gratification.

This case shows weaknesses in the prevailing legal system, where judges tend to prioritize the principle of legal certainty in a formalistic form rather than focusing on the material substance of the gratuity itself. If left unchecked, this pattern has the potential to weaken efforts to eradicate corruption in Indonesia, as gratification givers can easily avoid legal traps by utilizing this regulatory loophole.

This research also recommends the need for revision of the Corruption Law, especially in the aspect of proving gratuities, so that not only the recipient is subject to sanctions, but also the giver. Thus, it is hoped that a more comprehensive deterrent effect will be created in the enforcement of corruption laws, and efforts to prevent the practice of gratuities can run more effectively. This revision also needs to emphasize that improper fund flows to state officials should be automatically categorized as illegal gratuities, without the need to prove formal agreements that are often difficult to uncover in court.

Comparison with Previous Decisions

In this study, a comparative analysis of several other decisions with similar characteristics shows inconsistencies in the application of the law regarding gratuity givers. One of the cases for comparison is the case of Simon Gunawan Tanjung and Rudi Rubiandini, where Simon as

the grantor of the gratification was sentenced despite the absence of a written agreement explicitly proving the existence of a meeting of minds. In that case, the judge considered the intent (*mens rea*) and active actions of the gratuity giver as crucial factors showing involvement in corruption. Simon Gunawan Tanjaya was charged for giving money to Rudi Rubiandini in an effort to influence decisions related to project management within SKK Migas.

In the verdict, the judge argued that although there was no direct evidence in the form of a written agreement, the fact of a significant flow of funds and the interest held by Simon Gunawan Tanjaya in the project managed by Rudi Rubiandini was sufficient to prove the existence of gratification. This approach shows that in some cases, judges use a substance approach where the intention and motive of the gift is prioritized over formal proof. This is in line with the spirit of Law No. 20/2001 on the Eradication of Corruption, which places gratuities as part of the crime of bribery.

However, in the Samin Tan case, the Supreme Court took a different approach. Despite evidence of a transfer of Rp 5 billion given to Eni Maulani Saragih, the judges in Supreme Court Decision Number 2205 K/Pid.Sus/2022 stated that the absence of evidence of an explicit agreement between Samin Tan and Eni Saragih was the main reason for the defendant's acquittal. This reasoning shows that the Supreme Court focuses more on the lack of formal evidence and ignores indications of the intention and motive of the gratification giver. This overly legalistic approach creates a dangerous precedent as it could open up space for gratification givers to escape the law as long as there is no concrete evidence of a written agreement.

This inconsistency poses a major challenge to the corruption criminal justice system in Indonesia. If the approach taken in the Samin Tan case is maintained, there will be great potential for graft givers to take advantage of existing legal loopholes. This not only hampers efforts to eradicate corruption, but also undermines the integrity of the justice system, which should serve as a bulwark in upholding law and justice. Therefore, this thesis recommends the need for harmonization in the application of gratuity law, where the intention and motive aspect of the giver should be the main factor in the assessment of the case, regardless of the presence or absence of a formal agreement.

Implications for Legal Certainty and Justice

The Supreme Court Decision No. 2205 K/Pid.Sus/2022 acquitting Samin Tan of gratification charges has far-reaching implications, not only for the defendant, but also for the justice system and corruption eradication efforts as a whole. In this context, legal certainty, which should be the main pillar of the Indonesian legal system, as stipulated in Article 28D paragraph (1) of the 1945 Constitution, is threatened by inconsistencies in the application of sanctions against gratuity givers. The public considers that this exemption provides space for the perpetrators of corruption to escape the law, thus creating loopholes that can be utilized in similar cases in the future.

This research highlights that the lack of clarity in the application of the law against graft givers has the potential to undermine public trust in the judiciary. This decision creates the perception that the law cannot be relied upon to crack down on corrupt practices among public officials and business people. When gratuity givers are let off the hook in the absence of explicit evidence of an agreement (meeting of minds), the public doubts the judiciary's alignment with the public interest in upholding justice and eradicating corruption. This is contrary to the spirit of Law No. 20/2001 on the Eradication of Corruption, which stipulates that gratuities related to office must be considered as a form of bribery.

Furthermore, this study asserts that this decision weakens the efforts of the Corruption Eradication Commission (KPK) in handling corruption cases involving high-ranking officials and big businessmen. When gratification givers are not sanctioned, the deterrent effect that should result from the judicial process is lost. The practice of gratuities that should be prevented

and punished is even more difficult to overcome, because the gratuity giver can take refuge behind unclear regulations and formal proof. As a result, this decision could set a bad precedent that slows down the progress of corruption eradication in Indonesia.

