

**GRATIFICATION GRANT REPORTING
AS A REASON TO ABOLISH PROSECUTION****¹Deni Setya Bagus Yuherawan, ²Racel Suryaningsih**

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Abstract

Gratuity is a type of corruption crime. The criminalization of gratification is regulated in Article 12 B paragraph (1) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, which determines that every gratuity to a civil servant or state administrator is considered to be a bribe if it is related with his position and contrary to his obligations or duties. However, Article 12 C determines that Article 12 B paragraph (1) does not apply if the recipient reports the gratuity they receive to the Corruption Eradication Commission. This article does not question the existence of Article 12 B paragraph (1) and Article 12 C paragraph (1) of the relevant law, but does not question whether the ratio legis is stipulated in Article 12 C paragraph (1) and conceptually whether Article 12 C paragraph (1) constitutes a justification reason or a reason to remove prosecution. The type of research used is normative research using a statutory approach and a conceptual approach. Analysis of the collected legal materials was carried out using prescriptive analysis. The results of the research conclude that based on the ratio legis, the provisions of Article 12 C Paragraph (1) are used as an excuse to abolish prosecution, not as a justification.

Keywords: *Corruption Offenses; Gratification; Reasons for Abolish Prosecution*

INTRODUCTION

In the crime of gratification, two parties play an active role in realizing the crime of gratification perfectly, namely the giver and receiver of the gratification. The granting of gratuities is regulated in the provisions of Article 5 and the recipient is regulated in Article 12 B of Law Number 20 the Year 2001 concerning the

Elimination of Corruption Crime. However, with the provisions of Article 12 C, namely when a gratification recipient reports the gratuity to the KPK within 30

days, the legal provisions of Article 12B paragraph (1) do not apply.¹

Examples of cases of gratification that occurred in Indonesia in 2011, namely: The case of a former head of customs who allegedly collected a sum of money from export-import entrepreneurs who distributed goods through Juanda airport during 2004-2010 as operational money. The Attorney General's Office (AGO) named the former head of the Juanda Airport Surabaya Customs and Excise Supervision and Service office, Argandiono as a suspect in the gratification case. Investigators and Deputy Attorney General for Special Crimes (Jampidsus), the AGO, named the former Head of Customs and Excise in Surabaya as a suspect.

As a result of the suspect's actions, it is estimated that there has been a state loss of IDR 11 billion. The Attorney General's Office charged the suspect with the gratification article in the Corruption Act Articles 11 and 12. The implementation of the enforcement of this gratification faces many obstacles because many Indonesians still think that giving gifts is a common thing.

Sociologically, gifts are something that is not only commonplace but also plays a very important role in a society and between communities and even between nations. Gratuity is an important element in the system and mechanism of exchange of gifts. So that this condition raises many questions to state officials, civil servants, and the public.²

Another example is when DKI Jakarta Governor Joko Widodo received a guitar from a Metallica band member when he saw a concert Joko Widodo immediately reported the gift to the KPK to check whether the gift was a gratuity or not. In the end, President Joko Widodo handed over hundreds of millions to the state. According to the Director of the KPK Gratification Corruption Eradication Commission, Giri Supradyono stated that the musical instrument belongs to the state. This is because giving the bass guitar is related to Jokowi's position as governor.

According to Giri, after being examined by the KPK, the guitar was considered a form of gratification because it was given

¹ Nur Mauliddar, Mohd. Din, Yanis Rinaldi, Gratifikasi Sebagai Tindak Pidana Korupsi Terkait Adanya Laporan Penerima Gratifikasi, *Kanun Jurnal Ilmu Hukum*, Vol. 19, No. 1, (April, 2017), hlm. 160

² Yasmirah Mandasari Saragih, S.H., M.H., *Problematika Gratifikasi Dalam Sistem Pembuktian Tindak Pidana*

Korupsi (Analisis Undang-Undang Nomor 31 Tahun 1999 JO Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi), *Jurnal Hukum FH UNPAB* Vol. 5 No. 5, Oktober 2017, hlm. 80

by Jonathan Liu as a music event promoter to Jokowi as the Governor of DKI Jakarta. Also, on the guitar, there is the inscription "Giving Back" which when examined further there is an implied element of the word, which in Indonesian means "reciprocal". In this case, the guitar will be handed over and become state property. As explained in the example case, gratification can happen to anyone, including President Joko Widodo. The President immediately reports on the gratuity he has received before 30 days after receiving it.

