THE GRATIFICATION OF SEXUAL SERVICES IN CORRUPTION OFFENSES

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ABSTRACT

Objective: This research aims to examine in depth the legal regulations related to gratification for sexual services in the context of corruption. As well as evidence in the trial of corruption crimes.

Method: This research is included in normative juridical research. This research uses a statutory approach and a conceptual approach. The statutory approach provides an overview of the regulation of the subject matter under study. While the concept approach will obtain an overview of the suitability of the subject matter that has been regulated in the legislation with concepts that discuss the subject matter itself.

Results: The Law No. 31/1999 in conjunction with Law No. 20/2001 on the Eradication of Corruption does not prohibit gifts to civil servants or state officials, but there are signs that must be considered regarding gratification in order to avoid the types of gratification that can be considered bribes. Corruption crimes related to gratification are expressly regulated in Article 12 b and Article 12 c of Law No. 31 of 1999 on the Amendment to Law No. 20 of 2001 on the Eradication of Corruption. Any gratification to a civil servant or state organizer is considered a bribe if it is related to his/her position and contrary to his/her obligations or duties. For gratification with a value of Rp. 10 million or more, the proof that the gratuity is not a bribe is carried out by the recipient of the gratuity (reverse proof); while those with a value of less than Rp. 10 million, the proof that the gratuity is not a bribe is carried out by the public prosecutor.

Keywords: corruption, gratification, sexual services.
Método: Esta investigação insere-se na investigação jurídica normativa. Esta investigação utiliza uma abordagem estatutária e uma abordagem concetual. A abordagem estatutária fornece uma visão geral da regulamentação do objeto de estudo. Enquanto a abordagem concetual permite obter uma visão geral da adequação da matéria que foi regulamentada na legislação com conceitos que discutem a própria matéria.

Resultados: A Lei n.º 31/1999, em conjugação com a Lei n.º 20/2001 relativa à Erradicação do Crime de Corrupção, não proíbe a oferta de presentes a funcionários públicos ou a agentes do Estado, mas existem sinais que devem ser tidos em conta no que respeita às gratificações, a fim de evitar os tipos de gratificações que podem ser considerados subornos. As infrações de corrupção relacionadas com as gratificações estão expressamente reguladas no artigo 12 b e no artigo 12 c da Lei n.º 31 de 1999 sobre a alteração da Lei n.º 20 de 2001 sobre a Erradicação da Corrupção. Qualquer gratificação a um funcionário público ou oficial do Estado é considerada um suborno se estiver relacionada com a sua posição e for contrária às suas obrigações ou deveres. No caso das gratificações de valor igual ou superior a 10 milhões de rupias, a prova de que a gratificação não é um suborno é efectuada pelo beneficiário da gratificação (prova inversa); no caso das gratificações de valor inferior a 10 milhões de rupias, a prova de que a gratificação não é um suborno é efectuada pelo Ministério Público.

Palavras-chave: corrupção, gratificação, serviços sexuais.

1 INTRODUCTION

The era of digitalization has positive and negative implications, including in terms of the development of crime modes faced in various countries. Crime is increasing and shifting from conventional crimes to crimes committed by honorable people called "white collar crime", one of which is corruption. The consequences of corruption for a nation can jeopardize the stability and security of society, jeopardize socio-economic and political development and can damage democratic values, values of justice and morals. (Hartanti, 2023; Syamsuddin, 2019). Therefore, corruption is an extraordinary crime or extra ordinary crime that is transnational in nature.

So far, the condition of corruption in Indonesia is still worrying despite experiencing an increase in the Corruption Perception Index (CPI) ranking by one level from the previous year. This can be seen from the Transparency International (TI) Report in 2022 which ranked Indonesia 110th with a score of 34 out of 180 countries, compared to 2021 which ranked Indonesia 96th with a score of 38 out of 180 (the scale used is 0-100. A score of 0 means the most corrupt, while a score of 100 means the cleanest)....(Transparency International, 2023)

As a form of white collar crime, corruption is always experiencing dynamism from all sides and is constantly evolving, both the modus operandi and the tools used in line with the times, the development of society and the development of science. Various efforts have been made to eradicate this crime, but it turns out that corruption still exists,
grows and develops in line with the development of society (Hutabarat et al., 2022).

