GIJLSS
Greenation International Journal of Law and Social Sciences
+62 81210467572 https://research.e-greenation.org/GIJLSS greenation.info@gmail.com
GREENATION RESEARCH

DOI: https://doi.org/10.38035/gijlss.v2i4

Distortion of Gratuities In Acquittal (*Vrijspraak*) Verdict in Corruption Case Juridical Analysis of the Central Jakarta District Court Decision Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst

Ai Permanasari[1], Sirrinawati[2], Suarman Gulo[3], Aep Sulaeman[4], Imas Rosidawati Wiradirja[5]
[1]Postgraduate Law Doctoral Study Program, Langlangbuana University, Bandung, Indonesia, aipermanasari@gmail.com
[2]Postgraduate Law Doctoral Study Program, Langlangbuana University, Bandung, Indonesia jilaany.jilaany@gmail.com
[3]Postgraduate Law Doctoral Study Program, Langlangbuana University, Bandung, Indonesia aep.sulaeman69@gmail.com
[4]Postgraduate Law Doctoral Study Program, Langlangbuana University, Bandung, Indonesia kangmelvinmelvin@gmail.com
[5]Postgraduate Law Doctoral Study Program, Langlangbuana University, Bandung, Indonesia imas.rosidawati@unla.ac.id

Corresponding Author: aipermanasari@gmail.com[1]

Abstract: This study aims to examine and analyze the acts of gratuities givers in the Central Jakarta District Court Decision Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst related to the application of article 5 paragraph (1) letter a and article 13 of law number 31 of 1999 as amended by law number 20 of 2001 concerning the eradication of corruption. This descriptive research uses a normative legal research method through Study Literature legal research using two approaches, namely the statute approach and the case approach. The types of data used are primary data and secondary data. The technique used in the collection of primary legal materials in this study is through literature search by analyzing court decisions, while in secondary legal materials through literature studies and document studies. This study uses a descriptive method analysis technique, namely providing an overview or explanation of the subject, object, and research results, however, the results of this research are not justified by the researcher. The results of this study show that the panel of judges acquitted the defendant, the judge's decision in this case stated that one of the considerations is regarding the absence of a criminal article that regulates the existing act of giving gratuities is the action of the recipient of gratuities, the results of this research are intended to contribute to the literature on gratuities for law enforcement and the eradication of corruption, Unlike the previous research which focused on the application of the article of indictment, this study focuses on the consideration of the Council of Judges about the elements of giving or promising something to a civil servant or state administrator**.** Using legal political theory and legal findings, this study assesses the legislative policy related to gratuities and the legal interpretation of judges in the condition of legal vacuum. Through a normative and empirical juridical approach, this research

produces an in-depth analysis as an academic and practical contribution to the eradication of corruption, especially related to gratuities. The targeted outputs in the form of policy recommendations for regulatory improvement and legal practice guidelines are presented in the form of international journals. The level of research readiness is on an exploratory scale, with the potential for policy implementation**.**

Keyword: Corruption, Gratuities, Bribery, Legal Politics, Legal Findings

INTRODUCTION

One form of corruption that is widely revealed today is corruption in the form of gratuities. Gratuity is a given, reward or gift by a person who has received services or benefits or by a person who has or is dealing with a public institution or government in for example to obtain a work contract. The prohibition of any form of giving gifts or gratuities to someone related to his capacity as a state administrator is not something new. Gratification is a special concern because it is becoming more and more prevalent every day. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes defines Gratification in a broad sense, which includes; giving money, goods, rebates or discounts, commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free medical treatment and so on.

Legally, there is actually no problem with gratuities, this act is just an act of a person giving a gift or grant to another person, of course it is allowed, but if the gift is intended to influence the decision or policy of the state administrator who is given the gift, then the gift is an act that cannot be justified because it affects integrity, independence and objectivity of state administrators and this is included in the definition of gratuity.

Article 12B of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption reads: *"every gratuity to a civil servant or state administrator is considered a bribe if it is related to his position and is contrary to his obligations or duties"*. In fact, law enforcement of this regulation in practice is still constrained in its implementation due to the unclarity of the elements of the article.

Even gratuity itself in relation to corruption is still a puzzle for the public, including legal experts, because they wonder what is the real fundamental difference between gratuity and bribery?, this happens because if you read the formulation of the sentence gratuity and bribery in law number 20 of 2001, the amendment to law number 31 of 1999 is indeed unclear and there is even a similarity where the emphasis is on the recipient Gratuities are not gratuities, this is what some judges then see as a legal vacuum that regulates the perpetrators of gratuities, one of which is the decision of the Central Jakarta District Court number 37/Pid.Sus-Tpk/2021/Pn.Jkt.Pst which imposed a free verdict (acquittal) in the case of gratuity corruption.

The study and analysis of the decision of the Central Jakarta District Court number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst which acquitted the defendant is necessary to find or seek a law that is not just looking for the law to be applied to the event being tried, but to find the law that the congress event is required to be directed to existing regulations so that it can be applied to concrete events, Meanwhile, the law itself must be adjusted to the event so that it covers each other between the regulation and the events that occur. The verdict handed down by the judge must be based on clear and sufficient considerations. Judge's considerations are the reasons for imposing the law carried out by the judge stated in the judge's decision. A verdict that does not meet clear and sufficient considerations is referred to as *onvoldoende gemotiveerd*. This is affirmed in Article 50 of Law No. 48 of 2009 concerning Judicial Power which emphasizes that a court decision must not only contain the reasons and basis for the decision, but also contain certain articles of the relevant laws and regulations or unwritten legal sources that are used as the basis for adjudicating.

