

 <p>ISSN NO. 2320-5407</p>	<p>Journal Homepage: -<a href="http://www.journalijar.com">www.journalijar.com</a></p> <p><b>INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)</b></p> <p>Article DOI:10.21474/IJAR01/10642 DOI URL: <a href="http://dx.doi.org/10.21474/IJAR01/10642">http://dx.doi.org/10.21474/IJAR01/10642</a></p>	 <p>INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR) ISSN 2320-5407 Journal Homepage: <a href="http://www.journalijar.com">http://www.journalijar.com</a> Journal DOI:10.21474/IJAR01</p>
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### RESEARCH ARTICLE

## THE PRINCIPLE OF GRATIFICATION IN INDONESIAN CORRUPTION LAW BASED ON DIGNIFIED JUSTICE VALUES

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### Manuscript Info

#### Manuscript History

Received: 10 January 2020

Final Accepted: 12 February 2020

Published: March 2020

#### Key words:-

Gratification, Corruption, Dignified Justice Value

### Abstract

Giving gratuities to individuals who have become a norm in Indonesian community is a real condition, so as to produce the principle of gratification in a dignified justice based on corruption, a reconstruction is needed to separate between gratification as a criminal act of corruption and gratification as part of culture. Therefore, in this study the writer formulates the problem into What are the weaknesses that arise in the regulation of gratification in gratification in the Law on the Eradication of Corruption and the How to Reconstruct it. The study was done using the constructivism paradigm and the type of research is a qualitative study with a socio-legal approach. Research shows that the weaknesses are caused by two factors: first, a lack of in-depth knowledge (comprehensive) of the limits of recommendations and restrictions, especially in terms of the laws relating to gratification itself. Second, from the cultural aspect, because of the strong Indonesian culture of gratification is inseparable from the habits of the people who have been entrenched, whether it is realized or not. Therefore the formulation of gratification and bribery sentences in Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption must be reconstructed to make it clearer by paying attention to the Meeting of Mind or intentions held by the giver and the recipient based on the condition and time.

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### Introduction:-

Law Number 31 of 1999 which has been amended by Law Number 20 of 2001 concerning Eradication of Corruption Crimes clearly formulates 30 forms / types of corruption, including one of which is gratification. that the crime of gratuity in Law Number 20 of 2001 concerning Eradication of Corruption Crimes is referred to as Corruption Crime. Civil Servants Receive Gratification as regulated in Article 12B jo. Article 12C of Law Number 20 Year 2001 concerning Eradication of Corruption Crimes. Giving gifts to state officials, or now better known as aesthetics of the urban environment. the same also applies to online prostitution.

gratification can not be separated from the culture that has been owned by the Indonesian people. However, until now there has been no specific law made. In a cultural context, giving gifts or gifts is a natural thing to do and become part of the eastern culture which is thick with hospitality. Therefore, if we analogize this matter more

closely, then what has become this culture does not necessarily have to be eliminated just like that, unless the gift made contains other elements relating to the individual's desire to launch the tender process, he wants to be increased his rank, and his interests are prioritized by public officials. So if we respond to the problem of gratification, caution is needed, lest it is because of the desire to show seriousness in the enforcement of corruption, the application is then beaten evenly to all officials. If this happens then it can be said that gratification itself is one of the nation's criminalized cultures.

Associated with the theory of dignified justice, we must note that in the science of law there are several layers that are interrelated and constitute a unity, namely legal philosophy, legal theory, law dogmatics and law and legal practice. Giving gratuities to individuals who have become a norm in this community is a real condition, so as to produce the principle of gratification in a dignified justice based on corruption, a reconstruction is needed, the separation between gratification as a criminal act of corruption and gratification as part of culture.

In a modern legal state the main task of the state lies not only in the implementation of law, but also in achieving social justice (*sociale gerechtigheid*) for all people, legal and legal protection is applied in accordance with the culture of the local community. The gratification is already in effect and has deep roots as a habit and culture in the traditions of the Indonesian people that are commonly practiced by the community as a form of mutual respect, as in Javanese culture that is familiar with the term *andhap asorin* Indonesia. However, the legal fact actually says that gratification is included in a criminal act of corruption, which then appears and regulated in Law Number 20 of 2001 concerning Eradication of Corruption.

Giving gratuities to individuals who have become a norm in this community is a real condition, so as to produce the principle of gratification in a dignified justice based on corruption, a reconstruction is needed, the separation between gratification as a criminal act of corruption and gratification as part of culture. Therefore, in this study the authors formulated the problem as follows :

1. What are the weaknesses that arise in the regulation of gratification in the current Indonesian Corruption Eradication Act?
2. How is the reconstruction of gratification law in the Corruption Eradication Act based on the dignified-Justice value ?

