

 <p>ISSN NO. 2320-5407</p>	<p>Journal Homepage: -www.journalijar.com</p> <h2 style="text-align: center;">INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)</h2> <p style="text-align: center;">Article DOI:10.21474/IJAR01/10239 DOI URL: http://dx.doi.org/10.21474/IJAR01/10239</p>	 <p>INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR) ISSN 2320-5407 Journal Homepage: http://www.journalijar.com Article DOI:10.21474/IJAR01/10239</p>
---	---	---

RESEARCH ARTICLE

RECONSTRUCTION OF GRATIFICATION AS BRIBERY IN THE INDONESIAN ANTICORRUPTION LAW BASED ON THE VALUE OF DIGNIFIED JUSTICE

Dina Irawati¹, Prof. Dr. Teguh Prasetyo SH. M.Si² and Dr. H. Amin Purnawan SH. CN. M. Hum³

1. Ph.D Student at the Faculty of Law Universitas Islam Sultan Agung Semarang (Unissula) Semarang-Indonesia.
2. Professor of Law, Faculty of Law Universitas Pelita Harapan, Karawaci-Indonesia and Commissioner of DKPP-RI.
3. Associate Professor in Law, Faculty of Law Universitas Islam Sultan Agung Semarang (Unissula) Semarang-Indonesia.

Manuscript Info

Manuscript History

Received: 12 October 2019

Final Accepted: 14 November 2019

Published: December 2019

Key words:-

Reconstruction, Gratification, Bribery, Pancasila, Dignified Justice

Abstract

Conception of Gratification has been perceived as a formulation (constructed) of a concept similar to bribery in the law governing the prohibition of corruption in Indonesia. There is no term of Gratification one could find in the Law No. 20 of 2001 on Corruption Eradication. In fact the term has been misleadingly constructed or even generally understood as bribery; a kind of corruption, as we were thought, can be found in the formulation of positive legal provisions contained in the Article 12B of the Anticorruption Law. It was formulated in the Anticorruption Law that; "Any gratuity to a civil servant or state's high officers is considered a bribe, if it relates to his position and is contrary to his obligations or duties". This construction must be reconstruct. By reconstruction is meant as returning something to its original place, rearranging or redrawing from existing materials and rearranging as is or returning to the original event. The reconstruction relating to the concept of Gratification as synonymous to bribery, a type or form of a criminal act of corruption in order not to be confused with the popular belief that has been upheld for about 18 years after its stipulation in the new Indonesian Anticorruption Act, or the Law Number 31 of 1999 jo Amended Law Number 20 of 2001.

Copy Right, IJAR, 2019,. All rights reserved.

Introduction:-

In May 2013, Joko Widodo (Jokowi), who was then the Governor of Jakarta, received a gift in a form of bass guitar with brands Ibanez. It was Robert Trujillo's guitar. Trujillo a member of the band of which the idol rock group of Jokowi, namely Metallica. The guitar was given by Jonathan Liu, a promoter of the Metallica Concert event in Jakarta. The guitar's with a stamped signature was inscripted with a message from Trujillo: "Giving back! To Jokowi, Keep playing that cool funky bass!"

After receiving the gift, a few days later, Jokowi reported the gift to the Corruption Eradication Commission (KPK). The purpose of the report made by Jokowi, besides fulfilling the provisions of the laws and

Corresponding Author:- Dina Irawati

Address:- Ph.D Student at the Faculty of Law Universitas Islam Sultan Agung Semarang (Unissula) Semarang-Indonesia.

regulations, was also intended for the gift to be assessed by the KPK. The assessment is carried out in order to find out whether he (Jokowi) deserves to accept the prize, free of any suspicious criminal motives or *quid pro quo*. In this term, the gift could be considered as bribery, which in the Indonesian legal system was given a synonymous word to Gratification, which is a criminal act of corruption, an extraordinary crime that is prohibited in Indonesia.

It may be that, on the one hand, Jokowi's actions as described above, namely reporting the gift from Jonathan Liu to the KPK was an act that "at odd" in the eyes of ordinary people or the general public. While on the other hand, the action taken by Jokowi was thought as a necessity in law. Especially the law governing corruption. So, legally, the act of reporting a gift in the form of a guitar by Jokowi was an act that is legally required.

