

LAW ENFORCEMENT AGAINST THE CRIMINAL ACT OF GRATIFICATION IN THE FORM OF SEXUAL SERVICES IN INDONESIA

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Abstract

There are several consequences that must be faced, including imprisonment for the perpetrator based on the principle of legality, complicating the evidentiary system, especially in terms of the limits of value that can be classified as gratification so that it can cause a decrease in the market and dignity of a person, restrictions on the KPK to classify the gratification, and the inability of sexual relations to be assessed as nominal. The purpose of this study is to determine the construction of Indonesian law in regulating criminal acts of gratification in the form of sexual services, and the mechanism of legal protection in Indonesia in the occurrence of criminal acts of gratification in the form of sexual services. The research method used in this study is juridical-normative which uses secondary data, with a statutory regulatory approach and a case approach. The legal sources used include the Criminal Code, the Corruption Law, and other related regulations. The results of the study concluded that the Corruption Law has not explicitly regulated gratification in the form of sexual services, making law enforcement difficult because there is no clear classification. The main obstacles are the principle of legality and the difficulty of proof. Legal reform is needed to expand the definition of gratification as well as clearer technical guidelines and standards of proof, so that the legal system is more responsive to new forms of crime and able to protect from authorities.

Keywords: Law Enforcement, Criminal Acts of Gratification, Sexual Services

A. INTRODUCTION

The law serves to maintain order in society and government by providing a clear structure regarding the rights and obligations of each individual and the sanctions that will be imposed if the rules are violated. One way the law protects society is through the enforcement of criminal provisions, which aim to protect the public interest and prevent actions that disrupt social order. Criminal provisions in law contain a series of prohibitions and threats of punishment that apply to anyone who commits an act deemed detrimental to society or the state, such as theft, fraud, violence, and corruption.

The criminal sanctions imposed are not only punitive but also reformatory, providing perpetrators with the opportunity to improve themselves through rehabilitation, particularly for perpetrators of minor crimes or those who are still young. Thus, criminal law aims not only to punish but also to provide a deterrent effect so that harmful actions can be prevented and avoided in the future.

Through these criminal provisions, the law also serves as a preventative measure, regulating and enforcing rules that reduce the potential for violations. Firm criminal sanctions can instill fear or discomfort in individuals who intend to commit unlawful acts, ultimately

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maintaining societal stability and harmony. Furthermore, criminal law ensures that actions that harm others or the state will not go unpunished. In this regard, the state acts as a guardian of justice and protects the interests of society from all forms of actions that undermine social order, whether through imprisonment, fines, or other measures relevant to the type of violation. Criminal law, therefore, serves as a bulwark that protects society from the threat of injustice and chaos, while also providing legal certainty for everyone that harmful actions will receive appropriate retribution.

Although the use of law in Indonesia has supported the spirit and values that exist in social life, the codification system results in the standardization of provisions and becomes like a static photo that does not move from social norms which are constantly evolving. According to Tacitus, one of the crucial weaknesses of legal codification is that the law will never be able to "record" all positive laws so that the law will produce outdated legal guidelines to control human behavior that continues to develop (Budiono Kusumohamidjojo, 2017). As a result, there will be legal ambiguity in its implementation, which gives rise to problems, one example of which is related to Gratification.

Gratuities generally refer to gifts in the form of money, goods, or facilities given to someone, often with the intention of influencing that person's decisions or actions. The concept of gratification is often discussed in the context of law, ethics, and government, particularly in relation to the potential abuse of power. In the context of government or the business world, gratification is often seen as a gift that can influence the decisions of a public official or other powerful individual. Gratuities can come in various forms, such as gifts, discounts, travel, or other forms of luxury. However, what becomes problematic is when gratification is given with the intention of obtaining personal gain or harming the public interest.

In many countries, gratuities are considered a form of corruption, especially when given to obtain unfair or detrimental decisions. Therefore, many countries, including Indonesia, have regulated gratuities through legal regulations, such as the Corruption Eradication Law, to prevent abuse of power and ensure the integrity of public officials.