### **Method of Research:-**

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research . Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach ( *approach*) the research is to use the approach of *Socio-Legal*, which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation .

As for the source of research used in this study are :

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study , researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

## Research Result and Discussion:-

### Weaknesses That Arise In The Regulation Of Gratification In The Current Indonesian Corruption Eradication Act

Money Laundering (TPPU Act) is regulated in Act Number 15 of 2002 Jo. Act Number 25 of 2003 which was subsequently updated in Act Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. The establishment of the Money Laundering Law is actually a form of commitment and *political will* of the Indonesian state to combat the problem of money laundering. The revolutionary concept set forth in this regulation is the use of the burden of proof in reverse. Gives the defendant the right to explain and help simplify the trial process for the indictment which had previously been investigated by the Public Prosecutor. In the Money Laundering law generally there are many things that are specific when compared to the law in general, this specificity causes the Money Laundering Law to be in two sides of the law, namely Criminal Law and Civil Law, although the civil law side is not so clearly stated in the law, but will be illustrated if described in its elements.

The process of money laundering itself consists of three stages namely :

1. Placement: The first stage of money laundering is to place (deposit) illicit money into the *financial system* . The placement stage, the form of the proceeds of crime must be converted to hide the illegitimate origins of the money. For example, the proceeds from drug trafficking consists of small money in a large pile and heavier than the narcotics, then converted into larger money denominations. Then deposited into a bank account, and bought into monetary instruments such as *checks ,money orders* , etc.
2. Layering: Layering or *heavy soaping* , in this stage the washer tries to disconnect the proceeds of crime from the source, by moving the money from one bank to another, up to several times. By splitting up the amount, the funds can be channeled through the purchase and sale of investment instruments. Sending from one fake company to another fake company. The money launderers also did it by establishing fictitious companies, being able to buy securities or transportation equipment such as airplanes, heavy equipment on behalf of others.
3. Integration: Integration is sometimes called spin dry in which money washed is brought back into circulation in the form of net income and even is a tax object by using money that has become lawful for business activities by investing these funds into real estate, luxury goods, or companies.

After the enactment of Law Number 8 Year 2010 concerning Prevention and Eradication of Money Laundering Criminal Acts, the reverse evidence is contained in articles Article 77 and 78 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, which reads as follows:

Article 77: "*For the purpose of examining the court, the defendant must prove that his assets are not the result of a criminal offense.*"

Article 78: "*(1) In the examination at the court hearing referred to in Article 77, the judge orders the defendant to prove that the Assets related to the case are not originating or related to a criminal offense as referred to in Article 2 paragraph 1.*"

"*(2) The defendant proves that the Assets related to the case are not originating or related to a criminal offense as referred to in Article 2 paragraph 1 by submitting sufficient evidence.*"

That rule automatically gives the defendant the right to explain the accusations pinned to him. If viewed from the article it can be assumed that this law is contrary to Article 66 of the Criminal Procedure Code which stipulates that the prosecutor is the only one who is given the obligation in the proof. However, if explored deeper, the principle of *Lex Specialis Derogate Legi Generalis* can answer this assumption. That the Law on Money Laundering is a special nature that will override the general Criminal Procedure Code, the legal basis is Article 103 of the Criminal Code. In addition, this is one of the tools that can be taken to eradicate corruption that has taken root in Indonesia.

Various modes now appear to disguise the results of gratuities received, where the results of these gifts are then washed in such a way that it is difficult for law enforcers to sniff out the despicable acts they have committed, at least there are 4 modes that are often used by state officials to launder money from proceeds. The said gratification are namely:

1. Washing the results of Gratuities through Loan Back, where the perpetrators appear to disguise their gratuity receipts by ostensibly borrowing "their own money". Where the form of gratification that will be given is camouflaged into the form of *Direct Loans* , then the perpetrators appear to borrow money from foreign banks

on a *stand-by letter of credit* or as a *certificate of deposit*. Loans made are then not returned so collateral which is usually a gratification item is then withdrawn by the bank.