The international community, including Indonesia, agrees that corruption is an extraordinary crime and can spread throughout the country in terms of perpetrators, money flows and impacts. This agreement was then achieved through the initiative of the United Nations with the signing of the United Nations Convention Against Corruption (UNCAC) on December 18, 2003 in Merida, Mexico. UNCAC includes a set of principles for combating corruption, consisting of preventive measures, identification of different forms of corruption, law enforcement procedures, regulation of international cooperation, and asset recovery mechanisms, especially those involving different countries.

The UN Convention against Corruption is the only legally binding global instrument against corruption. The Convention's broad strategy and the mandatory nature of many of its provisions make it a unique tool for formulating all-encompassing responses to worldwide problems. The Convention covers five main domains: proactive action, criminalization and application of the law, global collaboration, asset retrieval, technical assistance, and information exchange. The Convention covers various manifestations of corruption, abuse of power, and various examples of corruption in the business world.

In the legal regulations on the elimination of corruption crimes, there is the term gratuity, which is one of the elements of corruption crimes. The recognition of gratuity as one of the elements of the crime of corruption since Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption. Gratification is known as giving something to someone with the background of an intention that aims to gain benefits for themselves. In addition, gratification are also often known as an expression of gratitude given to someone for doing something.

Giving something to others often occurs in various contexts, where this gift is given as a means of showing gratitude to someone who has offered help. If this gift is solely intended as an expression of gratitude, of course this is not prohibited and is not against the law, but if this action is carried out with a specific intention and motive or the gift is given in the hope of influencing a decision, or as a tactic to gain an advantage from the official or evaluator that will compromise his honesty, autonomy and objectivity, this is something that cannot be justified or unlawful and becomes a criminal act.

Giving something to someone against the background of an intention, if left unchecked, can turn into a negative routine and can lead to potential acts of corruption.
This potential is what the legislation is trying to prevent. Therefore, regardless of the value of the gift received by civil servants or public workers, if there is suspicion related to their role or influence, the State organizer or public employee should immediately report it. The development of an increasingly advanced era has led to the development of types of gratification, which previously did not exist, namely sexual service gratification. Sexual gratification is currently developing in various business and political transactions. This is very concerning because it is not in accordance with the view of life and culture of the Indonesian people. The formulation of the problem is how the regulation of sexual service gratification in corruption crimes and how to prove it?

2 METHOD

This research is included in normative juridical research. In normative juridical research, law is conceptualized as norms, methods, principles, or dogmas. The object of this research is the statutory norms relating to gratification. (Shidarta & Irianto, 2011). The source of normative juridical legal research is obtained from literature which is called legal material. (Marzuki, 2017). A statutory approach and factual approach with primary legal materials and secondary legal materials are used. (Marzuki, 2017; Soekanto & Mamudji, 2006). The primary legal materials consist of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption and secondary legal materials, namely literature and journals related to corruption and sexual gratification. The collection of legal materials uses document studies and literature studies.

3 RESULT AND DISCUSSION

3.1 GRATIFICATION OF SEXUAL SERVICES IN THE CRIME OF CORRUPTION

Based on the theory of the causes of crime/criminal acts which states that criminal behavior is learned through associations made with those who violate the norms of society including legal norms. Therefore, the practice of providing sexual services that occurs within the scope of state administrators, which is a form of norm violation, is also a criminal behavior.

