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Legal Approach in Proving and Providing Sanctions for Sexual Gratification Cases in Indonesia

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Abstract: Corruption is a serious crime that broadly threatens social, economic, and political balance and weakens the legal foundation and ethical values in society. In Indonesia, corrupt practices are increasingly diverse, one of which is gratuities in the form of sexual services, which existing regulations have not fully covered. Although Indonesia's Corruption Eradication Law has regulated various types of gratuities, there are no explicit rules regarding sexual services, creating potential legal uncertainty. In contrast, Singapore through the Prevention of Corruption Act (PCA) has established clear rules related to sexual gratification as a form of offense that can be subject to legal sanctions. Based on this comparison, Indonesia needs more comprehensive regulations related to sexual gratification to deal with increasingly complex modes of corruption so that effectiveness in preventing and eradicating corruption in various sectors can be further enhanced.

Keywords: Social Identity, Digital Communities, Social Media, Collectivist Culture, Social Identity Theory

INTRODUCTION

Gratification is an important element in the system and mechanism of gift exchange. This raises many questions among state administrators, civil servants, and the public, such as what is meant by gratification, whether gratification is the same as giving gifts which is commonly done in society, or whether every gratuity received by state administrators or civil servants is an act that violates the law. Apart from that, there are also questions regarding the forms of gratification that are prohibited or permitted. These questions often arise in various issues regarding gratification (Doni Muhandiansyah et.al., 2010).

Sexual gratification is an issue that has recently emerged. This mode probably emerged due to two things: first, officials who wanted satisfaction in the form of sexual services; secondly, because officials cannot be influenced by money so offers in the form of services become an alternative to influence the policies made (Firman Wahyudi, 2019).

Elucidation of Article 12B paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes defines gratification as a gift in a broad sense, including money, goods, rebates (discounts), commissions, interest-

free loans, travel tickets, lodging facilities, tourist trips, free medical treatment, and other facilities. These gratifications can be received domestically or abroad (Saeful Akbar, 2016), with or without using electronic means. This definition does not explain in detail the provision of sexual services or facilities as a form of gratification, which shows the weakness and ambiguity of the law. There are still differences of opinion regarding whether the meaning of other facilities is strong enough as a basis for including sexual services to officials or state administrators in the gratification category.

One example of a case of sexual gratification is the case of Judge (Erlita, 2022) who explicitly asked for sexual services every Thursday or Friday, apart from receiving the money given to him. In this case, the Public Prosecutor did not mention in detail the receipt of gratuities in the form of sexual services even though the facts from the trial were known that S received and requested that the gratuity giver provide sexual services. Proving in criminal acts of corruption is indeed a complex issue because perpetrators usually carry out their crimes carefully and well.

In several state institutions, regulations regarding gratification control do not explain further the types or forms of gratification that are included in other categories of facilities. For example, Minister of Finance Regulation No. 83/PMK.01/2015 of 2015 concerning Gratification Control within the Ministry of Finance only explains the types of gifts that focus on goods without touching on other facilities.

Abroad, one of which is Singapore, has implemented strict measures against recipients of sexual gratification. In Singapore law, anti-corruption laws have existed since 1960, 1972, 1981, 1989, and 1991 (Edita Elda, 2021). This law is known as the Prevention of Corruption Act (PCA). The provisions in this law include material criminal law, formal criminal law, and criminal procedural law. The formulation of the criminal act of corruption used is taken from the Singapore Criminal Code without any increase in penalties as applied in Indonesia. The PCA also added two substantive articles, namely Article 5 and Article 6. Apart from that, this law also regulates the prevention of corruption in certain cases. There is also the addition of three other articles, namely Articles 10 to 12, which focus on bribery related to tenders for work, services, and the supply of materials or goods in contracts with the government, departments or public bodies (Edita Elda, 2021). This positive law is used as a comparison between law in Indonesia and law in Singapore.