The Acts of the other State Officials or Public Servants, as carried out by Jokowi, are regulated in the Corruption Crime Act that applies in Indonesia. The report of the gift by Jokowi was the action that must be carried out every State Operator or Civil or principal Public Servant who receives a gift or any similar things. In connection with the problem of this research article, the report by Jokowi can also be seen for the purpose of ensuring that the gift in the form of the guitar is not a Gratification, which is considered also as similar to not a bribery. As is known, Gratification is still seen as being identified with the type of bribery as prohibited by the Corruption Act in force in Indonesia i.e. the Act or the Law Number 31 of 1999 jo Amended Law Number 20 of 2001.

That is the juridical issues, which can also be seen as the background of the problem in the context of writing this research article. One of them is the lack of clarity of understanding or construction among ordinary people or in this article we termed it as the men in the street, or a general view regarding what is meant by the concept of Gratification. Why this conception of Gratification is formulated (constructed) as a concept similar to bribery in the Law governing the Prohibition of Corruption in Indonesia.

Misleading of Construction or Understanding of Gratification:

There is no term of Gratification one could find in the Law No. 20 of 2001 on Corruption Eradication. In fact the term has been misleadingly constructed or even generally understood as bribery; a kind of corruption, as we were thought, can be found in the formulation of positive legal provisions contained in the Article 12B of the Anticorruption Law. It was formulated or constructed there, in the Anticorruption Law that; "Any gratuity to a civil servant or state's high officers is considered a bribe, if it relates to his position and is contrary to his obligations or duties".

The formulation or the construction of the legal provisions that apply as stated above, seems to be contrary to what is already common knowledge. It is common in Indonesia that in the culture of Indonesian society, gift giving or offerings which can also be referred to as Gratification in the midst of society must be understood as intended as a sign of gratitude, tips, and so on. And this phenomenon is a commonplace, besides being noble. Giving tips for tasks done by any hotels employees, not only in Indonesia but throughout the world is not a violation of the norm. When people take a taxi in London, for instance, everyone should be aware that in addition to the costs listed on the Taxi meter, there is also a kind of "customs expectation" to be fulfilled. Therefore giving rise to expectation from the Taxi driver in the city of London for them to get tips from customers or passengers of his or her Taxi.

Indeed, in the view of the teachings of religion, there are also views that are slightly different from the views that are common in the community above. An Islamic economist, named Syafii Antonio, considered gift, can be rated as things unclean. That is if the condition of the giver and receiver is known to be a vertical relationship or a relationship that is from "bottom" to "top". Gifts that can be categorized as unclean exemplified by an Islamic Economist as: if there is a gift that comes from a subordinate to the boss, or gifts of any kind from the taxpayer to the tax authorities, or gift from the people to the authorities, and so on.

The prohibition or impropriety of gifts or gifts made by those who are in the "below", to those who are in the "above", lies in the existence of an unwanted intention. The purpose of illegal means, namely to meet the expectations of the recipient (the party in the "above") who expects a reward from the party that is in the "below". There is an obligation to provide "rewards", both material and non-material, for services performed by those party in the "above". In addition, grant or gift in question, also based on the motif or instance, to accelerate business interests, to ride a rank or position, authorization or decision of a superior, and all matters relating to the scope of "subordinate to the boss".

Even though on the one hand there is a view about the categorization of the giving of gifts or gratuity according to the teachings or perceptions of the scholars, but according to the views of the existing scholars, one can also find the view that if gift giving or in this case can be likened to Gratification it happens “from the top to the down”, or to each other. This was previously Gratification and is allowed. Gifts or gratuities by rich people give to poor people, or gifts from bosses to employees or gifts made between friends. The reason is that the Gratification is justified by a good cause. Because such a gift is not a gift accompanied by strings attached, or a general term that is often used for that, there is a “shrimp behind a stone”. Giving gifts like what had just pointed out above that, based on fostering brotherhood, friendship, and affection alone is a Gratification and simply not a bribery.