This can be found in the explanation of Article 12 C Paragraph (1) of Law Number 20 of 2001 concerning the Elimination of Corruption Crime, which states that if the gratuity is immediately reported in less than 30 working days, the criminal element will be removed. Article 12 C of Law Number 20 the Year 2001 has provided an exception regarding the offense of gratification itself, where it is emphasized that the provisions of each gratification are deemed invalid if the recipient reports the gratuity they receive to the Corruption Eradication Commission. The gratification recipient must submit a report no later than 30 (thirty) working days from the date the gratification is received.

The Corruption Eradication Commission (KPK), within 30 (thirty) working days from the date of receipt of the report, is obliged to determine whether gratuities are the property of the recipient or state property. In the juridical analysis of the provisions of Article 12 B and Article 12 C of Law Number 20 the Year 2001:

Gratification is a unique corruption offense. Unlike the usual other criminal offenses, gratification requires a deadline to "raise the status to become a perfect criminal offense". So there is no possibility of being "caught red-handed" in a case of gratification;

Gratuities that indicate bribery are divided into two types based on the amount and burden of proof: the first category, if the gratuity is IDR 10 million or more, then the burden of proof of the gratuity is not in the hands of the recipient, while the second category if less than IDR 10 million then it is the public prosecutor who must prove that the gratification is considered a bribe or not.³

Besides, some cases can be classified as gratification, namely:

- a. Funding for working visits of the legislature as this can influence legislation and its

³ Ibid, hlm. 85.

- implementation by the executive.
- b. Souvenirs for teachers (PNS) after the distribution of report cards/graduation. Illegal charges on the highway and not accompanied by evidence with unclear donation purposes, the persons involved can be from police officers (traffic police), retribution (regional revenue office), LLAJR, and the community (*preman*). If this case occurs, the KPK recommends that the report be published in the mass media and take firm action against the perpetrators.
 - c. The fee for entering the port without a ticket is made by the Port Agency, the Transportation Service, and the Regional Revenue Service.
 - d. The latest sophisticated cell phone parcels from businessmen to officials.
 - e. Tour trip for the Regent towards the end of his position.
- a. whose value is Rp. 10,000,000.00 (ten million rupiahs) or more, proving that the gratification is not a bribe made by the gratification recipient;
 - b. whose value is less than Rp. 10,000,000.00 (ten million rupiahs), proving that the gratuity was bribed by the public prosecutor.⁴

Meanwhile, the meaning of gratification itself is explained in Article 12 B Paragraph (1) of Law Number 20 the Year 2001 which contains: "What is meant by" gratification "in this paragraph is a gift which is a broad sense means that it includes the provision of money, goods, rebates. (discount), commissions, interest-free loans, travel tickets, lodging facilities, tours, free medical treatment, and other facilities. The gratuities are either received domestically or abroad and are made using electronic means or without electronic means".⁵

To know when the receipt of gratification becomes a crime of corruption, it is necessary to first look at the formulation in Article 12 B Paragraph (1) of Law Number 20 the Year 2001, namely:

- 1) "Every gratuity to a civil servant or state official is considered to be a bribe, if it is related to his position and contrary to his obligations or duties, with the following conditions:

Gratification itself is regulated in Article 12 B of Law Number 20 the Year 2001 which reads "Every gratification to a civil servant or state administrator is considered to be a bribe, if it is related to his position and contrary to his / her obligations or duties, with the following provisions":

⁴ Undang-Undang Nomor 20 tahun 2001 tentang *Pemberantasan Tindakan Pidana Korupsi*, Diterbitkan oleh Komisi Pemberantasan Korupsi., hlm. 45.