As a recommendation, this thesis highlights the importance of revising the laws governing gratuities to further clarify the legal position of the gratuity giver. One of the proposed measures is the comprehensive application of the reverse proof principle, in which the gratuity giver must prove that the gift is not related to the recipient's position or authority. With this step, it is hoped that better legal certainty will be created and a sense of justice in the community can be restored, in line with efforts to strengthen the justice system in combating corruption.

Legal Vacancy and Urgency of Regulatory Revision

This research highlights a significant legal gap in the regulation related to gratuity givers. Based on an analysis of Article 12B of Law No. 20/2001 on the Eradication of Corruption, criminal sanctions are only imposed on recipients of gratuities, while the givers of gratuities are not explicitly regulated in the law. This creates a legal loophole that allows the gratification giver to escape the law, as long as there is no concrete evidence of active involvement in the agreement or intention of bribery. This loophole is one of the factors that lead to many corruption cases not being resolved, as the givers of gratuities often cannot be held legally accountable.

This research observes that the absence of sanctions for gratuity givers contradicts the basic principles in the eradication of corruption, which considers gratuities as part of the crime of bribery. In many cases, gratuity givers have an active role in triggering corruption by offering money or facilities to state officials. Therefore, the omission of the giver can strengthen the culture of corruption in various sectors, because the giver feels safe and not threatened by legal proceedings. In interviews conducted with legal experts in the context of this research, most of the interviewees stated that the revision of gratuity regulations is an indispensable step to create a fairer and more comprehensive legal system.

A more in-depth analysis in this thesis also shows that in the crime of bribery, both the giver and the receiver are subject to comparable sanctions according to their respective levels of involvement. For example, Article 5 of the same law stipulates that the giver of a bribe is subject to imprisonment for a minimum of 1 year and a maximum of 5 years. However, in the case of gratuities, there is no article that specifically regulates sanctions against the giver, thus creating an imbalance in law enforcement. This shows the urgent need to harmonize the legal provisions between the criminal acts of bribery and gratuities, so that the gratuity giver is not left unpunished.

As a recommendation, this thesis emphasizes the importance of revising Law Number 20 Year 2001, by including provisions that explicitly regulate criminal sanctions for gratuity givers. This revision is expected to strengthen the legal system, prevent the practice of gratuities, and close legal loopholes that have been utilized by parties who want to avoid accountability. Thus, the process of eradicating corruption in Indonesia can run more effectively and create an even deterrent effect for all parties involved in corrupt practices.

Social and Economic Impact of Gratuity

The practice of graft has far-reaching impacts that not only implicate the legal system and the integrity of public officials, but also have a significant impact on the economic sector and national development. In the case of PT Asmin Koalindo Tuhup (PT AKT), the gratuities given to Eni Maulani Saragih demonstrate how business processes can be disrupted by individual interests and illegal practices. These practices often create legal uncertainty in the business world, where companies' strategic decisions depend on personal relationships and transactions outside official procedures. As a result, government projects that should be run transparently are hampered, hindering efficiency and productivity.

One of the main findings in this thesis is that graft involving public officials often leads to inefficiencies in the management of state resources. Infrastructure and natural resource exploitation projects awarded to certain parties on the basis of graft are potentially not run by the best competent companies. This can lead to low project quality, budget overruns, and the inability of projects to be completed on time. In the case of PT AKT, the revocation of its mining license by the Ministry of Energy and Mineral Resources also highlights how gratuities can affect business continuity and create uncertainty in energy sector regulations.

Furthermore, this gratuity practice also has a direct impact on fair business competition. Parties that have greater access to public officials through gratuities tend to gain an unfair competitive advantage over other business actors. In this context, gratuities worsen the investment climate and hamper opportunities for companies that conduct business transparently and in accordance with regulations. This creates an exclusive and oligarchic business environment, where economic power is concentrated in certain groups with close ties to power holders.

From a social perspective, graft also contributes to increased social injustice. Projects that are supposed to benefit the wider community are often distorted by the interests of a handful of individuals involved in corrupt practices. As a result, the community becomes the main victim of the failure of projects that do not go according to plan. In the long run, this practice widens social inequalities and creates public distrust of the government and public institutions.

As a recommendation, the eradication of gratuities not only serves to strengthen the legal system, but is also an integral part of efforts to create a healthy and sustainable economic environment. Synergy is needed between the government, law enforcement officials, and the private sector in applying the principles of transparency and accountability in every aspect of business and public policy. Thus, it is hoped that the negative impact of gratuities on the economy and national development can be minimized, thereby promoting inclusive and equitable growth.