2. The mode of washing gratification by means of Certain Investments, usually carried out in the business of transactions of goods or paintings, krisses or antiques. For example, a perpetrator buys a painting item and then sells it to someone who is actually the agent of the perpetrator himself at an expensive price. Paintings with immeasurable prices can be priced as high and legal. Funds from the sale of the paintings can be categorized as legitimate funds.
3. Laundering gratuities by making fake identities or using the names of others, namely using banking institutions as money bleach machines by depositing under false names, using safe deposit boxes to hide the proceeds of crime, providing transfer facilities so that they can be easily transferred to the desired place or using electronic fund transfers to pay off illicit transaction obligations, store or distribute the proceeds of illicit transactions.
4. Cash smuggling mode or parallel bank system to other countries. This mode smuggled a physical amount of money out of the country. This includes a big risk like being robbed, lost or caught so to avoid this usually the perpetrators use the form of electronic transfer, ie transferring from one country to another without physical transfer of money and avoid sniffing by law enforcement.

The emergence of these modes certainly makes it more difficult for law enforcement officials to crack down on perpetrators of gratification, bearing in mind that developments in the times and technology are progressing rapidly, so that action against gratification must also be carried out in modern ways so that its use can become a facilitator to act against gratification practices. the government should make its own legal basis that specifically regulates gratification, where the legal basis must be firm and clear in making a positive legal basis regarding gratification, especially regarding the large amount and elements so that an act can be said to be gratification. In addition, the government should also have to disseminate information about this gratification to all levels of society, because this gratification can occur in layers of society with all the professions that they live. If the public is given the opportunity to conduct surveillance by making a clear legal umbrella as protection for those who report to law enforcement officials or officials who are suspected of having committed corrupt acts, then actions against state officials who practice gratification will be able to be carried out properly.

So far, law enforcement efforts against gratuity still continue to meet obstacles. The inhibition of law enforcement efforts towards gratification is caused by several weaknesses, as a reference to this, the opinion of SoerjonoSoekanto is felt to be very appropriate to trace the factors that hinder the course of law enforcement against cases of gratification that are rife. Regarding the problem of obstruction of law enforcement that occurs, there are 5 factors that turned out to influence it, namely:

### **1. Legal factors**

Law No. 20/2001 concerning the eradication of Corruption has substantially regulated explanations, sanctions for recipients of gratuities but based on the opinions of experts and also competent respondents, this Law has weaknesses which become obstacles to the effectiveness of eradication of gratification. But if we look carefully then there are some weaknesses that can still be seen in the substance, namely:

#### **a. The application of article by article that seems selective logging**

In this case law enforcement against gratification in the law factor is not yet in line with its application there are still many incidents where this can actually be seen in a number of cases involving state officials such as what happened to Bank Indonesia's senior deputy Miranda Goeltom involving AgusCondroPrayitno as a member DPR. Selective logging was apparent when in his handling, AgusCondro was not immediately processed by the KPK because, he later reported the gratuities obtained from Miranda Goeltom to the KPK even though the trip had been going on for one year. Even though Article 12 C paragraph (2) states that reporting on gratuities must be done before the 30 day deadline. By cutting down on the choice of law enforcement treatment, this is an example of a case that injured the *Equal Before The Law principle*.

#### **b. Lack of clarity about the implementing regulations**

The implementing regulations, Article 12 paragraph 1 letter a, concerning proof is reversed for recipients of gratuities above 10 million. From his explanation, there are distinguishing elements between gratification offenses which are considered bribes and bribes offenses, it appears that regulating gratification offenses requires the fulfillment of elements that are simpler than bribery, but has a heavier criminal threat and a reversal of the burden of

proof. In fact, if it is addressed more closely, it is very contrary to the Criminal Procedure Code which states that the prosecution and verification is carried out by the Prosecutor, so that its implementation then becomes blunt. Although in practice absolute certainty will not be achieved, but the purpose of proof is to seek and apply the truths in the case, not merely to find one's mistakes.

**c. Unclear meaning and words in the law resulting in multiple interpretations and confusion in its application.**

In Article 12 B paragraph 1 of Law No. 20 of 2001 reads "Every gratuity to a civil servant or the administration of the state is considered giving bribes, when it relates to his position and contrary to his obligations or duties". The word "considered" is what actually causes multiple interpretations because the assumption of each law enforcement apparatus can certainly be different. It could be that sexual services received by a state official are interpreted as a form that is not considered gratification. Though lust gratuities are very close to criminal acts of oversight (*overspel*) if one or both of the perpetrators are married. However, if there is no complaint from the legal partner, then Article 284 of the Criminal Code regarding adultery cannot be applied.