Based on the description above, the researcher is interested in conducting research by analyzing the legal considerations of the council of judges who examine and adjudicate criminal cases with case registration number 37/Pid.Sus-Tpk/2021/Pn.Jkt.Pst where the researcher will focus on studying and analyzing the judges' considerations on proving the elements of gratuity as referred to in article 5 paragraph (1) letter a and Article 13 of Law Number 31 of 1999 jo Law Number 20 In 2001 concerning the Eradication of Corruption Crimes, observing the judge's considerations, *the researcher viewed that there was a distortion of gratuities in the decision, this scientific work took the title Distortion of Gratification in the Decision of the Corruption Crime Case (juridical analysis of the decision of the central jakarta district court Number: 37/Pid.Sus-Tpk/2021/Pn.Jkt.Pst).*

This research is expected to be useful as a reference for academics who want to deepen their knowledge about Gratification in Corruption Cases and make a positive contribution and provide constructive input for law enforcers, both Police Investigators, Prosecutor's Office Investigators and KPK Investigators, Public Prosecutors, and Judges in the process of handling corruption cases related to Gratification. This research has novelty in terms of the specificity of the discussion regarding *legal reasoning* or judges' considerations, because a judge's decision must contain *good legal reasoning*, therefore an understanding of legal reasoning for judges is an absolute must-have, this study discusses the judge's considerations in deciding cases Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst with the hope that other judges who handle the same case can applying adequate legal reasoning, because in a decision it is very necessary to have good legal reasoning, especially when the judge is faced with a legal vacuum in handling a case.

METHOD

The research method is a scientific way to obtain data with the aim of being able to describe, proven, develop and discover knowledge, theories, to understand, solve, and anticipate problems in human life, This research is descriptive and is carried out using *normative* juridical methodsNamely the research process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced, using two approaches, namely the statute *approach* and the case *approach*.

The legal approach is carried out by examining all laws and regulations related to the legal issues being handled, this legal approach will open up opportunities for researchers to study whether there is consistency and suitability between one law and another. In this study, the researcher conducted an analysis of the gratuity formula regulated in Law Number 31 of 1999 j.o Law Number 20 of 2001

The case approach is carried out by examining cases related to the issues at hand that have become court decisions that have permanent legal force, which is the main study in the case approach is *ratio decidendi* or *reasoning* , which is the court's consideration to arrive at a decision. In this study, the researcher conducted a review of the judge's consideration or *ratio decidendi* in the decision of the Criminal Case Number: 37/Pid.Sus-TPK/2021/PN.Jkt.Pst which already has permanent legal force**.**

This research uses primary legal materials in the form of legislation and *secondary legal materials* in the form of explanations of primary legal materials. The application of legal material processing techniques begins by collecting several primary and secondary legal materials that will be processed in sequence in order to get an easy-to-understand picture related to the problem to be researched. *The data collection technique* in this study was obtained through literature study, while *the data analysis technique* of this research is in the form of a descriptive method where legal facts will be identified as well as eliminating materials that are not related to the research, looking for answers to the problem formulation through legal

materials that have been collected and then making conclusions from the answer to the problem formulation appropriately.

RESULT AND DISCUSSION

A. Gratuity Criminal Policy in the Law on the Eradication of Corruption

a. The concept of gratuity etymologically

basically gratuity is a community culture, besides that in Islamic teachings humans are taught to knit affection and foster unity, in order to grow and develop affection among them is done by giving to each other, this is illustrated from the hadith of the Prophet Muhammad PBUH narrated by At Turmudzi, that the Prophet Muhammad PBUH said; *"You should give gifts to each other, because gifts can eliminate the hatred in the chest, do not underestimate a gift that she gives to her neighbor even if it is only in the form of a goat's leg*".

The term gratuity originally came from the Dutch *gratificatie* which was later adopted in English into *gratification* which means gift. The term then appeared in several *Anglo-Saxon* and continental European countries. Gratification arises because of the difficulty of proving bribery. There are two terms used in *Black's law dictionary*, namely *gartification* and *gratuity*.

Gratification is a *gratuity*, a reward or reward for a service or benefit that is given voluntarily, without any persuasion or promise. While gratuity is defined as something that is obtained or accepted without any specific bargain or persuasion; something that is given at no cost (free) or without the need to be reciprocated; A gift is "*voluntarily given in return for a favor or especially a service"* thus includes a *bounty*, tip, bribe.

b. Criminal *Policy*

The term criminal law policy is also commonly referred to as criminal law reform, Barda Nawawi Arief as quoted by M Ali Zaidan stated, the term criminal law reform is also called criminal law politics or formulaic policy which is interpreted as an effort to reorient and reform criminal law in accordance with *sociopolitical*, *sociophilosophical*, and *sociocultural* valuesIndonesian society which underlies social policies, criminal policies, and law enforcement policies in Indonesia.

Criminal law policy, criminal law politics or criminal law reform, as well as formulative policies and legislative policies, are synonymous terms which are one of the problems faced by the Indonesian nation today, this is because most of the laws in Indonesia are a continuation of the previous legal system with the reason that to prevent legal vacuums, the provisions of colonial law remain in force until a new law is enacted In accordance with the constitutional system and the philosophy of life of the Indonesian nation, on the other hand, the reform of criminal law continues to be carried out by paying attention to world developments in addition to maintaining the law that lives in society as the Indonesian nation's perspective in law.

Efforts to reform the criminal law cannot be separated from criminal politics, thus crimes with criminal law as the main means. The determination of prohibited acts and threatened with sanctions is a form of law enforcement that is *in abstracto*. The lawmakers (legislative bodies) can determine what acts are prohibited and what sanctions are threatened if the prohibition is violated as well as what acts have the potential to occur. Thus, the lawmakers not only know the modus operandi of the crimes that are happening, but also have the ability *to futuristically* imagine what crimes will occur in the future as a result of the development of science and technology as well as the mobilization of the population and the development of industrial technology that is sweeping the world today.