The meaning of gratification can be obtained from the Explanation of Article 12B of Law No. 20 of 2001, namely giving in the broad sense, namely including giving money, goods, discounts (*discount*), commissions, interest-free loans, travel tickets, accommodation, tours, free medical treatment, and other facilities (Tigana Barkah Maradona, 2020). The receipts can be made domestically or internationally and can use electronic or non-electronic means (Corruption Eradication Commission, 2015). This definition shows that gratification actually means a neutral gift. A gift becomes a gratification that is considered a bribe if it is related to a position and is contrary to the recipient's obligations or duties.

To date, the legal framework for gratification has not been clearly defined or classified into several types and remains largely undefined. This is highly influenced by individual interpretations. This makes it extremely difficult for law enforcement to prove the involvement of individuals in a gratification case. One form of gratification that is particularly difficult to prove is sexual favors.

Gratuities in the form of sexual favors differ significantly from the definition of gratification as defined in the Corruption Eradication Law. Gratuities are defined as neutral gifts, meaning they do not contain negative connotations or violate the law. This contrasts sharply with sexual gratification, which involves an imbalance between the two parties and can contain negative connotations and violate the law (Muh. Arief Syahroni, 2020).

Sexual gratification is a highly controversial form of gratification that violates legal and ethical norms in many social and legal systems around the world. This type of gratification refers to the provision of sexual favors in exchange for certain decisions, actions, or facilities

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provided by a party with power or influence over the recipient. In many countries, including Indonesia, sexual favors as gratification are considered a form of exploitation and abuse, which not only violates criminal law but also violates human rights. Sexual favors as gratification can occur in various contexts, whether in business, government, or even in personal relationships, and are often accompanied by abuse of position or power by the party providing the favor.

From a legal perspective, this form of gratification is often categorized as corruption or bribery, which is more dangerous because it involves the abuse of power and sexual exploitation of a weaker party or those forced to accept the payment. Furthermore, gratification in the form of sexual services can also have serious social impacts, such as the spread of sexually transmitted diseases, the neglect of workers' rights, and the undermining of morality and integrity in society. Therefore, many countries strictly regulate this form of gratification and impose severe legal sanctions on parties involved in such transactions. According to Zulkarnaen, Deputy Chairman of the Corruption Eradication Commission (KPK), sexual gratification is something that goes beyond the bounds of reasonableness and is too far to be considered a lawsuit. Eradicating sex is not the goal of enacting a law. Existing cases show that existing Indonesian law still has shortcomings.

From the gray area regarding gratification in the form of sexual services, there are several consequences that must be faced, including limitations in imposing criminal penalties on perpetrators based on the principle of legality, complicating the evidentiary system, especially in terms of the limits of value that can be classified as gratification so that it can lead to lowering the status and dignity of a person, limitations of the Corruption Eradication Commission (KPK) in classifying such gratification, and the inability to assess sexual relations as nominal (Harris Kristanto and Yani Osmawati, 2022).

This research cannot be separated from the findings resulting from research by previous researchers entitled *Sexual Service Gratification in Corruption Crimes* (Muh. Arief Syahroni, 2020). This research focuses on answering questions related to the differences between gratification in the form of sexual services and gratification in general. The difference between this research and the research to be discussed lies in the researcher's focus on answering the legal construction related to the existence of the crime of gratification in the form of sexual services according to Indonesian law and how legal protection exists in the event of the crime of gratification in the form of sexual services.

The second previous research entitled *Sexual Services as a New Mode of Gratification for Public Officials* (Erlita Kresna, 2022), that this research focuses on answering questions related to new modes in the form of gratification, namely in the form of *sextortion* or also known as sexual services. This research used a comparative approach with several countries and international legal regulations. The difference between this study and the research presented here lies in the data used, namely Indonesian law.

Meanwhile, the third previous study was entitled *The Phenomenon of Sexual Gratification in Indonesia as a Form of Corruption Crime*, (Harris Kristanto and Yani Osmawati, 2022). This study discusses the relationship between extortion And *white collar crime* which links gratification with corruption. The core problem of this research is the existence of a legal vacuum that provides loopholes for perpetrators of criminal acts of gratification in the form of sexual services and also eliminates the status of *extraordinary crime* on corruption when connected with *sextortion*.