⁵ *Ibid.*, hlm. 53.

- a. The amount of Rp.10,000,000.00 (ten million rupiahs) or more is proof that the gratification is not a bribe made by the gratification recipient;
 - b. The value of which is less than Rp.10,000,000.00 (ten million rupiahs), proof that the gratification is a bribe is proven by the public prosecutor:
- 2) 2. Criminal for civil servants or state administrators as meant in paragraph (1) is life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years, and a fine of at least IDR 200,000,000. , 00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiahs).⁶

An elucidation in Article 12 C of Law no. 20 of 2001 on Corruption Eradication itself states:⁷

1. As referred to in Article 12 B paragraph (1), this provision does not apply if the recipient reports the gratuity they receive to the Corruption Eradication Commission.
2. Submission of the report as referred to in paragraph (1) must be made by the gratification recipient no later than 30 (thirty) working days from the date the gratuity is received.
3. Within 30 (thirty) days from the date of receipt of the report, the Corruption Eradication Commission is obliged to determine that gratuities can belong to the recipient or belong to the state
4. Provisions regarding the procedure for submitting reports as referred to in

paragraph (2) and the determination of the status of gratuities as referred to in paragraph (3) are regulated in the Law on the Corruption Eradication Commission.

It is explained that in the elucidation of article 12 C of Law Number 20 of 2001, that is, if the recipient has reported the gratuity he has received for 30 days after receipt, it is not a bribe. And only sentenced if the recipient does not report it. The formulation of Article 12 C paragraph (1) of Law Number 20 of 2001 appears to be an excuse to abolish the punishment. If the abolition of criminal sanctions in Article 12 C of Law Number 20 of 2001 is viewed from a theoretical point of view regarding the abolition of a criminal act, then there is no element of the act of reporting the receipt of gratuities by the recipient which explains that the act of reporting voluntarily can erase all elements. the punishment, unless those who have received the gratuity submit fully the results of the gratification to the state

Law Number 20 of 2001 concerning the Eradication of Corruption Crimes is a reason for abolishing prosecution because although prosecution cannot be carried out, it does not eliminate the elements of the crime.

⁶Tim Redaksi Fokus media, *Himpunan peraturan Perundang-Undangan Pemberantasan Tindak Pidana Korupsi*, Bandung: Fokusmedia, 2008, hlm. 87.

⁷ Evi Hartanti, *Tindak Pidana Korupsi*, Jakarta: Sinar Grafika, 2005, hlm. 8.

Source of Legal Materials

The legal materials obtained are:

1. Primary legal materials in the form of legislation as well as legal materials which are ratio decidendi, namely legal reasons used by judges to arrive at a decision.
2. Secondary Legal Materials obtained from books are in the form of theses, theses, and legal journals, which include, among others, criminal acts, gratuities, as well as reasons for abolishing prosecution.

Legal Material Collection Techniques

The technique of collecting legal materials is used to obtain legal material for research. The technique of collecting legal material related to research explanations uses document study or literature study. The technique of collecting legal materials is used by conducting a study of several sources of legislation relating to the subject matter which is the focus of the study.

Legal Material Analysis

The method used for this research is prescriptive analysis. Where the nature of this analysis is intended to provide arguments on the results of research that has been studied. This argument is presented by the author to explain the prescription or research on right or wrong or what should be legally lawful against legal facts or legal events as a result of the research.

RESEARCH RESULT

Legis Ratio Article 12 C Paragraph (1) of Law Number 20 the Year 2001 Concerning Amendments to Law Number 31 the Year 1999 Concerning the Eradication of Corruption Crime

In the explanation of Law Number 20 of 2001 concerning the Eradication of Corruption Crime, namely in Article 12 B, it is explained that the object of gratification is "the giving of money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tour trips, , free treatment, and other facilities. The gratuities are received both inside and outside the country and made using electronic means or without electronic means"

"Every gratuity to a civil servant or state official is considered to be a bribe, if it is related to his position and contrary to his obligations or duties, with the following conditions":

- a) whose value is Rp. 10,000,000.00 (ten million rupiahs) or more, proving that the gratification is not a bribe made by the gratification recipient;
- b) whose value is less than Rp. 10,000,000.00 (ten million rupiahs), proving that the gratuity was bribed by the public prosecutor.