Barda Nawawi Arief in Hibnu Nugroho explained that the Criminal Law policy or also known as criminal law politics contains an understanding of how to seek or make and formulate a good legislation. Crime prevention policies are part of law enforcement policies that must be a guideline for law enforcement officials in crime prevention.

Criminal Policy is part of law *enforcement policy* which includes criminal law policy, civil law, and administrative law, which as a whole is part of social *policy* which is an effort of a society to increase its social resilience which includes the welfare and security of its citizens.

The use of criminal law in Indonesia as a means to overcome crime does not seem to be a problem, this can be seen from the practice of legislation that shows that the use of criminal law is part of the policy or politics of the law embraced in Indonesia, the use of criminal law is considered a natural and normal thing, as if its existence is no longer in question. The problem is what policy lines or approaches should be taken in using the criminal law?.

Sudarto, as quoted by Muladi and Barda Nawawi Arief, stated that if criminal law is to be used, it should be seen in the overall relationship of criminal politics or *social defence planning* , which must also be an integral part of the national development plan. Criminal politics is the rational arrangement or arrangement of crime control efforts by the community

According to Marc Ancel as quoted by Muladi and Barda Nawawi Arief, that every society requires a social order, namely a set of rules that are not only in accordance with the needs for common life but also in accordance with the aspirations of citizens in general.

Therefore, the great role of criminal law is an inevitable necessity for a legal system. The protection of individuals and society depends on the proper formulation of criminal law and this is no less important than the life of the community itself, therefore the criminal law system, the criminal act of the judge's assessment of the violator in his or her relationship with the law purely or criminally is the institutions (*institusi*) that must be maintained.

Criminal law enforcement policy has always been a chart of crime prevention policies in the framework of social protection policies, as well as an integral part of social policies to achieve community welfare in solving social problems, therefore it can be said that law enforcement requires an implementation organization consisting of law enforcement, a set of laws and regulations whose elements consist of law enforcement officials and Other government officials.

The formulation of gratuities should be formulated comprehensively regarding the issue of givers and recipients of gratuities as a whole rule, so that in terms of the application of sanctions can refer to one article that regulates it, this has an impact on the principle of balance and justice where for the perpetrators both givers and recipients receive appropriate criminal sanctions, the formulation policy regarding gratuities should also pay attention to the supporting factors that play a role important.

c. Criminal Provisions in Gratification and Gratuity Formulation in Law Number 31 of 1999 j.o Law Number 20 of 2001

Regulations governing gratuities are contained in several provisions as follows:

1. Article 12 B paragraph (1) of Law number 31 of 1999 jo Law number 20 of 2001 concerning the eradication of corruption crimes, this article reads ;" Any gratuity to a civil servant or state administrator is considered a bribe if it is related to his position and contrary to his obligations or duties"

2. Article 12C paragraph (1) of Law number 31 of 1999 jo Law number 20 of 2001 concerning the eradication of corruption, this article reads: "the provisions as referred to in article 12B paragraph (1) do not apply if the recipient reports the gratuity he received to the KPK"
3. Article 12C paragraph (2) of Law number 31 of 1999 jo Law number 20 of 2001 concerning the eradication of corruption, this article reads: "the submission of reports as referred to in paragraph (1) must be carried out by the recipient of the gratuity no later than 30 (thirty) working days from the date the gratuity is received"
4. Article 16, Article 17, Article 18 of Law Number 30 of 2002 concerning the Corruption Eradication Commission
5. Regulation of the Minister of Finance (PMK) number 7/PMK.09/2017 concerning guidelines for controlling Gratuities within the Ministry of Finance

From the provisions of Article 12 B paragraph (1) of Law Number 31 of 1999 and Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, it is said that;" Any gratuity to a civil servant or state administrator is considered a bribe if it is related to his position and contrary to his obligations or duties", so that from the formulation of this article it can be concluded that the elements of gratuity are as follows :

1. Civil servants or state administrators;
2. Giving and receiving gratuities (handovers);
3. Related to the position; and
4. Contrary to their obligations and/or duties.

The formulation of the type of criminal sanction in the Criminal Code generally uses two options, for example, imprisonment or an alternative in the form of a fine. Meanwhile, criminal legislation outside the Criminal Code uses an alternative and cumulative system. In the gratuity rules of Law number 31 of 1999 jo Law number 20 of 2001 concerning the eradication of corruption crimes, a cumulative formulation system is used against the main criminal threat in the form of imprisonment and fines, namely life imprisonment or a minimum sentence of 4 (four) years in prison and a maximum of 20 (twenty) years in prison and a fine of at least Rp. 200,000,000,- (two hundred million rupiah) and a maximum of Rp. 1,000,000,000,- (one billion rupiah). The formulation is rigid and imperative, because it does not provide an opportunity for judges to apply the principle of criminal individualization, namely choosing and determining the type of crime that is most suitable for the defendant.

To be able to convict the recipient of gratuities, the elements must be fulfilled based on the provisions of article 12B and article 12C of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes as follows:

1. Recipients of gratuities are qualified as civil servants or state administrators;
2. Giving is related to his position and is contrary to his obligations and duties;
3. The recipient did not report the gratuities he received to the corruption eradication commission

d. Perpetrator (subject of law) Gratuity

The definition of the subject of Law in law can be interpreted as everything that can be a supporter of rights and obligations, L.J. Van Apeldoorn stated that everything that has legal authority. Legal Authority is the ability to be a supporter (subject) of the Law.