Based on the problems above, the objectives of this research are to carry out this research, among others, to find out the construction of Indonesian law in regulating criminal acts of gratification in the form of sexual services, and to find out the mechanism of legal protection in Indonesia in the event of criminal acts of gratification in the form of sexual services.

B. LITERATURE REVIEW

Criminal law

Criminal law is a branch of law that regulates prohibitions against certain acts deemed detrimental to society or the state and establishes sanctions for violators (Budiono Kusumohamidjojo, 2017). Its purpose is not only to impose punishment, but also to provide a deterrent effect and prevent the recurrence of unlawful acts. In addition to being punitive, criminal law also has a reformatory dimension, providing opportunities for perpetrators to improve themselves. Through criminal provisions, the law plays a role in maintaining societal stability and harmony by regulating rights and obligations, as well as the consequences of violations. Thus, criminal law serves as an instrument for protecting the public interest while simultaneously safeguarding justice in the social order. Indicators:

- There is a legal prohibition against certain actions.
- Determination of criminal sanctions that are punitive and reformatory.
- The aim is to protect public interests and prevent violations.
- The role of the state as a protector of justice and social stability.
- Consistent law enforcement mechanisms against violations.

Gratification in Legal Perspective

Gratuity is a gift in the broad sense that includes money, goods, facilities, or other benefits received by someone, both domestically and abroad, which can use electronic means or not (Tigana Barkah Maradona, 2020; Corruption Eradication Commission, 2015). Although neutral by definition, gratuity can become a bribe if it is related to position and contradicts the recipient's obligations. In a legal context, gratuity is often viewed as a form of corruption that has the potential to harm the public interest. Regulations regarding gratuity in Indonesia are contained in the Corruption Eradication Law as a measure to prevent abuse of power. However, the limited classification of gratuity gives rise to differences in interpretation and obstacles to proof in court. Indicators:

- Broad forms of giving (money, goods, facilities).
- Direct relationship with recipient department.
- Potential conflict with obligations or duties.
- Strict and detailed legal regulations.
- There is a clear reporting and proof mechanism.

Sexual Service Gratification

Sexual gratification is the provision of sexual favors to a person in authority, with the aim of influencing their decisions or actions (Muh. Arief Syahrani, 2020). This form of gratification differs from the general definition of gratification in the Corruption Eradication Law, as it carries negative connotations and is contrary to law and ethics. This practice is often categorized as a form of corruption or bribery involving sexual exploitation and abuse of power (Harris Kristanto & Yani Osmawati, 2022). Sexual gratification has the potential to cause serious social impacts such as harassment, human rights violations, and the destruction of public morals. The absence of specific regulations in Indonesia makes it difficult to establish evidence and impose sanctions. Indicators:

- There is an element of sexual services as compensation.
- Occurs in a relationship of power inequality.
- The aim is to influence the decisions or actions of authorities.
- Violation of legal, ethical and human rights norms.
- There is no specific regulation governing this form of gratification.

C. RESEARCH METHODOLOGY

The research method used in this study is a juridical-normative one, which utilizes secondary data in its implementation. This normative research is a study of legal systematics, namely research whose main objective is to identify the meanings or foundations of law (Bambang Sunggono, 2016). The approaches used in this study are the statute approach and the case approach. In this study, the legislation used by the author is the Criminal Code and the Corruption Law, as well as other laws and regulations related to this research.

D. RESULTS AND DISCUSSION

Positive law in Indonesia, particularly Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, does regulate gratification in general. However, this provision does not explicitly regulate gratification in the form of sexual services. This ambiguity creates difficulties in law enforcement, as there is no clear classification of this type of gratification, whether in terms of form, value, or legal boundaries. Gratuities in the form of money or goods are easier to identify and calculate their nominal value, thus facilitating law enforcement. Conversely, gratification in the form of sexual services has more complex and abstract characteristics, making it difficult to prosecute under existing articles.

One of the main obstacles in addressing sexual gratification is the principle of legality (*nullum crimen sine lege*), which requires clear legal provisions before someone can be punished. In the case of sexual gratification, there is no article that directly regulates this form of gratification, making it difficult to prosecute the perpetrator. Proving in this case is also a major challenge, because there is no nominal value to use as a benchmark, as is the case with gratification in the form of money or goods. In the context of criminal law, proving a crime depends heavily on the existence of evidence that is acceptable to the court. Sexual gratification, which is highly personal and often carried out in secret, is certainly very difficult to prove without witnesses or clear physical evidence.