In 2018, as an example of a case that occurred in Singapore, an immigration officer received sexual gratification in exchange for assistance from two women in extending their visas (Novi Christiastuti, 2018). As a result of this gratuity, the immigration officer was subject to sanctions, because Singapore is known to have very strict policies regarding corrupt practices, including sexual gratification. Previously in 2013, the former Head of the Civil Defense Force was sentenced to 6 (six) months in prison for sexual gratification. These cases show that Singapore considers sexual gratification a criminal act of corruption and enforces strict sanctions against such violations.

There is the phrase other facilities in Article 12 B paragraph (1) of Law no. 12 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes allows a broader interpretation. This reduces the potential for legal uncertainty, which could create ambiguity in the implementation of the Corruption Eradication Law. The lack of clarity regarding the regulations regarding sexual gratification in the law as well as considerations of the principle of legality, opens up opportunities for sexual services to be chosen as a form of gratification so that recipients of sexual gratification cannot be punished.

Based on the description above, the author outlines the problem formulation as follows: How to prove and provide legal sanctions against perpetrators of gratification for sexual services in Indonesia?

METHOD

The research method used is normative (legal research) with a statutory approach. Normative legal research views law as a structured system of norms and is closely related to library materials or secondary data, often referred to as library research. In this process, the author analyzes and examines regulations related to the issue under study. This research also involves elements such as legal document analysis, case study, and interpretation of legal texts to gain an in-depth understanding of the application of legal norms in practice. This approach aims to identify gaps, evaluate legal implementation, and provide recommendations based on findings resulting from normative studies.

RESULT AND DISCUSSION

In Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, especially in article 12B paragraph (1), it is not explicitly explained regarding sexual services as a form of gratification. The article states that gratuities include gifts in a broad sense including money, goods, rebates, commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free medical treatment and other facilities. This creates a problem because there are only other facility terms, which can be interpreted broadly.

In accordance with the extensive interpretation, sexual services can be included in the category of other facilities if they are provided to facilitate the implementation of the function of the criminal act of gratification (Clement Hoposdo Ompusunggu and Diah Ratna Sari Hariyanto, 2021). The provision of sexual services is intended to influence state officials or civil servants to do or not to do something contrary to their obligations.

Regulations regarding gratuities in Article 12B of Law no. 20 of 2001 explains that the form of gratification received by state officials must be proven by KPK investigators. Officials who receive gratuities, including sexual services, must meet the requirements as legal subjects under the authority of the Corruption Eradication Commission. These legal subjects consist of law enforcement officers, state officials, and other individuals involved in criminal acts of corruption committed by state officials. This provision is further regulated in Law No. 28 of 1999 concerning the Administration of a State that is Clean and Free from Corruption, Collusion, and Nepotism and Law No. 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

Basically, the prohibition on gratification aims to prevent corruption, collusion, and manipulation among policy makers. Gratification does not have to be money but can be in the form of discounts or other benefits, including sexual services. Proof also does not have to be through reporting as regulated in the law but can be done through the process of forming a case at trial.

For example, in Singapore, proof is carried out in the form of reporting. One of the cases is that of Fahd Siddiqui (Elitigation, 2024), a police officer who provided sexual services. Even though in reality Fahd did not provide sexual services, he only asked one of the commercial workers to serve him by threatening him and identifying himself as a police officer, Fahd was still reported to the authorities and received a reformatory training sentence within a period of 6 (six months).

In this case, the indictment was given to Fahd according to article 6 letter d PCA states; "any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or for being carried to do, any act concerning his principal's affairs or business, or for showing or forbearing to show favor or disfavor to any person to his principal's affairs or business."

In this case the judge accused Fahd of corruptly trying to obtain gratification in the form of sexual services from a social companion, and also refraining from enforcing the law against

the social companion. Therefore, in the cases described above, workers under government auspices can be subject to sanctions when receiving gratification in the form of sexual services. The case that occurred did not escape the decision of the competent judge. There have been many similar cases in Singapore so it is easier for judges to look at existing cases from previous court decisions, where Singapore adheres to a common law legal system, which is different from Indonesia.