Normatively, this act of gratification is included in a criminal offense that not only has properties against formal law, but also against material law. This is caused by the impact of gratification that have entered the realm of morals and ethics of officials, thus
requiring system reform. In general, the consequences of this act, whether we realize it or not, can form a disharmonious society and social inequality. (Mauliddar et al., 2017)

(Lindberg & Stensöta, 2018) Lindberg and Stensöta’s development of the definition of sexual corruption led to several forms of sexual corruption based on the situation and dynamics between the parties involved. Some of the forms in question are:

1. Sexual Petty Corruption which is an exchange between two parties in the context of corruption, using sexual services provided by one party to the other. Often this form of corruption appears situationally related to the context of public facilities/services.

2. Sexual Grand Corruption where an exchange occurs in the context of corruption, similar to Sexual Petty Corruption. The difference lies in the level, where this form of sexual corruption is closely related to political positions, public officials or other policy makers. One party has certain powers, while the other party is willing to give bribes to perpetuate their interests. The provision of sexual services can be accompanied by bribes in the form of goods or money as usual.

3. Transmitted Sexual Corruption is a form of sexual corruption where the transaction or exchange, in the context of corruption, is done with a third party. The role of the third party in this context is to provide sexual services, at the request or expense of the briber. The crucial point in this form of sexual corruption is that the recipient of the bribe is distanced from the guilt or moral stigma of transactional sex. Because the service was not obtained using his own money.

In an Indonesian context, according to (Ali et al., 2021) The inclusion of sexual activity as a form of gratuity broadly causes problems as well as the difficulty of determining whether the act belongs to the recipient or the state. The inclusion of sexual activity as a form of gratification could lead the KPK to seize women who are victims of sextortion as evidence. Given the normative vacuum, sexual graft tends to go unreported, is more difficult to report than other forms of corruption, and is often difficult to prove that the sexual relationship was coerced (Feigenblatt, 2020).

This is clearly due to the fact that there is no proper categorization of sexual gratification cases that can be brought to the criminal justice system, and complaints are not handled properly. (Feigenblatt, 2020). The result is that most of the perpetrators have never accounted for the sexual gratification they received. This happens because there is no legal framework that views sextortion as sexual gratification. Therefore, sexual
The gratification of sexual services in corruption offenses needs to be limited to the forms and types that are organized in writing in legislation. In addition, the absence of a formal social reaction, in the form of legal instruments, allows for inadequate prosecution and the role of the criminal justice system does not fulfill its function in cases of sexual gratification.

Shifting views on sexual gratification will also occur when there is a vacuum of legal norms governing prohibition and punishment. Although in general gratification in the form of sexual services is a violation of general norms that apply in the eyes of society, if these actions are not given legal sanctions, for example, it is feared that in the future these actions can be considered a common thing. Remember, in essence, no legislation is perfect, there must be shortcomings and limitations. There is no legislation that is as complete as possible or as clear as possible in regulating all human activities. (Kristanto & Osmawati, 2022)

The problem that the provision of sex services is not substantively mentioned in the regulation, becomes a gap in the existence of a legal vacuum in law enforcement against the practice of providing sex services itself. Based on Article 12 letter (b) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption, it states: "gratification" in this paragraph is a gift in a broad sense, which includes giving money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free treatment, and other facilities. This is included in the scope of the definition of gratification, as contained in the explanation of Article 12 B paragraph (1) of the Corruption Eradication Law (Mauliddar, 2017).

Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of the Criminal Acts of Corruption provides categories of corruption, among others: (Ansori, 2013)

1. State loss (Article 2 and Article 3);
2. Bribery (Article 5 Paragraph (1) letter a, letter b and Paragraph (2);
3. Embezzlement in office (Articles 8, 9, 10 letter a, letter b, and letter c);
4. Extortion (Article 12 letter e, letter g, and letter h);
5. Fraudulent acts (Article 7 Paragraph (1) letter a, letter b, letter c, letter d and Paragraph (2);
6. Article 12 letter h;
7. Conflict of interest in procurement (Article 12 letter l);
8. Gratification (Article 12 letter B Jo Article 12 letter c);
9. Other crimes related to corruption (preventing, obstructing the investigation of corruption crimes, including Article 21, Article 22, Article 23, Article 24, Article 28, Article 29, Article 31, Article 35, Article 36).