The above description shows that understanding that Gratification on the one hand is prohibited in State law. However, on the other hand it is different from the general view which seems to encourage Gratification or gift giving. The ban on giving gifts giving seems to be the same as the attitude of Islamic law. There is a view that Rasulullah SAW very firmly forbade his friends to accept gratuities. The history of A Bu Humaid as-Sa'idi, for example, told of the existence of one of the Al-Azdi tribes named Ibn Lutbiah. This person was assigned to collect zakat.

After he returned, he reported and handed over the zakat collected from Baitul Mal. That person, Ibn Lutbiah said: “This is their zakat payment, then this one is for me because this is a gift from the obligatory alms to my person”. Hearing what Ibn Lutbiah was doing, the Prophet Muhammad was angry. Rasulullah SAW ordered Ibn Lutbiah to return the gratification he had received. Rasulullah SAW said: “Try him (Ibn Lutbiah) just sit in the house of his father or mother. Will anyone give (gratification) to him?”. So what is proposed by H. R. Muslim Bukhari.

It appears from the description as stated above, that there is a blurring of understanding of a legal concept, namely the ambiguity of understanding in the principle of legal regulation concerning Gratification as a form or type of similar to bribery as an act of corruption. As has become general knowledge, Gratuities concept is a concept juridical. The juridical conception has been constructed or formed and institutionalized in Indonesian positive law.

Formulated with another formulation but having the same meaning, Gratification has been misleadingly regarded or criminalized as a type of criminal offense in Indonesian positive law. Formulated with positive law, which is the law in force, at the moment and must be followed by the community in the place and in the current period. Non-compliance with positive law is a sanction for those who do not comply. Compliance presupposes that what set it is what is clear, bright and with certainty.

However, it appears in the picture stated above that there is a blurring of the meaning of the concept in the applicable legal arrangements and which must be binding with full certainty. On the one hand, the understanding that is constructed in ordinary people is that gratification is permitted or even encouraged because the gift giving is a form of noble deed. But on the other hand, contrary to the views of society, positive law and also religious views firmly emphasize a construction that is contrary to the layman's view, that all forms of Gratification are prohibited. The action against the ban as it is not only considered as a crime, but more than that, is an evil that is beyond despair. Categorized as extraordinary crime, because what is called corruption is an extraordinary crime (extraordinary crime).

The blurring of the meaning or lack of clarity of understanding and multiftafsirnya pengertian or construction given to the concept of Gratification, as noted above, the reason is also to carry out a scientific investigation. It is hoped that with scientific research and scientific argumentation in the field of legal science, rational and objective reasons can be found, which exist and are explored and found in the Volksgeist.

What can be found in the Indonesian Volksgeist, is expected to be in accordance with the direction contained in various theories used in this study, especially the theory of Dignified Justice or the Dignified Justice Theory/Philosophy/Legal Science or the Dignified Justice Jurisprudence. The findings by using this scientific theory, is expected to be find a solution or problem solving or a reconstruction.

A kind of providing an explanation and illuminate the obscurity or darkness of the meaning or construction of Gratification in the legal system as stated above. Therefore, this study takes the title as mentioned above. Several problems have to be reconstructed as mainly why principle of regulating the concept of gratification as bribery or the form of corruption is not yet been based on the value of dignified justice.

By reconstruction is meant as returning something to its original place, rearranging or redrawing from existing materials and rearranging as is or returning to the original event. Simply put, the reconstruction relating to the concept of Gratification as synonymous to bribery, a type or form of a criminal act of corruption in order not to be confused with the popular belief meaning that has been upheld for about 18 years after its stipulation in the new Indonesian Anticorruption Act, or the Law Number 31 of 1999 and Amended Law Number 20 of 2001.

Ontological Notion of Gratification:

Gratuity is essentially the same as giving or giving. During development, the concept of gratification is divided into two. First, that is positive gratuity. It is a gift given with sincere intention from one person to another without strings attached. This means giving in the form of a "sign of love" without expecting anything in return. Gratification, which was originally just a pure concept of Gratification, and is now classified as Positive Gratification, which is reasonable Gratification. Especially in the business world, when a state official goes abroad then invited to dinner, it can be interpreted as a gratuity.