Meanwhile in Indonesia, proving sexual gratification as a criminal act of corruption presents its challenges, especially if it is not accompanied by strong enough evidence, except in cases of red-handed arrest which are supported by additional evidence. Following Article 137 of the Criminal Procedure Code, the public prosecutor must prove whether the defendant has committed a criminal act, while Article 66 of the Criminal Procedure Code states that suspects or defendants are not required to prove their innocence. However, in Article 12 B paragraph (1) letter a, the burden of proof falls on the recipient of the gratuity to show that gratification worth IDR 10,000,000.00 or more is not a bribe (Mardiana Arsjad, 2018).

This reverse evidence system is implemented in Law Number 20 of 2001, especially for criminal acts of corruption related to gratification and bribery, as well as for claims for confiscation of assets suspected of originating from criminal acts in Articles 2, 3, 4, 13, 14, 15, and 16 of Law Number 31 of 1999, as well as Articles 5 to Article 12 of Law Number 20 of 2001 (M. Chaerul Risal, 2018).

Regarding evidence in criminal acts of corruption, apart from those regulated in Article 184 of the Criminal Procedure Code (such as statements from witnesses, experts, letters, instructions and defendant statements), Article 26 A of Law Number 20 of 2001 also states that evidence can include instructions that sourced from electronic information, as regulated in Article 188 paragraph (2) of the Criminal Procedure Code. This evidence includes information expressed, sent, received, or stored electronically via optical devices or similar, as well as documents containing data or information that can be seen, read, or heard, whether printed on paper, other physical media, or recorded electronically. With the development of technology, now media such as SMS, email and social media platforms can be used as evidence in the form of valid clues to uncover cases of gratification related to sexual services.

However, the situation will be more complicated if the only evidence is the confession of the woman who provided the sexual services. Some methods that can be used to prove sexual gratification include:

1. Operation Arrest (OTT): Proving gratification in the form of sexual services is different from other types of gratification (Beniharmoni Harefa and Nurul Bazroh, 2022). For example, if the evidence is a hotel coupon, proof can be done with proof of the transaction and hotel CCTV footage. For sexual services, the testimony of the woman providing the service is stronger evidence, especially if supported by electronic evidence or other communications.
2. Crime of Adultery: Cases of sexual gratification are often related to the assumption of adultery, especially if one of the parties is married (Beniharmoni Harefa and Nurul Bazroh, 2022). Usually, the reporter in an adultery case is the perpetrator's partner. However, if both parties—the provider and recipient of the service—are both single, the adultery aspect is irrelevant.
3. Reporting Gratifications: If the recipient of sexual gratification reports it to the Corruption Eradication Commission (KPK) within 30 (thirty) days, receiving the gratification is not considered a criminal act. However, if it is not reported within that time period, the recipient of the gratification may be subject to criminal sanctions (Fry Anditya Rahayu Putri Rusadi et al., 2019).

Proving sexual gratification requires a different approach and evidence given the sensitivity and complexity inherent in this form of gratification. In the process of proving at trial, judges use a system that makes it easier to understand the placement of evidence in the case being tried. There are three generally known theories of proof systems, namely:

Evidence System Based on Judge's Belief

In this system, judges are given the freedom to make decisions based on their personal beliefs (conviction in time), without being attached to certain rules. This theory is often referred to as belief in time. This theory is rooted in a judge's strong belief that the defendant actually committed the crime for which he was charged (Afrillia Bella Novita, 2023). This system allows judges to impose sentences without having to rely on formal legal evidence. Adopted in jury trials in France, this system gives judges so much authority that their oversight becomes a challenge. In addition, this system makes it difficult for defendants and their lawyers in the defense process. Basically, this evidentiary system allows the judge to decide on a sentence for the defendant only if the evidence is limited by law and the judge believes in the validity of the evidence.

Evidence System Based on Judge's Belief on Logical Reasons

Conviction Raisonnée (belief based on logical reasons), this theory of evidence is essentially based on the judge's beliefs but must be accompanied by logical and justifiable reasons (Afrillia Bella Novita, 2023). In practice, judges as law enforcers do not have absolute freedom to determine their beliefs without the support of clear reasons and material evidence. The judge's beliefs must be supported by solid and generally accepted evidence so that these beliefs are not simply based on intuition, but also on rational reasons and can be tested for truth.