The meaning of gratification is contained in the explanation of Article 12 B Paragraph (1) of Law Number 20 of 2001 that: "What is meant by" gratification "in this paragraph is a gift in a broad sense, which includes the provision of money, goods, rebates (discounts), commissions. , interest-free loans, travel tickets, lodging facilities, travel tours, free medical treatment, and other facilities. The gratuities are either

received domestically or abroad and are made using electronic means or without electronic means”.⁸

Gratuities are part of a corruption case. Gratification also receives special attention, because it is a new provision in legislation. Law Number 31 of 1999 concerning Eradication of Corruption Crimes which is following the reform mandate, namely to resolve corrupt practices that are deemed inadequate. For this reason, through the MPR Decree of the Republic of Indonesia in 2001, a new offense was added regarding the giving or in Law Number 20 of 2001 the term gratuity was used.

Many people think that giving gifts and receiving gifts is a natural thing. However, it is also necessary to be careful if the gift is related to a job position. Because if it is related to the job position of the recipient of the gift, it is feared that there will be certain interests of the giver and it can also happen that one day the recipient will do something more and may harm others based on remuneration for the gift.

In Article 12 C Paragraph (1) of Law Number 20 the Year 2001 concerning the

Eradication of Corruption Crime it is explained that if the gratification recipient reports the gratification received, the gratification recipient is not a criminal because his unlawful nature is lost.⁹ Taking into account the formulation of Article 12 B and Article 12 C Paragraph (1), to be convicted of a gratuity recipient, the following elements must be fulfilled:

- 1) Recipients must qualify as “civil servants” or as “state administrators”.
- 2) Receiving “gratuities” from someone which constitutes a “giving of bribes” according to Article 12 B paragraph (1). According to Article 12 B paragraph (1), that is if the gift “relates to one's position and is contrary to his obligations”.
- 3) The recipient does not report the gratification he received to the Corruption Eradication Commission.¹⁰

The provisions for civil servants or state administrators who, if they are related to their job position and contrary to the obligations of their position, according to Article 12 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, do not apply if the recipient reports gratuities received before 30 (thirty) the day after receiving the bribe. Besides that, the formulation of the meaning of

⁸ Undang-Undang Nomor 20 tahun 2001 tentang *Pemberantasan Tindak Pidana Korupsi*, Diterbitkan oleh Komisi Pemberantasan Korupsi, t.th., hlm. 53

⁹ Nur Laeli Fauziah, *Penghapusan Pidana Bagi Pejabat Negara atau Penerima Gratifikasi*, Jurnal Hukum Islam, Vol. 1, NO 1, Juni 2015. hlm. 27.

¹⁰ Andi Hamzah, *Pemberantasan Korupsi melalui Hukum Pidana Nasional dan Internasional*, Jakarta: PT Raja Grafindo Persada, 2005, hlm. 4.

gratification itself in the formulation is still unclear, because, in the gratification article, there is no mention of the minimum limit for a person to be said to have committed gratification, and the burden of proof on receiving a bribe of gratification with a nominal value of Rp. 10,000,000, - (ten million rupiah) or more than the burden of proof), then the one who has to prove is the public prosecutor (ordinary proof

If a civil servant or state official who receives the gratuity immediately reports the gratification he has received to the Corruption Eradication Commission (KPK) no later than 30 working days from the date the gratification is received, the penalty is waived.¹¹ If a civil servant or state official has received the gratification, there is already an element of an unlawful nature, but this is invalid if the recipient reports to the KPK for 30 (thirty) days after receipt, then they cannot be convicted. Or in other words, the suspension of prosecution is invalid and can be abolished because the requirements for reporting gratuities received to the KPK have been fulfilled.¹²

In judicial practice, especially through the jurisprudence of the Supreme Court of the Republic of Indonesia, it has given new nuances that acts of violating material law are not only limited from a negative function as an excuse for the neglect of crime to avoid violations of the principle of legality and the use of analogies prohibited by criminal law. The existence of Article 12 C Paragraph (1) in Law Number 20 the Year 2001 concerning Corruption Crime implies the existence of legal injustice. This can make the public no longer trust the law enforcers of the Corruption Eradication Commission (KPK) who are tasked with eradicating this crime of gratification.