In this regard, the Law contains regulations regarding the types of gratuities that are not required to be reported to the KPK. This is in line with the KPK's letter No. B-143 in 2013 on Guidelines for Control of Gratification. There has been twelve kinds of acts that are not to be reported to the Commission, and seems to be a positive Gratification, provided that no conflicts of interest would exist. Acceptance of wedding, birth, aqiqah, baptism, circumcision, and tooth cutting, or other traditional/religious ceremonies with a maximum value of Rp. 1,000,000,00. Gifts relating to disaster or disaster with a maximum value of Rp. 1,000,000,00. Giving from fellow employees at the welcome, retirement, promotion, and birthday separations in the form of non-cash at the maximum amount of Rp. 300,000.00 with a total giving of Rp. 1,000,000 in one year from the same giver. Giving from fellow co-workers in the form of other than money with a maximum value of Rp.200,000.00 with a total gift of Rp1,000,000.00 in one year from the same giver.

Provision of dishes or offerings that are generally accepted, nor is the Gratification prohibited. Provision of academic or non-academic achievements that are followed, using their own costs such as championships, competitions or competitions that are not related to service. Receipt of profits or interest from generally accepted fund placement, investment or private stock ownership. Receipt of benefits for all cooperative participants or employee in organizations based on generally accepted membership.

Furthermore Gratifications that are not required to be reported to the KPK are: seminar kits in the form of a set of modules and stationery as well as certificates obtained from official activities such as meetings, seminars, workshops, conferences, training, or other similar activities that are generally accepted. Acceptance of gifts, scholarships or benefits in the form of money or goods related to the improvement of work performance provided by the Government or other parties in accordance with applicable laws and regulations. The types of receipts that do not need to be reported to the KPK subsequently, namely the gifts obtained from compensation for non-official occupations, which are not related to the duties and functions of officials/employees, do not have a conflict of interest, and do not violate internal rules or codes of conduct of the agency. Outside the twelve types of gratuities as stated above, the gratification that must be reported to the Commission. The second type of gratification was born, Criminal Gratification.

Meanwhile act of corruption must meet the following elements: everyone; enrich him/herself, others, or a corporation; by way of breaking the law; may be detrimental to the country's finances or the country's economy. For this reason, Article 3 of Law Number 31 of 1999 concerning Anticorruption Law, and latter has been amended by the Law Number 20 of 2001 formulating the notion of Corruption as any person who has the purpose of benefiting himself or another person or a corporation, misusing the authority, opportunity or means available to him because of his position or position that can harm financially the State or the State's economy, shall be liable to life imprisonment or imprisonment of at least one year and a maximum of twenty years or a fine of at least fifty million and a maximum of 1 billion rupiahs.

Forms or types of corruption, as follows: exactions of the offenses, the corruption of state money, evade taxes and customs, government bribery; illegal types of criminal charges that are difficult to prove, namely commissions in bank credit, project tender commissions, service fees for licensing, promotions, and even fees for travel money, extortion at interception points on roads, ports and so on; illegal charges of unauthorized levies made by the Government done without the provision according to local regulations, but only with the letters decision; bribery, i.e. an offering of money or other services to someone or his family for a service for the services giver; Pe merasan, demand payment of money or other services in exchange or reciprocal facilities granted; theft, that is, those in power abuse their power and steal people's property, directly or indirectly; nepotism, the people in power gives power and facility to the family or relatives of his. An act of unjustified enrichment oneself could consequently leads also to corruption. It has been stipulated in the Article 2 of Law No. 31 of 1999, especially the state loss are not as essential elements in Article 3. There are also corruption in the form of trading in influence. This corruption is regulated as the new type of corruption by demonstrating influence is the act of intentionally promising, offering, giving to a public official or another person, directly or indirectly, an undue advantage, so that the public official abuses his real or expected influence to gain an undue advantage for the original instigator of the act or for others.

In order to examine what have been mentioned above, these authors is using the theory of Dignified Justice. Theory of Dignified Justice is not the definition of a type of justice. However, the theory Dignity Justice is a name of the legal theory/science of law. The theory of law or theory of law is essentially the same as the philosophy of law (philosophy of law or legal philosophy), as well as jurisprudence or legal science and legal science.