The perpetrators of gratuities that lead to bribes are the givers and recipients, but specifically for recipients are regulated in article 12B of Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, namely:

1. Civil servants.
   Employees include;
   a. Civil servants as referred to in the Civil Service Law
   b. Civil servants as referred to in the criminal code
   c. People who receive salaries or wages from state or regional finances
   d. A person who receives a salary or wage from a corporation that receives assistance from state or regional finances; or
   e. Persons who receive salaries or wages from other corporations that use capital or facilities from the state

2. State Organizer
   Article 1 Number (1) of Law Number 28 of 1999 concerning the Administration of a Clean and Free State from Corruption, Collusion and Nepotism, what is meant by state administrators is state officials who carry out executive, legislative, or judicial functions and other officials whose main functions and duties are related to the administration of the state in accordance with the provisions of applicable laws and regulations. In the provisions of Article 2 of Law Number 28 of 1999 concerning the Administration of a Clean and Free State from Corruption, Collusion and Nepotism, it is stated that state administrators include:
   a. State officials at the highest state institutions;
   b. State officials at high state institutions
   c. Minister
   d. Governor
   e. Judge
   f. Other state officials in accordance with the provisions of the applicable laws and regulations; and
   g. Other officials who have a strategic function in relation to the administration of the state in accordance with the provisions of the applicable laws and regulations.

e. The Principle of Judges' Freedom in Imposing Judges' Judgments and Decisions as Products of Law and Justice

In the implementation of law enforcement, judges are obliged to follow the provisions of the rule of law, law enforcement that is not in accordance with the provisions of the law can result in nullity or *null and void*,. Judges in Indonesia are obliged to uphold law and justice, judges are obliged to judge according to the law as well as are obliged to explore legal values in accordance with the community's sense of justice, judges must not refuse to examine and adjudicate a case submitted to them under the pretext that the legal norms are unclear or there is a void of positive norms. With an independent attitude, state judges have given the authority to examine and adjudicate, including the authority *judicial discretion* for the sake of the value of usefulness and justice. Adjudication activities are always related to cases, in adjudicating judges in addition to being guided by ratios they also have a sharp instinct when dealing with cases, with that sharp instinct is like a sixth sense to find the truth.

What is the relationship between creating law and finding law?, in this case, the position of the judge in the forum of the Indonesian legal state, not only applies the law as it is as perceived by the theory of coherence truth because judges can make or create laws *"judge make law*", but not as it is legislative but through a decision. Finding a law is an effort to get a law from an existing law, or to get a law outside of laws and regulations. Getting the law from the existing law is an effort by the judge to give meaning to the words of the existing legal rules, such as the word "free decision" in article 244 of the Criminal

Procedure Code is given the meaning as "*acquittal"*, so that the verdict is free **"***Failure of Law Order"* can apply for cassation.

In the event that there is no legal rule in the law, it means that the judge faces a legal void, the judge must fill or complete it, to fill the void the judge in carrying out his duties can carry out the act of legal findings or the formation of law, one of which is by the method of legal argument which is divided into three, namely: (1) analogy argument or argumentation *especially* ; (2) Arguments *On the contrary* ; (3) narrowing of the law or expansion of the law. The argumentation method is explained in detail as follows :

1. Analogy argumentation, this method is basically an effort by the judge to apply the law to a concrete case by expanding the problem and scope regulated in the law so that it can be applied to the same core case regulated in the law, this method of analogy argument is based on the way of thinking from something special to the special, so this method does not use a deductive or inductive way of thinking, In Islamic law, this method is called *Qiyas.*
2. Argument *a Contrario* is a method of discovery that is carried out by determining the opposite. In Islamic law, this theory is called *mafhum kholafah*

The argumentation method as mentioned above, the legal reasoning method, namely the normative juridical and empirical juridical thinking method carried out by the judge in order to resolve concrete T-shirts that are not clear or have no rules in the law for the realization of the concept of justice.

Judges are not mouthpieces of the law, but judges with existing laws can form a fair legal rule. If the law can no longer capture the signal of justice in every case in the community, so that a judge's ability to try to find justice and the truth itself is tested, there is a legal principle *"ius curia novit"* That is, the judge is considered to know the law, even though there are no rules governing the case he is facing, he must find a new law through his decision, the judge must not say, this matter has no law even if necessary must form the law itself, then this is what is called *Jurisprudence* and will be used as a new source of law for other judges.

Fair law in Indonesia is a law that comes from the personality and life philosophy of the Indonesian nation which reflects the sense of justice of the Indonesian nation, is able to protect material and spiritual interests and is able to protect the personality and unity of the nation, the survival of the nation and state as well as the struggle to pursue national ideals.

Especially with regard to the duties of a judge in accepting, adjudicating and deciding cases submitted to him, he cannot be separated from the philosophical values that live in the midst of Indonesian society, and this is what is mandated by Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which reads: Judges and constitutional judges are obliged to explore, follow and understand the values of law and the sense of justice that live in society. The values that live in the midst of society are the philosophical grip for a judge in upholding the race of justice, so that in every decision it cannot be separated from philosophical review, even though from the juridical review it has been accommodated in the form of laws and regulations that have been standardized and become the standard of written rules in running this state system

Legal findings by judges, according to Sudiikno Mertokusumo, is a process of law formation by judges or other legal officers who are given the task of applying the law to concrete legal events, even though Indonesia is a country of law that has a tradition *Civil Law System*, Sudikno Mertokusumo's opinion needs to be adapted in legal findings for the realization of substantive justice decisions because it is in line with progressive law

enforcement which can be an alternative for law enforcement to present substantive justice with progressive steps and break through the rigidity of written law *(rule breaking)*. Judges in exercising their authority have room for freedom in adjudicating. Freedom from outside interference, freedom of expression in the development of practical law, freedom to explore legal values in accordance with the sense of justice of the community and the sense of justice that lives in society.