Gratification is one of the categories in corruption crimes regulated in Article 12 letter B of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption Crimes which states that what is meant by "gratification" in this paragraph is a gift in a broad sense, which includes giving money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free treatment and other facilities. These gratification are received both domestically and abroad and are carried out using electronic means or without electronic means.

Moreover, in contrast to bribery and extortion, gratification have independent offense qualifications. There does not need to be a common mind or intention between the giver and receiver for gratification. There does not need to be a direct relationship between the gratification and the recipient's authority, position, or duties, because if there is, then the gratification can be considered a direct bribe (KPK RI, 2019). The oath of office will be the first barrier for office holders to avoid gratification.

In the explanation of Article 12 B, it is related to the emergence of the phenomenon of sexual gratification, namely in the form of sexual services, Article 12 B is not mentioned as one of the forms or types that can be categorized as gratification so that it is perceived that Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the eradication of criminal acts of corruption does not clearly regulate sexual services, both givers and recipients of sexual services.

In the explanation of Article 12 B, it is stated that what is meant by gratification is a gift in a broad sense, which includes giving money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free treatment, and other facilities. These gratification are received both domestically and abroad and are made using electronic means or without electronic means. (Hafrida, 2013). As the times have progressed, gratification have also developed. If in the past gratification only included giving money and valuables, now a new type of gratification has emerged, namely sexual gratification. (Akbar, 2015).

The existence of Law No. 20 of 2001 concerning the Amendment to Law No. 31
of 1999 concerning the Eradication of Corruption, shows the persistence of the Indonesian government in trying to ensnare perpetrators of corruption crimes committed in various modes, but sexual gratification as a form of gift classified as gratification have not been explicitly explained but are explained implicitly, namely included in as a gift in a broad sense which includes other facilities.

According to the Big Indonesian Dictionary, the word facility is defined as everything that can be used to facilitate or facilitate the achievement of a purpose or goal. (Sugono, 2008). This is in accordance with the opinion of the Director of gratification of the Corruption Eradication Commission, Giri Suprapdiono, who argues that the provision of sexual services can actually be classified as gratification in the law on the eradication of corruption. Gratification do not have to be in the form of cash but also in other forms such as discounts or pleasure.

Cesare Beccaria explains that without a clear written law, no society will ever acquire a fixed form of law and form of government (Beccaria, 2011). Thus, it is necessary to formulate the elements of receiving sexual service gratification so that law enforcers have a clear legal basis.

Criminal sanction is the most widely used sanction in imposing punishment on someone who is found guilty of committing a criminal offense. Criminal sanctions are a retaliation (in the form of suffering) imposed by the authorities on a certain person who is deemed to have acted wrongly in violating the rules of behavior whose violation is threatened with punishment.

Herbert L. Packer in the book The Limits of Criminal Sanction provides an understanding of criminal sanctions, which is Criminal punishment means simply any particular disposition or the range or the permissible disposition that the law authorizes (or appears to authorize) in cases of a person who have been judged through the distinctive processes of the criminal law to be quality of crime. (Packer, 1968)

The explanation above can explain that criminal sanctions have a very important role in a legal society because if criminal sanctions are not regulated clearly and firmly, someone will freely commit a criminal act that has not been expressly regulated regarding criminal sanctions, in accordance with the principle of legality, that someone cannot be convicted if there are no rules.

Based on Article 12 B paragraph 2 of Law No. 20 of 2001 concerning the Amendment to Law No. 31 of 1999 concerning the Eradication of Corruption, the
sanctions imposed on civil servants or state administrators who commit gratification are life imprisonment or imprisonment for a minimum 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 1,000,000,000.00 (one billion rupiah). If sexual gratification is included in general gratification, then criminal sanctions apply to perpetrators of sexual gratification. Whereas sexual gratification contains criminal acts of decency which damage morals so that consideration is needed in determining criminal sanctions for perpetrators of sexual gratification coupled with additional or aggravated punishment.