As a theory of law (theory of law), or legal science (legal science) or legal philosophy, the theory of Dignified Justice or often also abbreviated with Dignified Justice has a function. The function, namely to help people (the jurists) in understanding and explaining or giving justification, and possibly also falsification legally various kinds of problems in human life in society, nation and state. Including, in this activity, understanding and explaining how the reconstruction of the principles of gratification as a bribe or a criminal act of corruption have not been based on the value of Dignified Justice.

As a legal theory, the theory of Dignified Justice has a number of postulates or beliefs in the important field of legal science. The following, put forward some of the postulates in the systemic theory of Dignified Justice. A postulate is a statement about the truth that is indisputable. People often call it axiom.

Firstly, according to the perspective of the theory of Dignified Justice, it is stated that if people (jurists) want to find the law, then the law must be sought in the soul of the nation (Volksgeist). Intended by the Volksgeist, according to the perspective of the theory of Dignified Justice, namely the applicable laws and regulations, and court decisions. It is hoped that what will be examined and studied will be court decisions in a jurisdiction that are examined or sought by law, which have permanent legal force.

The law to be sought, is the law that governs, or the law that provides explanations as well as the law that contains explanations and justifications, namely philosophy or jurisprudence concerning: reconstruction of the principle regulating Gratification as Bribery based on the virtue of dignified justice.

Secondly, in the perspective of the theory of Dignified Justice explained that the purpose of law, including what is sought is the law, is the truth in the form of justice with dignity. The concept of dignified justice is well known as justice which humanizes humans (nguwongke uwong). Such justice is found in every civilized nation's soul (Volksgeist), including and especially those sourced from Pancasila as the source of all sources of law in the Pancasila Legal System.

Civilized humanity, a major pillar of human effort in rational societies to humanize human beings (nguwongke uwong) should not be seen as an ideology or an ism; an indication of political propaganda that only wants to perpetuate power. Ideology is an ideal if it cannot be achieved, reached or attempted and carried out by those who are determined to carry it out, then that is okay; there are no sanctions and cannot be forced.

Civilized humanity a juridical formulation; a first agreement of a nation, an agreement. The agreement is a law for those who make it, thus, must be implemented. If not implemented, it is a violation of the agreement; something

shameful. Because it is a violation, its implementation can be imposed by a State instrument. This is a general legal principle that is recognized by all civilized nations in the world.

Likewise, as a juridical formulation, civilized humanity must be managed by those determined to work on it. If it cannot be tried, then those who promise/swear to carry it out (generally politicians in Political Campaigns) will receive legal (political) sanctions, forced to carry it out according to applicable law. Instead, forcing an ideal to be implemented is a violation of human rights, a “step” that cannot be accepted by civilized and rational people.

As mentioned above, there are problems which are still related to Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning Anticorruption Law. One of them is regarding the provisions of criminal gratuity which are considered as bribes. In principle, the repayment of state financial losses or losses of the state economy as regulated in Article 4 of the Anticorruption Law does not eliminate the criminal provisions in relation to criminal provisions in Articles 2 and 3.

It is conceivable, if gratuities that are considered bribes have been received, there could have been acts that were contrary to the obligations or duties of the recipient and potentially detrimental to the state. However, the criminal provisions did not apply because gratuities that were considered bribes were immediately returned by the recipient within 30 days. Let's say the recipient in this 30-day timeframe sniffs that there is a possibility that the KPK will be examined. Thus, the recipient is free from criminal charges. We can also imagine from the gratification side that is considered a bribe, it can still be tried using the provisions of Article of 5 paragraph (1) letter (b) of the PTPK Law. This situation is odd, considering that at the same time the recipient of a bribe can freely swing.

If the gratification that is considered a bribe that has been received does not include state financial losses and state economic losses as referred to in Article 4 of the Anticorruption Act, why in criminal provisions Article 5 and 12 of the Anticorruption Law which is the parent provision of criminal provisions concerning bribery, is not there is a criminal elimination mechanism as well as the provisions of this gratification. Such an arrangement is certainly illogical.