The elements of the judge's decision will always be assessed by the community, whether the decision is fair, has legal certainty and legal benefits. Indonesia as a pluralistic country, so the judge's decision functions to provide satisfaction with a sense of justice representing the community, not only fair according to the judge, a good judge's decision contains several elements, namely:

1. The judge's decision is a description of the process of social life as part of social control;
2. The judge's decision is the embodiment of the applicable law and is useful for every individual, group, or country;
3. The judge's decision is a balance between legal provisions and the reality in the field;
4. The judge's decision is an ideal picture of awareness between law and social change;
5. The judge's decision must provide benefits for everyone involved in the case;
6. The judge's decision should not create new conflicts for the litigants and the community.

Basically, a judge's decision must also pay attention to formal and material law, which is a condition for the process of legal rationalization. Formal law is an entire system whose rules are based on legal logic without considering other elements outside the law. On the other hand, material law pays attention to the elements *Non-juridical* such as ethical, political, economic, religious values and so on. Elements *Non-juridical* This means that the judge has the freedom to assess whether a case will have a major impact (positive or negative) on people's lives because of the verdict. This freedom has a legal basis and the power that judges cannot intervene, this can be seen in Law Number 8 of 2004 concerning amendments to Law Number 2 of 1986 concerning the general judiciary as follows:

a. Article 5 paragraph (2) guidance as referred to in paragraph 91) must not reduce the freedom of judges in examining cases;
b. Article 13 paragraph (2) guidance and supervision as intended in paragraph (1) must not reduce the freedom of judges in examining and deciding cases;
c. Article 53 paragraph (4) of the supervision in paragraphs (1), (2) and (3) must not reduce the freedom of judges in examining and deciding cases.

B. Juridical Analysis of Judges' Considerations in Issuing Criminal Case Verdicts Number: 37/Pid.Sus-TPK/2021/PN.JktPst

a. Public Prosecutor's Indictment

In the Criminal Case Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst which was examined and tried at the Central Jakarta District Court, the Public Prosecutor from the Corruption Eradication Commission charged Samin Tan, 57 years old, a resident of Jalan Crystal Block H/20 RT 008 Rw 013, North Grogol Village, Kebayoran Lama District, South Jakarta, self-employed worker, is the owner of PT. Borneo Energy & Metal Barn. Tbk (PT. BLEM) with an alternative indictment, namely, the First Indictment of the defendant's act constitutes a criminal act as regulated and criminally threatened in *article 5 paragraph (1) letter a of Law Number 31 of 1999* concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption *Crimes jo* Article 64 paragraph (1) of the

Criminal Code or the Second Indictment of the defendant's actions constitute a criminal act as regulated and threatened with criminal acts in *article 13 of Law Number 31 of 1999* concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption *in conjunction with* Article 64 paragraph (1) of the Criminal Code.

As for the criminal charges (*requisitoir*) against the defendant, in essence, the public prosecutor demanded that the corruption court at the Central Jakarta District Court issue the following verdict :

1. Declaring that the defendant Samin Tan is legally and convincingly proven guilty of committing a continuing criminal act as regulated and threatened with criminal offenses in violation *of article 5 paragraph (1) letter a of Law Number 31 of 1999* concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption *Crimes jo* article 64 paragraph (1) of the Criminal Code as in the first alternative indictment;
2. Imposing a penalty on Samin Tan with a prison sentence of 3 (three) years minus the period of temporary detention that has been served by the defendant and a fine of Rp 250,000,000 (two hundred and fifty million rupiah) of substitute confinement subsidy for 6 (six) months;
3. Stipulating that the defendant remain in custody

b. Judge's Considerations

The panel of judges who examined and adjudicated the criminal case of corruption with the registration number of case 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst handed down an acquittal verdict against the defendant Samin Tan, in its consideration the council *was of the opinion that one of the elements charged against Samin Tan was not proven* , in brief the judges' consideration will be described as follows; *The first alternative indictment* as stipulated in *Article 5 paragraph (1) letter a of Law Number 31 of 1999* concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption *Crimes in conjunction with* Article 64 paragraph (1) of the Criminal Code whose elements are as follows :

Article 5 paragraph (1) letter a

"Every person who gives or promises something to a public servant or state administrator with the intention that the public servant or state administrator does or does not do something in his or her position that is contrary to his or her obligations"

That the elements of the article mentioned above are :

1. Everyone ;
2. Giving or promising something to a public servant or state administrator;
3. With the intention that the civil servant or state administrator does or does not do something in his position that is contrary to his obligations;
4. Some actions that are related in such a way that they must be seen as one continuous act

In its consideration, the element that is considered unproven is the element *of "giving or promising something to a civil servant or state administrator"*, the panel of judges argued that Eni Maulani Saragih as a member of the House of Representatives of the Republic of Indonesia who held the position of deputy chairman of commission

VII of the House of Representatives of the Republic of Indonesia from the Golkar Faction in 2014-2019, based on the provisions of article 1 number 1 and article 2 of the Republic of Indonesia Law No. 28 of 1999 concerning the administration of a clean and corruption-free state, collusion and nepotism are included as state administrators, but Eni Maulani Saragih as a member of the House of Representatives of the Republic of Indonesia does not have the authority to revoke Decree Number: 3174/30/MEM/2017 concerning the termination of PKP2B PT. AKT because the authority to revoke the decree is in the Ministry of Energy and Housing.