Negatively Based on Law Evidence System

The negative legal proof system requires the existence of at least two pieces of evidence that act as the main elements. In this system, the judge's confidence is only a supporting factor. To determine whether the defendant is guilty, at least two pieces of evidence that are strong enough are required as regulated in Article 183 of the Criminal Procedure Code, supported by at least two pieces of valid evidence, the judge must be sure that the crime did occur and that the defendant is the party guilty of committing it (Ali Imron and Muhamad Iqbal, 2019).

Positive Law Based Evidence System (Positief Wettelijke Bewijs Theorie)

In this system, the evidentiary process depends entirely on evidence which is regulated in law, where the law determines the types of evidence that can be used by judges and the procedures for their use. One approach to evidence is one that only refers to evidence that is strictly regulated by law (positive wettelijk bewistheorie). This system is called positive because it is completely dependent on applicable legal regulations. In other words, if an act can be proven with evidence regulated by law, then the judge's confidence is no longer needed (Hermansyah, 2020).

By understanding these four systems, it can be concluded that criminal procedural law in Indonesia applies the Evidence System Based on the Law (UU) Negatively as stated in Article 183 of Law Number 81 of 1981 concerning Criminal Procedure Law.

Meanwhile, regarding sanctions, perpetrators of criminal acts of corruption involving sexual gratification, both as givers and recipients, can be subject to sanctions in accordance with the provisions in Article 5 in conjunction with Article 12 letters a and b of Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes (UU Tipikor), which stipulates fines ranging from IDR 50,000,000.00 (fifty million rupiah) to IDR 250,000,000.00 (two hundred and fifty million rupiah).

Although the Corruption Eradication Law has stipulated sanctions for perpetrators who give and receive gratuities, this law does not yet regulate sanctions for third parties, namely women who provide sexual services. Providing legal sanctions to women who are involved in sexual gratification is very necessary because they contribute to supporting this practice.

Article 15 provides special provisions, stating that the threat of punishment for attempts and accompaniments is generally reduced by one-third, but can still be punished with the same sentence as the perpetrator of the main crime. This means that a sex servant can be charged under Article 5 paragraph (1) of the Corruption Law.

In the Islamic view, sexual gratification is prohibited because accepting gratification in the form of money is considered an act cursed by Allah, especially if the gratification is in the form of sexual services, which is included in the *judimah* of zina.

According to Djubaedah, zina is sexual relations between a man and a woman who are not bound by a valid marriage according to Islamic law, which is carried out based on mutual consent without hesitation from both parties (Djubaedah, 2010). Perpetrators of sexual gratification, both recipients and sex servants, can be sentenced to the punishment of zina, which can take the form of whipping (*jilid*), exile (*tagrib*), or stoning. The punishment of flogging and exile is imposed on unmarried adulterers (*ghairu muhsan*), while stoning is imposed on married adulterers (*muhsan*). In Islamic law, unmarried adulterers can be punished with one hundred lashes (Fardiansyah Hasibuan, 2021).

CONCLUSION

Proof of sexual gratification in eradicating criminal acts of corruption (*tipikor*) in Indonesia refers to the Criminal Procedure Code (KUHP), specifically Article 184 paragraph (1) and Article 26A of Law Number 20 of 2001 in conjunction with Law Number 31 1999. In this evidentiary system, both the Public Prosecutor and the defendant are required to prove the existence of the crime of sexual gratification for which the defendant is charged.

The meaning of gratification contained in Article 12B of the Law is conditional. Therefore, the phrase other facilities was formulated by the legislator to include provisions that are not specifically explained in the explanation of Article 12B. Although sexual gratification is not directly mentioned in the article, its conditional nature makes it possible to include it in Article 12B.

In the future, forms of gratification may develop into new things, such as cryptocurrency or bitcoin, which can be considered as other facilities. Other facility concepts are designed to cover various types of giving that may change over time.

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