Based on the provisions in Article 12 C Paragraph (1) of Law Number 20 the Year 2001, public confidence will fade because the person who has received the gratuity will lose the element of a criminal act and will be eliminated criminal sanctions by the KPK because in the explanation of Article 12 C Paragraph (1) This states that the criminal sanction can be removed based on the reason for the reporting of gratification that has been received during a

¹¹ Nadya Syafira, *Tinjauan Yuridis Tindak Pidana Menerima Gratifikasi Berdasarkan Undang-Undang No. 31 Tahun 1999 Jo Undang-Undang No. 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi*, Jurnal Hukum, Vol. II. No. 2, Maret 2015, hlm. 9.

¹² <https://www.kpk.go.id/images/pdf/kajian-implem-tasi-pasal-gratifikasi-KPK2019-preview.pdf>, Diakses terakhir pada 01 Mei 2020 Pukul 12:32.

predetermined time, namely 30 (thirty) days after the receipt of said gratification.

What needs to be explained is the legal consequences of not reporting the gratification received, namely minimum imprisonment of four years and a maximum of 20 years or life imprisonment and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs), a maximum of Rp. 1,000,000,000.00 (one billion rupiah). Based on the explanation of this formulation, it is clear that the acceptance of gratuities is a very serious matter as a form of corruption, with criminal sanctions that are the same as other criminal acts of bribery in the law to eradicate corruption. A person who deliberately does not report the gratuity he has received is considered an act against material law so that it is sufficient to become a condition for the enactment of a criminal offense against corruption sanctions.

Gratification is a criminal act committed not because of negligence or ignorance. Gratification is done consciously. Therefore, it is very difficult to say that the gratuity recipient who reports the gratuity that has been received voluntarily to the

KPK can escape legal punishment. Giving gifts as an act or act of someone who gives something (money or objects) to someone else is of course allowed, but if the gift is in the hope of influencing the decisions or policies of the official who is given a gift, then the gift is not just a greeting. Congratulations or a token of gratitude, but as an effort to gain benefits from officials or examiners which will affect their integrity, independence, and objectivity.

This is included in the scope of the meaning of gratification, as contained in the explanation of Article 12 B paragraph (1) of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.¹³ If seen, based on the two articles, several things need to be understood. First, gratification is not a criminal act. Second, gratification can be considered a criminal act, in this case, it is equivalent to bribery if it is related to one's position and contrary to one's obligations or duties. Then more explicitly, that if the gratification is not related to the position and contrary to the obligations or duties, a gratification is a lawful act.

¹³ Andri Winjaya Laksana, Tinjauan Mengenai Gratifikasi Pelayanan Seks, Jurnal Hukum, Vol. XXX. No. 2, Desember 2014, hlm. 1

Also, reverse proof can be done to make it easier in cases of gratification, the application of the reversed burden of proof theory must be prioritized, not limited to numbers. the gratification recipient must prove otherwise that the gratuity he received was not a bribe, regardless of the amount. This reverse proof is important, especially to reveal the illegal increase in wealth as a result of receiving illegal gratuities.

Based on the explanation from Barda Nawawi Arif, that an unlawful nature of the act of gratification can disappear by itself because the construction of Article 12 C Paragraph (1) of Law Number 20 the Year 2001 requires this. If we see, based on the analysis of the explanation in Article 12 C Paragraph (1), this article does not contradict the 1945 Law or other positive laws. However, legal development in Indonesia does not stop at the legality of law, but it is also necessary to carry out an application of progressive analysis that represents the value of justice in an area of society

Normatively, this act of gratification is a criminal offense that is not only against formal law but also against material law. This is caused by the impact of the act of gratification which has entered the moral

and ethical realm of officials, thus requiring system reform. In general, the consequences of this action, whether consciously or not, can form a society that is not harmonious and social inequality. Even politically it can create disintegration of the nation because of the loss of public trust in the government. The current reality shows that materialism has grown and entered the social structure of society. Based on the customs of society in Indonesia, gratuity is often considered a gift that is reasonable to do. However, since the existence of gratification that often occurs, it causes a shift in the meaning and purpose of the gratification itself and has mixed with elements of power and authority, which makes these actions contrary to the moral values of a nation.