In its legal considerations, the panel of judges also argued that Samin Tan's case could not be separated from the case of Eni Maulani Saragih in indictment number: 113/TUT.01.04/24/11/2018 dated November 22, 2018 which had been decided by the Central Jakarta Corruption Court with decision number: 100/Pid.Sus-TPK/2018/PN.Jkt.Pst which has permanent legal force, in the indictment Samin Tan is as a gratuity giver to Eni Maulani Saragih as a civil servant or state administrators as members of the House of Representatives of the Republic of Indonesia, who in their verdict are found guilty of accepting gratuities as stipulated in article 12 B *of law number 31 of 1999* concerning the eradication of corruption crimes as amended by law number 20 of 2001 concerning amendments to law number 31 of 1999 concerning the eradication of corruption crimes.

Because Eni Maulani Saragih does not have the authority to revoke the Decree of the Minister of Energy and Mineral Resources Number: 3174/30/MEM/2017 concerning the termination of PKP2B PT. AKT because the one who has the authority is the Ministry of Energy and Mineral Resources so that Samin Tan who gave money to Eni Maulani Sragih is a victim of extortion, besides that Samin Tan as a gratuity giver to Eni Maulani Saragih as a member of the House of Representatives of the Republic of Indonesia has not been regulated in the laws and regulations on corruption, what is regulated is civil servants and state administrators who are dishonest because they have received something within a 30-day deadline and do not report to the KPK in accordance with the Article 12C so that Eni Maulani Saragih who does not report is threatened with Article 12B. Based on this description, the Council of Judges is of the opinion that the element of *giving or promising something to a civil servant or state administrator is not fulfilled* because one of the elements charged is not fulfilled, then the defendant Samin Tan is declared not legally and convincingly proven to have committed a criminal act as charged in the first alternative indictment.

Furthermore, the panel of judges considered the *second alternative indictment* as stipulated in *Article 13 of Law Number 31 of 1999* concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption *Crimes in conjunction with* article 64 paragraph (1) of the Criminal Code whose elements are as follows:

Article 13

"Any person who gives a gift or promise to a public servant by remembering the power or authority attached to his position or position, or by the giver of a gift or promise is deemed to be attached to the position or position"

The elements are as follows:

1. Every person;
2. Giving promises or gifts to public officials;
3. Remembering the power or authority attached to his position or position or by the giver of gifts or promises deemed to be attached to such position or position;

4. Some actions that are related in such a way that they must be seen as one continuous act.

Regarding the *second alternative charge* in its consideration, the panel of judges is of the opinion that *the element of giving promises or gifts to civil servants* is the same as the elements contained in Article 5 paragraph (1) letter a as referred to in the *first alternative charge*, therefore the consideration of the element of *giving promises or gifts to civil* servants In Article 13, the Council of Judges takes over the consideration of the second element of Article 5 paragraph (1) letter a into the consideration of the second element of Article 13, therefore, *mutatis mutandis* the consideration of the second element of Article 5 paragraph (1) letter a is reloaded in the second consideration *of Article 13 of Law Number 31 of 1999* concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to the Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, based on this description, the Council of Judges is of the opinion that the element *of Giving or Promising Something to a Civil Servant or State Administrator is not fulfilled* because one of the elements charged is not fulfilled, then the defendant Samin Tan is declared not legally and convincingly proven to have committed a criminal act as charged in the second alternative indictment.

c. Analysis

In describing the results of this study, the researcher does not elaborate on the relevance of the evidence and facts revealed in the trial, whether the evidence revealed is relevant to the public prosecutor's indictment or not?, the researcher only describes the judges' council considerations associated with the elements of the articles charged against the defendant, the researcher views the judges' judges' considerations from the point of view of the doctrines of legal experts and the provisions of the legislation.

In contrast to previous research, from searching several scientific journal literature, there are several authors who raised and researched the Central Jakarta District Court Decision Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst, including the title Examination of the Prosecutor's Indictment Against the Crime of Bribery by Samin Tan Case Study of Decision Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst, this research examines the verdict from the perspective of the public prosecutor's indictment, where in the study it was concluded that the public prosecutor was inappropriate in applying the article to charge Samin Tan as a defendant, because the indictment has an important function, namely to be the basis for the judge in examining the case being tried, while this study examines the consideration of the Council of Judges on the elements of the article charged, namely the elements of Article 5 paragraph (1) letter a and Article 13 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption.

Looking at the consideration of the panel of judges who are of the opinion that *the element of giving promises or gifts to civil servants* , both contained in Article 5 paragraph (1) letter a and Article 13 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, is considered not fulfilled on the grounds based on The fact revealed in the trial that from the beginning of the meeting with Eni Maulani Saragih, the defendant Samin Tan said not to expect anything from the assistance that would be provided related to the PKP2B termination issue of PT. AKT because the defendant Samin Tan has no longer served as the company's leader and the company has been experiencing financial difficulties since PKP2B PT. AKT is terminated by the Ministry of Energy and Mineral Resources.

In addition, the defendant never had a conversation with Eni Maulani Saragih about the need for funds for the management of PKP2B PT. AKT at the Ministry of Energy and Mineral Resources, therefore the receipt of funds of Rp 5,000,000,000 (five billion rupiah) by Eni Maulani Saragih is considered as Gratuity because there is no agreement between the Defendant Samin Tan and Eni Maulani Saragih

In addition, Eni Maulani Saragih does not have the authority to revoke the Decree of the Minister of Energy and Mineral Resources Number: 3174/30/MEM/2017 concerning the termination of PKP2B PT. AKT so that Samin Tan who gave money to Eni Maulani Saragih is a victim of extortion, besides that Samin Tan as a gratuity giver to Eni Maulani Saragih as a member of the House of Representatives of the Republic of Indonesia has not been regulated in the laws and regulations on corruption, what is regulated is that civil servants and state administrators who are dishonest because they have received something within a 30-day deadline do not report to the KPK in accordance with the provisions of article 12C so that Eni Maulani Saragih who failure to report is threatened with article 12B.