**d. The unclear limits of gratuity are given.**

The difficulty of handling cases of gratification so far has also been caused by the absence of a standard of acceptance of a gift that is considered gratification, so that in its application it creates many problems. An example is the gift of Eid parcel or Christmas which is usually sent by colleagues, friends, or relatives of state officials. Some consider that accepting the gift of this parcel is a form of gratification, but some others consider it not a problem. There is an assumption that the initial purpose of giving parcels or gifts as a sign of ceremonial greetings during the holiday experience digression. One of his interests is to hope that the activity can smooth the way the giver wins the project tender, in other words bribes or special lobbies. The targets are representatives of the people as well as officials and state administrators who have the capacity, one of which is to give authority to win a project tender. So it can be assumed that if you want to give a parcel to an official, make sure that it really has nothing to do with the work and the value is not more than 10 million so that it is not considered as gratuity. However, difficulties will occur when the parcel recipient must estimate the value of the contents of the parcel he got to the KPK. Such things will continue to cause pros and cons if the contents of the law are not immediately confirmed.

**e. Criminal sanctions are still low.**

The provisions of criminal gratification contained in the law are considered to be still low, especially in the reporting of the assets of the state administrators or the State Assets Asset Report (LHKPN). This of course happened because all this time the handling of gratification still showed an element of prudence. Considering that the clarity of the law is still very premature, coupled with the tendency of State Administrators who are still reluctant to report on their assets, even though LHKPN also provides facilities for law enforcement officials to track acts of gratification that occur in State Administrators. Should have seen the importance of LHKPN in law enforcement against gratification, the weighting of sanctions should have been applied to State Administrators.

**2. Factors supporting facilities or facilities in law enforcement.**

As for what is meant by means or facilities is a matter that covers human resources who are educated and skilled, good organization, adequate equipment, and sufficient financial in law enforcement efforts. This has a very important role because without these facilities or facilities it would not be possible to enforce the law and harmonize its role to be able to run actually. During this time the facilities owned by law enforcers in the effort to resolve the crime of gratification are still lacking. supporting facilities such as the current building are no longer able to accommodate all KPK employees and the KPK has not had its own detention house that is permanent and is capable of accommodating corruption prisoners on a large scale. It should be that the perpetrators of heavy corruption from all over Indonesia were accommodated in a special prison. With the treatment that makes the perpetrators get a deterrent effect, considering the actions they have done have harmed the people and the country. At present the KPK only has a detention center located in a complex with the KPK's Red and White Building with a capacity of 37 people for 29 male prisoners and 8 female prisoners. Considering the fact that corruption is increasingly rampant, Law No. 46 of 2009 concerning the Corruption Court must be refined again. The KPK in carrying out prosecutions that have taken place in the regions so far has had to convene in the Corruption Court in the region in accordance with the *locus delicti* of the TPK. This actually complicates the legal efforts carried out, in 2018 the KPK has proposed to establish representative offices in Sumatra, Sulawesi, Kalimantan, Papua and Java with the hope that the KPK along with the community is able to make efforts to prevent and supervise corruption. Considering the urgency

of combating corruption needs to be done as soon as possible, the improvement of the law that supports this is very necessary.

### **3. Law enforcement factors**

This happens to those who form and apply the law itself. law enforcement is an important element, because a statutory regulation will not function properly if the law enforcers are not able to implement the wishes of the law in society. Consistency, Commitment and Integrity of law enforcers is very much needed considering that it is now easier for law enforcement officials to make deviations. This inconsistency can be seen from the process of investigation, investigation, prosecution to the decision of a case. the law enforcers seemed to forget that the initial commitment that they planted when they became the apparatus was justice in law enforcement but over time all of that changed because of material, efficiency and laziness. What is equally important is the loss of integrity of law enforcement officials so that the handling of gratification cases is actually growing. On this side, the quality of insights and human resources in handling gratification cases must be truly improved given the changing and new modes of gratification that require extensive insights in law enforcers. Finally, there is an increase in the quantity of law enforcers, seeing the vast territory of Indonesia that is not proportional to the number of law enforcement officers carrying out their duties. KPK as the frontline in the enforcement process is still not maximized in carrying out its duties, considering the number of KPK personnel up to 2017 still reaches 1500 people. This figure is still far from the ideal word, when compared to the tasks carried out by the Corruption Eradication Commission.

### **4. Community factors**

This barrier occurs in an environment where the law applies or is applied where many community members still do not know about their rights and obligations in legal efforts to protect, fulfill and develop their needs with existing rules. The active role of the community is very important for eradicating corruption, but in general they do not yet know about the procedures for reporting gratuities. They also cannot distinguish between positive gratuities and negative gratuities. Positive gratification is giving gifts with sincere intentions from someone to others without strings attached, meaning giving in the form of "signs of love" without expecting anything in return while Negative Gratification is giving gifts carried out with selfish objectives, gifts of this type that have been entrenched among bureaucrats and entrepreneurs because of the interaction of interests, for example in handling taxes, someone gives tips money to one of the officers so that the handling of taxes can be dealt with immediately where this is very detrimental to others and perspectives of fair values. For this reason, the Government should play an active role in socializing the community as an effort to optimize corruption.