Discussion

Supreme Court Decision Number 2205/K/Pid.Sus/2022 is one of the decisions that triggered a broad discourse in the realm of corruption criminal law in Indonesia, especially related to the offense of gratification (Auliya et al., 2024). In this decision, Samin Tan was acquitted despite being proven to have given a sum of money to Eni Saragih, a member of the House of Representatives, to help facilitate the revocation of the business license of PT Asmin Koalindo Tuhup (PT AKT). The judge argued that there was no meeting of minds that could prove the elements of the crime of corruption as stipulated in Law Number 20 of 2001 concerning the Eradication of Corruption.

The main problem raised in this research is the lack of clarity of regulations related to sanctions for gratuity givers. In the prevailing regulations, the main focus is more directed at the recipient of gratuities, while the giver often does not receive appropriate sanctions. Article 12B of Law Number 20 of 2001 focuses more on the obligation to report gratuities by recipients, without any explicit provisions regarding the penalties that can be imposed on the giver. As a result, there is a legal loophole that allows perpetrators among businessmen or interest owners to avoid legal traps even though they are proven to have committed acts of gratification.

Inconsistency in the Application of Law in Gratification Cases

Inconsistency in the application of law in graft cases in Indonesia is one of the crucial issues raised in this research. In the case of Simon Gunawan Tanjung and Rudi Rubiandini, the givers of gratuities were subject to criminal sanctions even though there was no written agreement or strong evidence of an explicit agreement. The judge in the case considered that the existence of an irregular flow of funds was sufficient to prove the intent (*mens rea*) and active involvement of the giver in the corruption offense. This approach emphasizes that the giver of

gratuities has equal responsibility with the receiver, as part of efforts to maintain the integrity of the legal system and prevent the practice of bribery and gratuities.

In contrast, in the Samin Tan case, the Supreme Court decided to acquit the defendant on the grounds that there was no evidence of a written agreement or concrete evidence of Eni Maulani Saragih's consent as a recipient of gratuities. This formalistic approach creates a precedent that is detrimental to corruption eradication efforts, as it emphasizes formal proof and overrides substantial indications that could lead to the occurrence of gratuities. In analysis, this decision shows the existence of legal loopholes that can be utilized by perpetrators of corruption to avoid legal snares, thus weakening the deterrent effect that should arise from the judicial process.

The different approaches in these decisions indicate a lack of clear standards in law enforcement against graft cases. In some cases, judges prioritize formal evidence, while in other cases, substantive considerations that focus on motive and intention become the determining factor. This creates legal uncertainty that harms public trust in the justice system. The public can see that there is injustice in the treatment of perpetrators who have great position and influence, who should be the subject of more scrutiny in the enforcement of corruption laws.

Furthermore, this study highlights that this inconsistency opens up opportunities for decisions that are not in line with the spirit of eradicating corruption. Judges have the freedom to interpret the law, but without consistent standards, the risk of contradictory decisions will increase. Therefore, this study recommends the importance of preparing standardized guidelines or standards in handling gratification cases, so that all elements in the justice system have a uniform reference in deciding similar cases. With these guidelines, it is hoped that the application of the law will be more equitable and no longer cause significant differences in law enforcement of corruption crimes.

As a concrete step, the revision of Law No. 20/2001 on the Eradication of Corruption is also one of the solutions proposed in this study. This revision is expected to clarify the legal position of the gratuity giver and equalize the level of sanctions with the recipient, thus eliminating the legal loopholes that have been debated in the judicial process. Through a more assertive and comprehensive approach, corruption eradication in Indonesia can run more effectively and have a long-term impact on national development.

The Role of Judges in Interpreting the Law

Judges have a central role in creating legal certainty and providing a sense of justice in society (Azizah et al., 2023). In this case, the Supreme Court adhered to the principle of "in dubio pro reo" (in doubt, in favor of the defendant). However, this approach has been criticized because it is considered to ignore the facts that indicate the existence of indications of gratification. In several interviews conducted with legal experts, the majority stated that even if there is no evidence of an explicit agreement, the provision of Rp 5 billion in three tranches is sufficient to prove the existence of an intention or ulterior motive related to the crime of corruption.

Furthermore, judges also have the responsibility to explore and understand the legal values that live in society, as stipulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (Dewi, 2019). In this case, the judge was considered too rigid in applying the law, without considering the social implications and negative impacts of the decision. Therefore, this study recommends that judges be more flexible in interpreting the law, especially in cases involving broad public interests.

Legal Vacancy and Urgency of Regulatory Revision

The legal vacuum related to gratuity givers is one of the crucial aspects identified in this research. Article 12B of Law Number 20/2001 on the Eradication of Corruption Crime does explicitly regulate sanctions for recipients of gratuities. However, the regulation does not explicitly mention the gratification giver as a party that can be subject to criminal sanctions,

except in the context of bribery which is regulated in other articles. This creates an imbalance in law enforcement, where recipients of gratuities face criminal risks, while givers often escape the law. In this context, the revision of the law is an urgent step to eliminate these legal loopholes and create a broader deterrent effect.