Therefore, it is necessary for sexual gratification to be regulated in a separate article separate from general gratification, both regulating the elements and sanctions of sexual gratification which are different from general gratification.

The law enforcement process often experiences obstacles in realizing the legal certainty expected by the community. Factors that influence law enforcement, regarding the legal system (related to legal substance and legal structure. This is the problem, whether the service can be qualified as a gift or gift of something. It is undeniable that these juridical questions then become one of the factors inhibiting the corruption law enforcement process regarding sexual gratification.

The existing legal structure, in this case, which is given more authority over law enforcement of corruption crimes, namely the Corruption Eradication Commission (KPK). Because the current law is still debating whether the word "other facilities" in Article 12 B of Law Number 20 of 2001 concerning the Eradication of Corruption can also be interpreted as providing sexual services.

In practice, gratification have their own problems related to proof at trial. These problems also include evidence in Article 184 paragraph (1) of the Criminal Code relating to proving the sexual intercourse performed, if the gratuity is in the form of giving a sum of money, goods, which can be seen by the naked eye. Despite this, if sexual gratification cannot be seen with the naked eye. Law enforcers argue that there is no regulation on sexual gratification so that officials who receive sexual gratification cannot be charged with criminal sanctions, and this will lead to legal uncertainty. In the end, law enforcers can only ensnare the perpetrators from the side of bribes that can be calculated economically, without being able to further ensnare bribes in the form of sexual services. (Fernando et al., 2022)

The implementation of law enforcement in corruption crimes against sexual
gratification, according to the author, law enforcers can currently ensnare the giver and or recipient of sexual services or sexual gratification, by applying the provisions of Article 12 B of the TIPIKOR Law, because sexual services in corruption cases are similar to other gifts that are certain that the recipient of sexual services benefits from the gift. Regarding the burden of proof of this crime, it refers to the Criminal Procedure Code (KUHAP) Article 184 that valid evidence is witness testimony, expert testimony, letters, instructions and testimony of the defendant, besides that it can also be done with digital or electronic traces related to communication between the perpetrators mentioned in Article 26 letter A which states that clue evidence can be obtained from the results of electronic means or optical devices such as data records or other information. So that it is easier to prove the existence of a criminal act of corruption in the form of gratification for providing sex services. However, there are also obstacles faced in proving whether or not sexual gratification was committed. How the crime of corruption, including sexual gratification, is a very complicated thing to eradicate to its roots. Various patterns are carried out so that this is not fertile by strengthening the authority for law enforcers by strengthening legal tools and laws and regulations that become reinforcers (legal authority).

In order to realize progressive criminal legal reform, it is necessary to criminalize the practice of sexual gratification. Given that the regulation regarding this is not yet clear either in the Criminal Code (KUHP) or other laws and regulations. The Corruption Crime Law (TIPIKOR) regulates gratification broadly, but it creates uncertainty about other modus operandi related to gratification.

3.2 EVIDENCING IN GRATIFICATION OF SEXUAL SERVICE

Proving is a rational process to prove the facts in a case based on evidence. According to Floris J Bex, the law of evidence is divided into two, namely the study of evidence law, focusing on the ratiocinative process of contingent persuasion of evidence or evidence and the study of process of proof, focusing on the admissibility of the Criminal Procedure Law on that matter. (Bex, 2011)

Proving sex gratification is not easy unless caught red-handed. PSHK Indonesia researcher, Miko Susanto Ginting, said that proving sex gratification is somewhat different from other forms of gratification. Other gratification, such as travel, can be proven with written evidence of tickets or lodging. Sex gratification may be easily proven
if the person who provides sex services to officials confesses, supported by evidence of communication relationships.