The 'Ratiolegis' in the application of Article 12 C Paragraph (1) of Law Number 20 the Year 2001 is often used as an excuse to abolish crime, if the element against the law does not exist/is not proven, then the perpetrator cannot be convicted. This means that the provisions in Article 12 C Paragraph (1) contain the principle of non-punishment without being against the law (no liability without unlawfulness). If the recipient of the gratuity is submitted to a court session and if it can be proven or has fulfilled the provisions of Article 12 C

Paragraph (1) of Law Number 20 the Year 2001, the civil servant is not decided to be released (*vrijispraak*) but is free from all legal claims (*ontslag van alle rechtsvervolging*), because the actions of the recipient of the gratuity have been proven.¹⁴

Article 12 C Paragraph (1) Law Number 20 the Year 2001 Concerning Eradicating Corruption as a Reason for Abolishing Prosecution

Not all criminal acts in the criminal system in Indonesia are punishable. There are reasons where a person who commits a crime is not sentenced. These reasons are usually called exclusion reasons. In the application of this article, a person who receives gratuity in any form may lose his criminal responsibility because there is a reason for the elimination of prosecution. The authority to excuse prosecution is exercised by a general prosecutor.

In the Criminal Code, the reasons for waiving prosecution are not regulated, even though the regulation already exists. The meaning of the reason for the erasure of crime can only be found in the history of the formation of the Criminal Code (WVS Netherlands). (*Memorie van Toelichting*) states what is meant by "reasons that someone cannot account for or reasons for not

being convicted of someone", there are 2 reasons, namely:

1. Can not be accounted for someone who lies in that person, and
2. Then someone cannot be accounted for lies outside the person.

Apart from the two reasons above, it is emphasized in Article 58 of the Criminal Code which reads: "The condition of the self which causes the abolition, reduction or addition of this sentence can only be considered against the person who did it or the servant only."

The reason for the annulment of a criminal act is also permitted for actions that are carried out to carry out statutory orders or to carry out legal orders of office. Therefore, the excuse of prosecution can be used to abolish the criminal act for the perpetrator or the maker of "person as subject", then it can also be used to remove the punishment from an act or act "as an object". Criminal law determines the reasons for justifying and the reasons for forgiveness as the basis for the abolition of criminal acts, but apart from that, there are reasons for the abolition of prosecution which are also used as the reasons for the abolition of crimes. The reason for eliminating prosecution is the regulation that is primarily aimed at judges. This regulation

¹⁴ Sulistia Teguh dan Zurnetti Aria, *Sistem Pembuktian Gratifikasi dalam Perkara Tindak Pidana Korupsi*,

Kanun Jurnal Hukum, Nomor 42 Tahun XIV, Agustus 2005, hlm. 323.

determines the various circumstances of the perpetrator, who has fulfilled the formulation of offenses as stipulated in the law, who should be convicted, but not convicted. The judge, in this case, places the authority within himself as a determinant of whether there are special circumstances in the perpetrator, as formulated in the reasons for the abolition of criminal prosecution.¹⁵

As the explanation in Article 12 C Paragraph (1) states that the provisions contained in Article 12 B Paragraph (1) will be deleted or canceled because there are provisions in Article 12 C Paragraph (1). And this is the reason for the elimination of prosecution for civil servants or state officials who have received gratuities but have reported to the KPK no later than 30 days after receipt. In the case of gratification, actually, the recipient or giver of the gratification has fulfilled all the elements of the criminal act formulated in criminal regulation. However, several reasons can cause the perpetrator not to be convicted, or to be excluded from the imposition of criminal sanctions as formulated in the legislation.