Furthermore, sexual gratification often occurs in unequal power relationships, where those in power exploit their position to gain personal gain from those in less powerful positions. This type of crime involves not only the abuse of power but also the exploitation of those in vulnerable positions. Sexual gratification involving coercion or manipulation clearly violates human rights and moral ethics, as well as violating existing social norms. This has the potential to have profound psychological impacts on victims, and these impacts can continue to damage the reputation and integrity of the institution where the act occurs.

However, the protection mechanism for victims of sexual gratification in Indonesia remains suboptimal. Institutions such as the Corruption Eradication Commission (KPK) and other law enforcement agencies often struggle to assess and process cases of gratification that cannot be quantified. This limitation stems from the lack of clear guidelines on how to handle non-material gratification, such as sexual services. In practice, this makes it difficult for law enforcement to prove and classify sexual gratification cases within the existing legal framework. Therefore, to address this issue, a more comprehensive legal reform is needed that includes expanding the definition of gratification, extending it beyond the provision of goods and money to include non-material gifts that have the potential to damage an individual's integrity and honor, such as sexual services.

Furthermore, it is necessary to develop technical guidelines or implementing regulations that can explain in detail the categories, elements, and standards of proof for sexual gratification cases. This update is crucial to ensure law enforcement is more responsive to the evolving forms of gratification and to ensure a clearer and fairer evidentiary process. Sexual

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gratification, as a crime involving the exploitation of power, requires a more holistic and interdisciplinary approach, incorporating legal, ethical, and human rights perspectives.

In this context, static legal codification has the potential to create loopholes that perpetrators of sexual gratification can exploit to evade legal sanctions. Although Indonesia has strong legal instruments to eradicate corruption, the lack of clarity regarding the law regarding sexual gratification opens up opportunities for perpetrators to escape prosecution. This is made even more serious by the lack of clear instruments to evaluate the value or concrete form of sexual services provided as gratification. The absence of clear standards in this regard complicates the evidentiary process and makes it difficult for law enforcement officials to impose appropriate sanctions on perpetrators.

Sociologically, sexual gratification also has significant social impacts. This practice not only undermines the integrity of public institutions but also destroys moral and ethical values within society. When abuse of power is accompanied by sexual exploitation, the violation not only harms the integrity of the position but also tarnishes human dignity and undermines the existing moral foundation. In cases like these, law enforcement should consider sexual gratification a serious crime that not only harms the victim but also undermines the existing social order.

Therefore, it is crucial for Indonesian law to undergo more progressive reform, one that views sexual gratification not merely as a mere legal issue but as a serious issue requiring special attention. This reform should encompass an interdisciplinary approach, combining criminal law, feminist, and human rights perspectives to reexamine the definition, types, and mechanisms of gratification within a broader context.

Synergy between lawmakers, law enforcement officials, and civil society is crucial to promote inclusive and responsive legal reforms to the development of new forms of crime, such as sexual gratification. These reforms are expected to create a more just and equitable legal system, capable of protecting the rights of individuals and communities from various forms of abuse of power and sexual exploitation.

E. CONCLUSION

Although Law Number 20 of 2001 concerning the Eradication of Corruption regulates gratification in general, Indonesian law does not explicitly regulate gratification in the form of sexual services. This creates difficulties in law enforcement, as there is no clear classification of this type of gratification, either in terms of form or value. The main obstacles lie in the principle of legality and the difficulty of proving it, especially because sexual gratification often occurs in unequal power relations and is highly personal in nature. Therefore, a more comprehensive legal reform is needed by expanding the definition of gratification to include non-material forms such as sexual services. Furthermore, the development of technical guidelines and clear standards of proof are crucial to facilitate law enforcement. With a more holistic approach, incorporating legal, ethical, and human rights perspectives, it is hoped that the Indonesian legal system will be more responsive to this new crime and can protect individuals from abuse of power and sexual exploitation.

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