In the process of proving the criminal offense of gratuity in the form of sexual services in practice, it is not easy to prove unless caught red-handed and accompanied by other evidence. It is different if the evidence found in the field is only a confession from the woman who gave Proof of sex gratuity is not very easy except through:(Harefa & Bazroh, 2022)

1. The process of the sting operation. Proving sexual service gratification is very different from proving other gratification. Other gratification such as receipt of hotel vouchers can be proven by proof of voucher purchase and CCTV Hotels. The gratification of sex services will be open to be proven in the condition that the party (woman) who is the object of sex services to civil servants / state administrators admits it supported by other evidence such as electronic / communication evidence.

2. Proving sex gratification is not easy because sex gratification intersects with the crime of adultery if one of the two perpetrators is married. However, the offense of adultery is based on a complaint from the husband or wife. Unless the person receiving the sex gratuity and the woman providing the service are both unmarried.

3. The recipient of gratification cannot be convicted if he/she reports the sex gratification to KPK within a certain time (30 days). If the gratification recipient does not report within 30 days, the gratification recipient will be convicted.

At the court hearing the investigator will openly present the woman:

1. The task of presenting the female sex provider at trial is not the responsibility of the Investigator. That duty lies with the Public Prosecutor.

2. The need to physically present or not will depend on the situation and conditions at the trial by considering all aspects including respect for the human rights of the woman not to be harassed or become an object of harassment at trial.

3. The most important thing is how 2 pieces of evidence can be presented by the Public Prosecutor to prove the guilt of the defendant.

Furthermore, KPK Investigators must prove whether the gratification of sexual services provided is related: (Harefa & Bazroh, 2022)

1. Related to the position of state organizer. At least the investigator must be
able to find formally and materially that the gift received contains a "conflict of interest" with the position held by the civil servant / state organizer. So that the gift can be interpreted as interfering with the objectivity and independence of the recipient from the giver either in the short term or in the long term.

2. Contrary to his/her obligations or duties. At least the investigator must be able to formally prove that the acceptance of the gratification is contrary to obligations and duties.

In investigating corruption crimes, KPK investigators will carry out investigations in accordance with the norms stipulated in the Criminal Procedure Code and the KPK Law. Investigators will certainly look for evidence with steps including the following: (Harefa & Bazroh, 2022)

1. Make inquiries of relevant witnesses.
2. Conduct a search for documents that can prove the existence of the event of providing sexual gratification services. Such as hotel receipts, bank account mutations etc.
3. Searching for documents that can formally prove the duties and responsibilities of the recipient of the gratuity.
4. Searching for documents that can formally prove the prohibitions related to the obligations and duties of a civil servant and State Organizer.

The proof process is very dependent on evidence or evidence. Evidence in the Criminal Procedure Code Article 184 paragraph 1 that valid evidence is witness testimony, expert testimony, letters, instructions and testimony of the defendant. The Indonesian criminal procedure law evidentiary system adheres to the stelsel negatief wettelijk, which means that only evidence that is valid according to the law can be used for proof. In corruption crimes, there is an expansion of evidence, that evidence becomes evidence. Electronically stored evidence can be used as valid evidence in corruption cases (Article 26 A of Law No. 20 of 2001 concerning Eradication of Corruption.

Proving the guilt of recipients of sexual service gratification with a limited and balanced reverse burden of proof system that the defendant has the right to prove he did not commit the crime. The operation of an evidentiary activity depends on the object to be proven, in this case the gratuity of sexual services in the form of sex services or commercial sex workers. Therefore, it must be proven that no sexual services were received either in a package with goods/money or separately or that the sexual
gratification was not received by him; if he did receive sexual services, it must be proven that what was received was not a gratification as referred to in Article 12 letter b of Law No. 20 of 2001; or if he did receive sexual services as a gratification, it must be proven that what was received was not related to his position or not contrary to his obligations and duties. (Ansori, 2013). If it is possible to prove one of these things, the legal consequences will not be sentenced or free from the criminal charges of gratification for sexual services in corruption.