The categories of the types of corruption are: i) State financial losses; ii) bribery; iii) embezzlement in office; iv) extortion; v) cheating; vi) conflict of interest in procurement; and vii) gratification. If examined closely, it appears that from these various types of corruption regulated in the law in Indonesia, Gratification is a relatively new category or type in the regulation and enforcement of criminal acts of corruption in Indonesia. There is a possibility, novelty, or the recent emergence of Gratification as a type of criminal act of corruption similar to bribery that has become a cause of the general assumption and confusion and that therefore this new regulation of Gratification has been considered as not dignified. It is said that it is not based on dignified justice because it is as if the regulation regarding Gratification has already become a type of criminal act of corruption, therefore has been considered as something foreign, not in accordance with the values in the Indonesian society.

Research on the Statutory Explanation to the Article on regulating the generally understood as Gratification found the fact that Gratification is not similar to a form of criminal gift. If it is similar to criminal gift, this is surprisingly vague, as generally understood, a gift is a gift, there is no what soever elements of crime in it. Giving which is the meaning of Gratification is Giving in a broad sense. Too much meaning of Gratification as such has also become a contributing factor for the undignity of the justice in the regulation. And in turn has been yield to the idea that the regulation has not been based on the principle of dignified justice. It has also been considered as irregularities to the values that live in Indonesian society.

According to the existing arrangements, if there are gifts such as giving money, goods, rebates, commissions, interest-free loans, travel tickets, lodging facilities, travel tours, free medical treatment, and other facilities, which are accepted domestically and abroad and those carried out using electronic means or without electronic means; then the first impression that arises in this way of formulation is that all of the things mentioned are types of crimes that fall into the Gratification category.

There is an impression that such an arrangement is contradictory or goes against the grain against the values of giving and the habit of giving in Indonesian society. This is a sign of what is called the not yet dignified principle of regulating Gratification. On the one hand, the community considers, and becomes common knowledge, that gift

giving is a common and even commendable thing. This was acknowledged by the KPK that although it had been explained in the law, apparently there were still many Indonesians who did not understand the definition of gratification, even experts were still debating this.

Presented as the results of an empirical records, in the history of the archaic law of Gratification, which can be used as one of a wide range of examples of the practice of granting gratuities in Indonesia found in a Codes of a Buddhist monk. Referring to the historical record as mentioned above there developed knowledge in history that the existence of Gratification was stems from the investor relations group that controls the armed Srivijaya kingdom. At that time, Gratification was used to facilitate communication with the officials Srivijaya kingdom. Gratuities were carried out using the medium of exchange in the Srivijaya kingdom and came to known in Malay as “taels”. This medium of exchange is a sign of “bonding” and sincerity from the investor or business men and women who want to meet with State officials.

The giving of silver coins then becomes a habit, or in juridical construction it can be seen as a “language” of greetings, a sign of intimacy and sincerity every time communication occurs. For traders or investors, such a thing is not an obstacle, yet it is given with sincerity. It's just that in the construction of historical records stated earlier, things like this are not revealed. However, if reconstructed, giving a “sign” has no other purpose.

However, the historical record that has been stated above does reveal that with the passage of time there is a suspicion, or perhaps an unfavorable prejudice, that the habit of receiving gratuities or giving in the form of marks as stated above has made the authorities, in this case the soldiers who was a close relative of the Srivijaya kingdom who, of course, was armed, felt entitled to ask for gratuity. The request from the authorities who are close relatives of the Work Fund mentioned above did not realize that when the Gratification was given under the request of the army, or the soldiers, the Gratification requested by the weapon holder could change from solely a gift to facilitate communication to a form of obligation because it is forced.

As for what is meant by circumstances forced to have turned into not because of sincerity anymore, is not a “token of good faith” anymore. Not to mention, as stated earlier, because those who ask for “signs” are those who hold “weapons”, a symbol of authority or violence. Changes in meaning and changes in values from “tokens of good faith” that are voluntary, kebatinan and closed and sincerity has changed “color” or motive into something that is mandatory and is open giving. So that in the early historical construction, Gratification is acceptable, and is a good thing, a sign of goodness that has changed or transformed into a compulsion.