Several reasons may result in the perpetrator not being punished or excluded from imposing criminal penalties as defined in the law. Therefore, the meaning of the reason for the abolition of criminal prosecution is to allow a person who has committed an act that fulfills the criminal formula not to be punished, and this is the authority granted by law to the judge.¹⁶ Thus the meaning of the reasons for the abolition of criminal prosecution, namely enabling a person who commits an act that has fulfilled the formulation of the offense, not to be convicted, and this is the authority granted by law to the judge.

As explained in the previous chapter, there are several reasons used by law enforcers, namely judges not to sentence defendants who have been deemed to have committed a criminal act. This reason is called the excuse reason. The reason for this penalty annulment is a reason that allows a person not to be convicted even though his act has fulfilled the element of the offense. However, it is different from the reason for the abolition of prosecution, the reason for the removal of this punishment is decided by the judge who states

¹⁵ M. Hamdan, *Alasan Penghapusan Pidana (Teori dan Studi Kasus)*, (Bandung, PT. Refika Aditama, 2012), hlm. 27.

¹⁶ Fitria Lubis dan Syawal Amry Siregar, *Analisis Penghapusan Pidana Terhadap Perbuatan Menghilangkan*

Nyawa Orang Lain Karena Alasan Adanya Daya Paksa (OVERMACHT), Jurnal Retentrum, Volume.1 No. 02, Februari Tahun 2020, hlm 13.

that the unlawful nature has been removed and the law can justify and forgive the act.

The prosecutor continued to prosecute the person, but the judge decided that his unlawful nature had been removed due to the excuse of a criminal offense. In contrast to the reason for eliminating prosecution, the eradication of corruption (PTPK) has prohibited the public prosecutor from bringing charges against the gratification recipient. This means that there is no need for an examination of the wrongdoing of the perpetrator and the judge is also not necessary to examine the main case.

What is meant in this explanation is not a justification or an excuse. So that there is no thought about the nature of the act or the nature of the person who did the act, however, the government considers that based on its benefit to society, it should not be used as prosecution. What is considered here is the public interest. In the reporting of the gratuity he has received, there is still a criminal element in the act, but it is deleted because of the explanation of Article 12 C Paragraph (1).

Statement from Barda Nawawi Arief, based on the explanation in Article 12 C paragraph (1), if the gratification recipient has reported the gratuity he received to the Corruption Eradication Commission, then the gratification is not

considered a bribe. Means also cannot be convicted. Can be sentenced if the recipient does not report. The formulation of Article 12 C paragraph (1) is impressed as an excuse to annul criminal punishment. In Article 12 C Paragraph (1) of Law Number 20 the Year 2001, it is explained that if the recipient of a gratification reports the gratification he has received, the recipient of the gratification is not criminal because of his unlawful nature is lost. Taking into account the formulation of Article 12 B and Article 12 C paragraph (1), to be convicted of a gratuity recipient, the following elements must be fulfilled:

1. Recipients must qualify as “civil servants” or as “state administrators”.
2. Receiving “gratuities” from someone which constitutes a “giving of bribes” according to Article 12 B paragraph (1). According to Article 12 B paragraph (1), that is if the gift “relates to one's position and is contrary to his obligations”.
3. The recipient does not report the gratification he received to the Corruption Eradication Commission.

Especially if we look at the parameters or measures for the Anti-Corruption Commission to determine the status of gratification as something lawful or not

accepted through unclear considerations. The reasons for (general) annulment of criminal law in the Criminal Code, one of which is to carry out statutory regulations. Article 50 of the Criminal Code states: "a person who commits an act is not convicted to enforce the law".¹⁷ In the case of receiving gratuities based on Article 12 C Paragraph (1), the reason for the termination of prosecution is to close the case by law or to close by law.