In the TIPIKOR Law, especially in Article 12B, it is explained that the definition of gratification is What is meant by "gratification" in this paragraph is a gift in a broad sense, which includes giving money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free treatment, and other facilities. There is a connection with the position of the recipient of the gratification and contrary to his duties and obligations as a state administrator or state official, it can be categorized as gratification.

However, it is different if the official reports the gratification to the kpk within a certain time (30 days) then the official cannot be convicted because he has reported the gratification to the kpk.12 According to the rules of the Law, it is often referred to as the object or the giving of a promise, namely "something". the phrase something means that it can be in the form of objects or non-objects which certainly have a price value.12 In Article 209 of the Criminal Code, it is explained that anyone who gives or promises something to a state official with the specific intent and purpose to do or not do something in his position that is contrary to his obligations and authority. The contents of Article 209 of the Criminal Code are reiterated in Article 5 of Law No. 20 of 2001 Jo Law No. 31 of 1999 on the Eradication of Corruption..(Ali, 2013)

The principle of Lex Specialis Derogat Lex Generalis applies in the provisions of Article 12 B paragraph (1) letter a of Law Number 20 Year 2001 because it is a deviation from the provisions of the Criminal Procedure Code (KUHAP). According to Article 137 of the Criminal Procedure Code, it is the public prosecutor who must prove whether the defendant committed a criminal offense. Meanwhile, Article 66 of the Criminal Procedure Code states that the suspect or defendant does not have the burden of proof. In Article 12 B paragraph (1) letter a, the burden of proof that gratification with a value of Rp 10,000,000.00 (ten million rupiah) or more are not bribes is carried out by the recipient of the gratuity.
Reverse proof is a new pattern of proof system applied in Anglo Saxon countries. This theory has been successfully practiced in several countries, including Hong Kong, the United Kingdom, Malaysia and Singapore. It is called new, because the reverse proof system implies that the burden of proof is on the defendant. It is the defendant who must prove that he or she did not commit a criminal offense. The reverse proof system is different from the current proof system, based on the Criminal Procedure Code (KUHAP). According to Article 137 of the Criminal Procedure Code, it is the public prosecutor who must prove whether the defendant committed a criminal offense. Meanwhile, Article 66 of the Criminal Procedure Code emphasizes that the suspect or defendant is not burdened with the obligation of proof. (Sari, 2013)

Evidence as referred to in Article 12 B paragraph (1) shall be taken at the time of examination in court:

Article 38 B
1. Every person charged with committing one of the criminal acts of corruption as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 concerning the Eradication of the Criminal Act of Corruption and Articles 5 through 12 of this Law, shall be obliged to prove otherwise with respect to his property that has not been charged, but is also suspected of originating from a criminal act of corruption.
2. In the event that the defendant is unable to prove that the property as referred to in paragraph (1) was not obtained as a result of a corruption crime, the property shall be deemed to have been obtained as a result of a corruption crime and the judge shall have the authority to order that all or part of the property be confiscated for the state.
3. The demand for forfeiture of property as referred to in paragraph (2) shall be submitted by the public prosecutor at the time of reading out the charges in the main case.
4. Evidence that the property as referred to in paragraph (1) did not originate from a criminal act of corruption shall be submitted by the defendant at the time of reading out his defense in the main case and may be repeated in the appeal memorandum and cassation memorandum.
5. The judge shall open a special hearing to examine the evidence submitted by the defendant as referred to in paragraph (4).
If the defendant is acquitted or declared free from all legal charges from the main case, the demand for property forfeiture as referred to in paragraph (1) and paragraph (2) must be rejected by the judge. According to the explanation of Article 38 B, it is stated: the provisions in this Article constitute reverse proof which is specific to the forfeiture of property that is strongly suspected of also originating from the crime of corruption based on one of the charges as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 concerning Eradication of the Crime of Corruption and Articles 5 through 12 of this Law as the main criminal offense. Consideration of whether all or part of the property is confiscated for the state is left to the judge with consideration of humanity and life insurance for the defendant. The rationale for the provision referred to in paragraph (6) is the legal logic because the acquittal or release of the defendant from all legal charges from the main case means that the defendant is not the perpetrator of the crime of corruption in that case.