If you look closely, article 12B is an article that regulates gratuity offenses, where no gratuity giver who is threatened with criminal punishment is the recipient of gratuity, the existence of article 12B in law number 31 of 1999 concerning the eradication of corruption crimes as amended by law number 20 of 2001 concerning amendments to law number 31 of 1999 concerning the eradication of corruption crimes aims to *To assess the honesty of civil servants and state administrators who receive something from others*, so that in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, the act of "giving gratuities" has not been regulated or in other words there is no *stratbaarfeit* Gratification against the act of "gratuity"

The judge's consideration of the criminal case Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst which in its legal consideration states that the element of the article charged against the defendant, namely the element of "*giving or promising something to a civil servant or state administrator"* is not fulfilled according to the judge's researcher's view, it is only based on legal facts associated with the text of the law, here the judge looks very rigid where it should be Judges based on the provisions of the law must explore the values that grow and develop in society, as mandated by Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which reads: Judges and constitutional judges are obliged to explore, follow and understand the values of law and the sense of justice that live in society. The values that live in the midst of society are the philosophical grip for a judge in upholding the race of justice, so that in every decision it cannot be separated from philosophical review, even though from the juridical review it has been accommodated in the form of laws and regulations that have been standardized and become the standard of written rules in running this state system.

In addition, the Judge who examines and adjudicates criminal cases Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst should also consider the principles of *criminalization* and *decriminalization* , not only relying on and fixating on the written legal rules alone, the previous gratuity was indeed good, but after being regulated by legal norms, namely the law, this became reprehensible (*criminalization*). Changes in the value of gratuities cause acts that were previously irreprehensible and not criminally prosecuted, to be considered reprehensible and need to be punished.

The researcher disagrees with the consideration of the panel of judges who examined and tried criminal cases Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst which stated that the provisions for the action of "gratuity-giver" have not been regulated or in other words, there is no gratuity *stratbaarfeit* for the act of "gratuity-giver" because it has not

been regulated in law number 31 of 1999 concerning the eradication of corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, the Judge should in analyzing the legal facts revealed at the trial The Judge explores the legal norms in the laws and regulations and legal norms that live in society to be applied in cases where the legal facts have been formulated in the law, the analysis that can be done is in the form of philosophical analysis and analysis Sociological. The panel of judges who examine and adjudicate criminal cases Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Ps should examine the case in depth to the fundamental and essential results, not only stop at the normative text, but must explore all the meanings behind the text, because behind the normative legal text there is a legal philosophy that is the background and the core of the existence of the law, In fact, the judge should reconstruct a new meaning from the existing text.

Due to the legal vacuum because it has not been regulated or in other words, there is no *stratbaarfeiit* gratuity against the act of "giving gratuities" even though based on the principle of freedom of judges, the Council of Judges who examines and adjudicates criminal cases Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Ps can override the written legal norm because of the provisions of article 5 paragraph (1) letter a and Article 13 of Law Number 31 of 1999 concerning the Eradication of Acts Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is no longer in accordance with the values of justice and social conditions of the community, the steps that can be taken by judges are by conducting *contra legem* which is made with rational legal arguments, not only from legal aspects but also sociological aspects. morals, ethics, religion and other disciplines include the criminalization of Gratuities.

The Contra Legem principle is a principle that overrides written law or law carried out by a panel of judges with the aim of finding a law. Because it is felt that the content of the articles of the law is contrary and not in harmony with the sense of justice of the event. Therefore, the panel of judges fills the gaps in the regulations to obtain a law that is in accordance with the events at the trial.

For the sake of upholding justice, a judge may use *Contra Legem*, it is permissible to do this, if there is no rule that does not run in a problematic law. Therefore, a judge has the power to do *Contra Legem*, which is a judge's decision that overrides the law for the sake of a sense of justice present in the community.

The principle of *Contra Legem* is in line with the stipulation in Pasa 28 paragraph 1 of Law No. 48 of 2009 concerning the power of the Judiciary. As the judge's decision is that the judge can decide the case and is in line with the justice and sociality of the community. Bagir Manan argued that judges when deciding cases should not just carry out legal formalities. But it also carries out the function of generating improvements in building social lines.

a Judge has the right and authority as well as the freedom to carry out *Contra Legem* , namely to carry out decisions that are not in line with the articles of the positive laws that are currently running, but must pay attention to the following 3 factors :

a. Legal Justice (*Gerechtigkeit*) is when implementing and enforcing the law, it must be fair. The law is not parallel to justice. The law is general, that is, it forces and binds every circle of people and does not look at anyone's feathers. In contrast to fairness which is subjective, individual, and favoritism
b. Legal Certainty (*Rechtssicherheit*) is that the law must be implemented and enforced when an event occurs that occurs immediately and the community hopes that law enforcement can be implemented.

c. The Usefulness of Law (*Zweckmassigkeit*) law is formed for humans, so when it comes to enforcing and applying it, there must be benefits

Based on Article 1 paragraph (I) of Law Number 48 of 2009 concerning the power of the judiciary, it states *that "Judicial power is the power of an independent state to hold the judiciary to uphold law and justice based on Pancasila and the State Law of the Republic of Indonesia of 1945, for the sake of the existence of the Law State of the Republic of Indonesia"*, based on this provision, the Judge's efforts in implementing the Laws and Regulations carried out by the Judge in resolving a problem/case that he will face, namely :

a. The judge refers to applying the laws and regulations that have existed in the case regulating the problem
b. The judge gave an opinion if in the law the case he was facing already existed but was not clear
c. The judge does it with a reasoning understanding in finding a law if the material in the law does not contain provisions about the case at hand