This reason is often controversial in the community because the reason the case is closed for the sake of the law does not have a clear understanding, both the Criminal Procedure Code and other laws. The act of closing a case for the sake of law, among others, can be carried out by the public prosecutor if it turns out that there are grounds that negate the prosecution because with such grounds it makes it impossible for the public prosecutor to be able to prosecute someone who the investigator has been suspected of committing a certain crime.

If a civil servant or state administrator has received the gratification, there is

already an element of an unlawful nature, but this is invalidated if the recipient reports to the KPK for 30 (thirty) days after receipt, then they cannot be convicted. Or in other words, the suspension of prosecution does not apply and can be abolished because the requirements for reporting gratuities received to the KPK have been fulfilled.¹⁸

The reason for the abolition of prosecution can not only be used to abolish the punishment for the perpetrator (the person as the subject), it can also be used for the elimination of punishment for his actions (as the object). And this is what makes the reasons for the abolition of the crime to be distinguished between the inability of the perpetrator to be convicted of the act. In this study, article 12 C Paragraph (1) of Law Number 20 the Year 2001 concerning the Eradication of Corruption is included in the reasons for eradicating prosecution. Because in this article there is no element of justification and excuse. Because the crime of gratification is not a criminal act that has elements of forgiveness and justification. However, it is included in the reason for eliminating prosecution because even

¹⁷ Lastiar Rudi H B*, Nyoman Serikat Putra Jaya, Budi Wisaksono, Kebijakan Formulasi Hukum Pidana Tentang Penerimaan Gratifikasi Dalam Tindak Pidana Korupsi (Studi Kasus Putusan Nomor 7 / PID. SUS-TPK / 2015 /

PN DPS.), Diponegoro Law Journal, Volume 5, Nomor 4, Tahun 2016.

¹⁸ <https://www.kpk.go.id/images/pdf/kajian-implem-tasi-pasal-gratifikasi-KPK2019-preview.pdf>, Diakses terakhir pada 01 Mei 2020 Pukul 12:32

though there is still a criminal element, it can be erased because of the existence of Article 12 C Paragraph (1) of Law Number 20 Year 2001a concerning Eradication of Corruption Crime.

Based on the sound of Article 12 C Paragraph (1) which states that the provisions as referred to in Article 12 B Paragraph (1) cannot apply if the recipient of the gratification has reported the gratification he received to the Corruption Eradication Commission. Then in Paragraph (2) states, reporting the gratuity that has been received as referred to in Paragraph (1) must be made by the gratification recipient no later than 30 (thirty) working days from the date the gratification is received. Then in Article 12 C Paragraph (3) states, that the Corruption Eradication Commission within 30 (thirty) working days from the date of receiving the report is obliged to determine that gratuities can belong to the recipient or belong to the state.

CONCLUSION

The Legis Ratio of the application of Article 12 C Paragraph (1) of Law Number 20 Year 2001 concerning the Eradication of Corruption Crime is used as an excuse to abolish prosecution due to the provisions in Article 12 C Paragraph (1) because basically this article is neither a justification

nor a excuses for forgiveness, so there is no thought about the nature of the act or the nature of the person who did the action, but the government considers that the basis for its utility or benefit to society should not be prosecuted. In the event that the power to sue is abolished, an act is still a criminal act, but under certain circumstances, the said act can no longer be prosecuted. And if it can be proven that the gift is a gratification then it has fulfilled the elements of a criminal act. However, the recipient of the gratuity was not set free but was free from all lawsuits. An unlawful nature of the act of gratification can disappear by itself because the construction of Article 12 C Paragraph (1) of Law Number 20 the Year 2001 requires this. Article 12 C Paragraph (1) states that if there is a receipt report 30 days after receipt of the gift, there will be no punishment. The loss of the unlawful nature of the giver of gratification in Article 12 C Paragraph (1) is related to the existence of a gratification recipient's report, namely the giver still has an unlawful nature for the act of giving gratification, while the existence of a gratification recipient's report is not an excuse to eradicate prosecution. However, the reason for removing the prosecution is aimed at the recipient of the gratuity. Waiver of prosecution does not apply and can be abolished

because the requirements for reporting gratuities received to the KPK have been fulfilled.

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