From the doctrinal and computational approach of the criminal law system, the "limited" or "special" meaning or meaning of the implementation of the reversal of the burden of proof system (in Indonesia later) is:

1. That the burden of proof reversal system is only limited to the offense of "gratification" (gift) related to "bribery" (bribery), and not to other offenses in the criminal act of corruption. Other offenses in Law No. 31 of 1999 which are contained in Articles 2 through 16, the burden of proof remains with the Public Prosecutor.

2. The reversal of the burden of proof is only limited to the "deprivation" of the offenses charged against anyone as contained in Articles 2 through 16 of Law No. 31 of 1999. It should also be emphasized that the system of proof of alleged violations of articles 2 to 16 of Law No. 31 of 1999 remains the burden of the Public Prosecutor. It is merely that, if the Defendant based on the Prosecutor's indictment is deemed proven to have committed a violation of one of these offenses and is subject to forfeiture of his property, the Defendant is obliged to prove (based on the system of reversal of the burden of proof) that his property did not originate from the crime of corruption. (Adji, 2016)

As for evidence in corruption crimes, apart from being based on Article 184 of the Criminal Procedure Code (witness testimony, expert testimony, letters, instructions, and
defendant's testimony), it is also based on Article 26 A of Law Number 20 of 2001 as follows:

"Valid evidence in the form of clues as referred to in Article 188 paragraph (2) of Law Number 8 of 1981 concerning Criminal Procedure, specifically for corruption crimes can also be obtained from:

1. other evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices or similar, and
2. documents, namely any record of data or information that can be seen, read, and or heard that can be issued with or without the aid of a means, whether contained on paper, any physical object other than paper, or recorded electronically, in the form of writing, sound, images, maps, designs, photographs, letters, signs, numbers, or perforations that have meaning. (Arsjad, 2021)

4 CONCLUSION

Directors of companies owned by conglomerates must uphold professionalism and independence, as they are not employees of the conglomerate and should not be mere puppets of the conglomerate. They must also adhere to the principles of corporate law. In the management and control of companies within its group, the conglomerate must comply with the legal doctrines discussed above. If a conglomerate engages in actions that violate the doctrines of corporate law, whether directly or through group companies and/or holding companies, the conglomerate should be held liable. This liability should extend to both criminal and civil matters, including personal liability that may impact the conglomerate's personal assets, given its status as a major shareholder.

The regulation of gratuities in the form of sexual services does not yet exist explicitly, but implicitly exists in the explanation of Article 12 B which explains that gratuities include the provision of money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free treatment and other facilities. By using interpretation, sexual services can be included in other facilities. The sanctions for gratuities in the form of sexual services are the same as gratuities in the form of money, goods, meetings, commissions and others, which should be different from sexual gratuities sanctions with additional or aggravated punishment because sexual service gratuities contain moral crimes that damage morals.

The legal foundations of proof in corruption crimes related to gratuities, the
reversal of the burden of proof for sexual service gratuities can refer to the imposition of proof in Article 12 B of Law Number 20 of 2001. Proof of sexual gratification can be through testimony or other evidence. Public Servants and State Administrators who commit corruption crimes in terms of receiving sexual service gratuities can be charged with Article 5 paragraph (2), Article 12 letters a and b, or Article 12 B of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 if they meet the elements in these laws and regulations. Likewise, the giver and the "woman" who is the object of sexual services can be charged with Article 5 paragraph (1), Article 15 of Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 concerning the Eradication of Corruption. The perpetrators can also be subject to criminal sanctions in Article 284 of the Criminal Code regarding the offense of decency if they fulfill the elements referred to in the article.
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