Based on the results of the analysis, it can be concluded that the Panel of Judges acquitted the Defendant Samin Tan from the Public Prosecutor's Indictment because the element of *giving or promising something to a public servant or state administrator was not fulfilled, the* panel of judges in its consideration only paid attention to the legal facts associated with the legal text without paying attention and considering There are other *non-juridical* things in making a decision. If the decision of the criminal case Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Ps is enacted by other decisions, it will become *jurisprudence* that has an impact on the *Decriminalization* of the act *of Gratuity*, namely the classification of an act that was initially considered a criminal event, but then considered as ordinary behavior, therefore it is necessary to conduct further research on this decision from the perspective of from the perspective *of criminology* and *sociology* in addition to the perspective of other legal disciplines, namely the law of proof

CONCLUSION

1. The application of the Law on Gratification contained in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes In the Central Jakarta District Court Decision Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst has experienced a distortion of understanding because the law does not explicitly regulate the action of "givers". gratuity" or in other words, there was no *stratbaarfeit* gratuity for the act of "gratuity giver", so that the Central Jakarta District Court Decision Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst which imposed the *Acquittal Verdict* has been in accordance with the provisions of the law, namely article 1 paragraph (1) of the Criminal Code which is also applied in adjudicating cases of corruption crimes, namely "an act cannot be punished, except based on the strength of the provisions existing criminal legislation" as the principle of legality
2. The consideration of the panel of judges in the Central Jakarta District Court Decision Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst if it only refers to the norms of the legal text is correct, that because not all elements of Article 5 paragraph (1) letter a and Article 13 of the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic Indonesia Number 31 of 1999 concerning the Eradication of Corruption Jo. Article 64 Paragraph (1) of the Criminal Code is not fulfilled, then the Defendant must be declared not legally

and convincingly proven to have committed the crime as charged, and if the accused cannot be held accountable for his actions, then the judge must release the accused from all lawsuits or in other words, the judge must decide on an *ontslag van alle rechtsvervolging*, including if there is any doubt about any of the elements, the judge must release the accused from all lawsuits and if one or more parts cannot be proved, then the judge must acquit the accused or in other words must decide a *acquittal.*

SUGGESTION

1. It should be in the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes expressly regulates gratuities with the formulation of comprehensive articles regarding the actions of givers and recipients of gratuities as a whole rule.
2. Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption *Crimes needs to be reformulated, especially those that regulate the substance of gratuities starting from the actions of gratuities givers and other matters related to gratuities*.

REFERENCES

Arief, Barda Nawawi, the effectiveness of legal tools to overcome corruption crimes. Paper at the seminar "Countering Corruption in the Era of Increasing the Rule of Law", Yayasan Setia Karya, Gracia Hotel Semarang, November 11, 2001

Central Jakarta District Court Decision Number: 37/Pid.Sus-Tpk/2021/PN.Jkt.Pst

Harahap, Yahya, Civil Procedure Law on Lawsuits, Trials, Confiscation, Proof and Court Decisions, Jakarta: Sinar Grafika, 2005

Hatta, H. Moh, Criminal Political Policy (Law Enforcement in the Context of Crime Control), Pustaka Siswa, Yogyakarta, 2010

Hidayat, Wahyu, Ahmad University, Dahlan Yogyakarta, Judicial Institutions, and Public Civilization. “Social Engineering of Judicial Institutions to Realize Public Civilization,” 2019, 309–40.

https://www.pta-banten.go.id/artikel-pengadilan/842-side-philosophy-in-ruling-hakim-ridho-afrianedi-s-h-i-lc-m-h, accessed on October 10, 2023

Kahar, Muhammad Paeway Ebiem, Khoirul Lukman Rahmatullah, Faza Yuris, Ainul Azizah, and Sapti Prihatmini. "Bribery and Gratuity in Corruption: A Case Study of Judges' Decisions in Law Enforcement Practice." Journal of Anti-Corruption 13, no. 1 (2023): 46–58. https://doi.org/10.19184/jak.

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption

Law Number 31 of 1999 concerning the Eradication of Corruption

Manan, Bagir, A Review of Indonesia's Judicial Power in Law No.4 of 2004, Jakarta, Supreme Court of the Republic of Indonesia, 2005

Mappiasse, Syarif, Legal Logic of Judges' Decision Considerations, Prenada Media Group, Jakarta, 2015

Marzuki, Peter Mahmud. Legal Research. Jakarta: Kencana Prenada Group, 2005

Mertokusumo, Sudikno, Knowing the Law, Yogyakarta, Liberty, 1999

Muharatulloh, Edshafa. "The imposition of maximum criminal penalties for corruption crimes committed during the pandemic." Multidisciplinary Scientific Journal 2, no. 3 (2023): 2023.

Muladi, Barda Nawawi Arief, Criminal Theories and Policies, PT. Alumni, Bandung, 2010

Muladi, Diah Sulistyani, The Complexity of the Development of Criminal Acts and Criminal Policies, PT. Alumni, Bandung, 2016

Mulyadi, Lilik Corruption Crimes in Indonesia, Normative, Theoretical, Practice and Problems, PT. Alumni, Bandung, 2007

Nadya, Syafira. "Juridical Review of Criminal Acts of Receiving Gratuities Based on Law Number 31 of 1999 Jo Law Number 20 of 2001 concerning the Eradication of Corruption Crimes," JOM Faculty of Law Volume II, number 2, March 2015

Nugroho, Hibnu, Integralization of Corruption Investigation in Indonesia, Media Prima Aksara, Jakarta, 2012

Nurliza, Vira. A Sign Of Thank You That Could Lead To A Criminal Act Of Corruption Type Of Gratification,"jurnal hukum Derechtsstaat Volume 9 No 2 sept 2023.

Zaidan, M Ali Criminal Policy, Sinar Grafika, Jakarta, 2016