This reconstruction actually has become the basis for the establishment of restrictions in the Kingdom of Srivijaya in the past. It's just that, in the construction of history that can be read, there is no information at all that the process of transformation of the meaning of Gratification in the Kingdom of Sriwijaya was then turned evil, and for that, there was no regulation to prohibit gratification.

Paying attention to the context of Indonesian culture in which there is a general practice of giving gifts to superiors and there is an emphasis on the importance of personal relationships, the culture of gift giving according to Verhazen is easier to lead to bribery. This construction when reconstructed, or brought back to its true meaning, Gratification is not a bribe. So it is very strange if in construction it says Gratification is the same as Bribery. Appears, as stated earlier, the Harkristuti view regarding gift giving or Gratification which reveals the development of gift giving that has nothing to do with superior-subordinate relations. In fact, that is actually the structure of giving gifts. Even though the two parties are equal, because one needs the other, the “language” of communication in the Gratification always requires the giver to “put” his position and status in the “under” position or give in. Because, that's the way “language”, which must be spoken, is in reconstruction.

Therefore, it is important to point out here in the reconstruction, that gratification is essentially only a sign of gratitude and appreciation (a token of good faith) to someone who is considered to have provided services or give pleasure to the gift giver. It is only a gratuities experiencing growth in the acceptor of the service. This temporary reconstruction, also referred to here, needs to be reconstructed, so that the regulation of Gratification in Indonesia will eventually become a model of regulation based on the value of dignified justice or according to the law. In deed based on the value of dignified justice is to meant in accordance with the Volksgeist.

Reconstruction also eliminates the misconception that there are no weaknesses in the regulation regarding Gratification in Article 12B of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 which prohibits the practice of Gratification or gift giving in Indonesia, therefore the principle of regulation is still based on the value of dignified justice. Because, in essence, from the perspective of the Dignified Justice Jurisprudence, in the reconstruction as stated above, the practice of gratification or gift giving in the Anticorruption Law was indeed in crystal clear not prohibited.

The reconstruction emphasized that the regulation of Gratification which seemed to be a weakness because it prohibited giving actually only had the purpose of forming additional signs. As stated earlier, the establishment of additional signs is intended to specifically and specifically prohibit civil servants/state administrators from accepting bribes. Therefore, based on reconstruction, it is clear that Gratification is not a bribe. The gratuity is a sign of the possibility of a relationship between the giver and the recipient up the stairs leading to Bribery as a criminal act of corruption.

Conclusion:-

There are many causes for the emergence of responses and judgments and perceptions of the men in the street or the general view that the principle of regulating Gratification is similar to bribery as a form of corruption in Indonesia, therefore it is not based on the value of Dignified Justice. One reason is that the existing meanings, both the meaning of the concept of Gratification and the meaning given to the concept of Bribery in the Anticorruption Law has been considered as similar. In fact this study using the theory of Dignified Justice has found that Gratification was in essence not similar to the concept of Bribery in the Pancasila Legal System.