One of the important recommendations in this thesis is to include a provision that explicitly states that the giver of gratuities can be subject to sanctions equal to the recipient. By doing so, it is hoped that there will be a more effective prevention of the practice of gratuities, which has been one of the main factors in the corruption process. This revision will also reduce the potential for abuse of power by private parties or individuals who have an interest in public policies and government projects. Equitable law enforcement between givers and receivers will strengthen the justice system and increase public confidence in corruption eradication efforts in Indonesia.

The importance of applying the principle of beneficial ownership as stipulated in Presidential Regulation No. 13/2018 on the Application of the Principle of Recognizing Beneficial Owners of Corporations. In the case of Samin Tan, his status as the ultimate beneficial owner of PT Asmin Koalindo Tuhup (PT AKT) should be the main factor in proving his involvement in graft. This principle provides a strong legal basis to ensnare individuals hiding behind corporate entities in various criminal offenses, including corruption and graft. Unfortunately, in its implementation, this principle has not been fully integrated in the context of gratuities, thus creating space for the giver to avoid legal liability.

As a concrete step, the application of the beneficial ownership principle should be extended not only to money laundering offenses, but also to graft and bribery cases. In this way, individuals who have control over a company can be directly held accountable when proven to have committed gratification practices, even if the transaction was formally carried out through an intermediary or business entity. The application of this principle will strengthen the effectiveness of the law and ensure that no actor can hide from criminal charges simply because his status as a beneficial owner is not explicitly regulated in the gratification law.

Reverse Evidence and Strengthening the Legal System

Reverse proof is one of the instruments that can strengthen law enforcement in gratification cases. However, currently reverse proof is only applied to recipients of gratuities, while the giver does not have a similar obligation (Mas & Hamid, 2020). This creates an imbalance in the legal system and provides an advantage for gratuity givers to avoid legal responsibility.

This study recommends that the reverse proof mechanism should also be applied to the gratification giver. Thus, the giver is obliged to prove that the gratification given is not related to the position or obligation of the recipient. This approach has been applied in several countries with a high level of success in eradicating the practice of gratuities and bribery.

Practical Implications

The implications of this decision extend to various aspects, not only in the legal sphere, but also have a direct impact on business dynamics and governance. When gratuity givers are not subject to appropriate sanctions, it sends the wrong signal to business actors and public officials that gratification practices can be carried out without meaningful legal consequences. In the long run, this condition has the potential to exacerbate the entrenched culture of corruption, where business people feel they have the discretion to influence important policies or decisions for personal or group interests.

The absence of sanctions for gratification givers weakens the efforts of the Corruption Eradication Commission (KPK) and other law enforcement agencies in cracking down on major corruption cases. By only targeting recipients of gratuities, law enforcement becomes ineffective and tends to be lame. In many cases, public officials who receive gratuities are only part of a

larger chain, where the intellectual actors are actually in the private sector as gratuity givers. Therefore, without clear sanctions against the giver, corruption eradication will not achieve optimal results and tends to stop at the lower levels.

In the business sphere, gratuity practices that go unpunished have the potential to create unfair competition. Companies that choose to conduct business in a clean and transparent manner will be at a disadvantage compared to companies that use gratuities as a tool to obtain certain projects or policies. This not only harms honest business actors, but also hinders healthy and sustainable economic growth. Therefore, the revision of the gratification regulation that includes the giver as a legal subject that can be charged criminally is an important step in creating a more competitive and fair business climate.

Regulatory reform is key to closing existing legal loopholes. By harmonizing rules related to gratuities and bribery, Indonesia can strengthen its justice system and increase public confidence in the fight against corruption. These reforms will not only improve governance, but also encourage more ethical and responsible business practices, ultimately contributing to cleaner and more transparent national development.

CONCLUSION

Supreme Court Decision Number 2205/K/Pid.Sus/2022 highlights the lack of clarity of regulations in ensnaring the gratification giver, which has an impact on the imbalance in law enforcement of corruption in Indonesia. Although the defendant was proven to have given gratuities, the judge decided to acquit the defendant on the grounds that there was insufficient evidence of an agreement (meeting of minds) between the giver and the recipient of the gratuity. This decision reflects the existence of a legal vacuum that allows the gratification giver to avoid punishment, thus potentially weakening efforts to eradicate corruption.

For this reason, revision of the Corruption Eradication Law is needed to clarify sanctions for gratuity givers. In addition, the application of the principle of beneficial ownership and reverse proof for gratuity givers needs to be strengthened in order to create balanced justice in law enforcement. This step is expected to increase the effectiveness of corruption eradication, improve public trust in the justice system, and encourage transparency and accountability in government and business practices in Indonesia

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