Bibliographies:-

1. Adami Chawazi, Hukum Pidana Materiil dan Formil Korupsi di Indonesia, Bayu Media, Jakarta, 2005;
2. _____, Hukum Pembuktian Tindak Pidana Korupsi, Alumni, Jakarta, 2008,
3. Andi Hamzah, Perbandingan Pemberantasan Korupsi di Berbagai Negara, Sinar Grafika, Jakarta, 2005;
4. Aziz Syamsuddin, Tindak Pidana Khusus, Sinar Grafika, Jakarta, 2011;
5. Baharuddin Lopa, Kejahatan Korupsi dan Penegakan Hukum, Buku Kompas, Jakarta, 2001;
6. BambangPurnomo, HukumPidana, Liberty, Yogyakarta, 1982;
7. Barda Nawawi Arief, Beberapa Aspek Kebijakan Penegakan Hukum dan Pengembangan Hukum Pidana, Citra Aditya Bakti, Bandung, 1998;
8. _____, Bunga Rampai Kebijakan Hukum Pidana, Cipta Aditya Bakti, Bandung, 1996;
9. _____, Perbandingan Hukum Pidana, RajaGrafindo Persada, Jakarta, 2002;
10. _____, Korupsi dan Upaya Penegakan Hukum (Kapita Selekta), Adika Remaja Indonesia, Jakarta, 2007;
11. Buku Saku KPK, Memahami Gratifikasi, diterbitkan oleh KPK, Jakarta, 2010;
12. Chaerudin, dkk., Strategi Pencegahan & Penegakkan Hukum Tindak Pidana Korupsi, Refika Adhitama, Bandung, 2008;
13. Darwan Prinst, Pemberantasan Tindak Pidana Korupsi, Aditya Bakti, Bandung, 2002;
14. Doni Muhahardiansyah, dkk, Buku Saku Memahami Gratifikasi, Komisi Pemberantasan Korupsi Republik Indonesia, Jakarta, 2010;
15. Ermansjah Djaja, Memberantas Korupsi Bersama KPK, Sinar Grafikan, 2010;
16. Hartanti, Tindak Pidana Korupsi, Sinar Grafika, Jakarta, 2006;
17. Hendarman Supandji, Korupsi dan Penegakan Hukum, Makalah Seminar Nasional: Korupsi antara Kausatif dan Simptomatik, Jakarta, 29 Juni 2006;
18. Hikmahanto Juwana, Mengadili Para Koruptor di Mahkamah Internasional, Sebuah Alternatif-Bunga Rampai Hukum Ekonomi dan Hukum Internasional, Lenterae Hati, Jakarta, 2002;
19. Komisi Pemberantas Korupsi, Mengenali & Memberantas Korupsi, KPK, Jakarta, 2012
20. Hans Kelsen, General Theory of Law and State, diterjemahkan oleh Rasisul Muttaqien, Nusa Media, Bandung, 2011;
21. Lilik Mulyadi, Pembalikan Beban Pembuktian Tindak Pidana Korupsi, Alumni, Bandung, 2007;
22. Majid Khadduri, The Islamic Conception of Justice, The Johns Hopkins University, USA, 1984;
23. M. Khoidin, Uang Terima Kasih, Hibah, Suap-Menyuap dan Korupsi, Artikel dimuat dalam Harian Suara Karya, tanggal 27 Agustus 2013;
24. Moeljatno, Kitab Undang-Undang Hukum Pidana, Bumi Aksara, tanpa kota terbitan, 2002;
25. Musni Umar dan Syukri Ilyas, Lembaga Pencegah Korupsi, Gramedia Pustaka. Jakarta, 2004;

26. Muchsin, Nilai-Nilai Hukum dalam Pembangunan Nasional Indonesia, Tanpa Penerbit, Tanpa Tempat Penerbit, tanpa tahun penerbitan;
27. Muladi, Gerakan Abolisionis Ancaman Non Represif terhadap Kejahatan, Makalah Ceramah Ilmiah, Fakultas Hukum Universitas Tujuh Belas Agustus 1945, Semarang, 1988;
28. Muladi dan Barda Nawawi Arief, Teori-teori dan Kebijakan Pidana, Alumni, Bandung, 2005;
29. Salahuddin Wahid, Islam dan Gratifikasi, Makalah yang disampaikan pada Expert Meeting dengan Direktorat Gratifikasi KPK, 10 Juni 2015;
30. Sudarto. Hukum Pidana 1, Yayasan Sudarto Fakultas Hukum Universitas Diponegoro, Semarang, 1990;
31. Soerjono Soekanto, Kriminologi Suatu Pengantar, Ghalia Indonesia, Jakarta, 1981;
32. Teguh Prasetyo, Hukum Pidana: Edisi Revisi, Radja Grafindo Persada, Depok, 2013;
33. _____, Keadilan Bermartabat, Perspektif Teori Hukum, Nusa Media, 2015, Bandung;
34. _____, Sistem Hukum Pancasila (Sistem, Sistem Hukum dan Pembentukan Peraturan Perundang-Undangan di Indonesia), Perspektif Teori Keadilan Bermartabat, Cetakan Pertama, Nusa Media, Bandung, 2016;
35. _____, Metode Penelitian Hukum dalam Perspektif Teori Keadilan Bermartabat, Cetakan Pertama, Nusa Media, Bandung, 2019;
36. Wirjono Prodjodikoro, Asas-Asas Hukum Pidana di Indonesia, Refika Aditama, Bandung, 2003.