### **5. Cultural factors**

Culture as a result of work, creativity and a taste that is based on human initiative in the interaction of life has deep roots in the community. In terms of law enforcement against gratuity, our culture is indeed a very influential inhibiting factor. Actually the culture of gratification has started since the kingdom. The people were forced to pay tribute to the king as a tax. Because this has been going on for so long, it has become part of the mindset of our society, so that it continues to develop so as to make it a culture that is difficult to eradicate even with socialization or campaigns. Therefore, to improve the mindset like that requires hard and systematic efforts to improve the mindset or culture as it is changing the concept of thinking in looking at a public official, the change is the paradigm that public officials serve not served, and leadership is also needed which exemplifies the officials so that the mindset of the people who are already entrenched can be minimized.

These five factors have been obstacles to law enforcement efforts against gratuity and generally corruption. However, the last factor felt is a factor that requires extra performance because it is related to changing the culture that has taken root in society is not easy. An extra hard performance is needed, which of course is accompanied by a commitment so that this habit does not continue to entrenched from generation to generation.

### **Reconstruction Of Gratification Law In The Corruption Eradication Act Based On The Dignified-Justice Value**

Changes in the meaning of gratuities to civil servants or state administrators cannot be separated from the development of Indonesian society, plus some countries have different definitions of gratification, some regulate them in such detail by mentioning the types of gifts or facilities, others only include gifts in the sense broad. This non-uniform definition gives rise to various types of separate interpretations of gratification as a logical consequence of the different definitions. Likewise in the cultural values that exist in Indonesia, the meaning of gratification still raises many big questions, because the culture of giving that has taken root in the lives of Indonesian people has

been embedded and has noble values long before Law Number 20 of 2001 concerning the eradication of corruption is published. Moreover, this practice of giving and receiving is also protected by a legal umbrella in the legal provisions of customary territories in Indonesia. In the habits of the Indonesian people, this culture is a form of appreciation, respect, offerings to someone who has an influence and meritorious in a group or ethnic community.

The tradition is a noble culture that has been planted for generations and shows the culture of giving and receiving in Indonesia has been going on for a long time. But these cultures also open the gap for gratification (bribery) involving various cultural elements, the gaps can be used by various elements to enrich themselves or create dynasties (vicious circle) to perpetuate their power especially in matters of politics and office. But these gaps do not necessarily always have criminal elements in them. Actions of gratification that lead to bribery can also arise from sublime cultures that were born in the community such as cultural thanksgiving moments that can be politicized as a means of seeking public support or attention. The difficulty of finding the motives behind one's intentions and objectives is still a weakness that can be exploited by unscrupulous officials. This also shows the gap that Law Number 20 Year 2010 regarding Corruption is still not relevant enough to overcome the problem of gratification. aims to enrich themselves or attract sympathy and support from the community.

The formulation of articles related to gratification, if examined from the politics of national law itself is not yet clear, whether gratification is positioned in the area of ethics or criminal law. On the one hand the Corruption Eradication Law regulates gratification with criminal threats. However, on the other hand and until now it still applies, PNS disciplinary rules regulate gratification with the threat of disciplinary sanctions. This lack of clarity and overlapping rules can cause problems because a civil servant who receives gratuities can still be subject to disciplinary sanctions even though the person concerned has reported to the KPK. Acts of gratification that occur within the client's own patron cannot be said to be a criminal offense such as gratification in general, because the true relationship between patron and client is a mutually beneficial relationship between the two parties. The giving and receiving of gratuities can create social learning for the community. For the recipient, there will be expectations in the future that gratuities and bribes will be received. For the giver, the stigma of the expectations of the opposite of the transaction encourages them to continue to practice bribery and gratification. This reciprocal relationship will take root and is difficult to eradicate, because the culture of giving and receiving has been seen to be in line with the culture of Indonesian collectivists.

From the basic idea that , every society has the living law which has been growing and growing ever since the community was formed . The living law of the birth of the social life of society that is materially practiced are kept constant , and then the people that stick to it based on the value of a moral, not because of the coercive of the sovereign . The living law can be sourced from customs / traditions , religion, and others . Hence a view of the erroneous if there is a view which states that in a society traditionally does not have rules of behavior that is called the law , it becomes a justification if the living law sitting together state law and make a value of laws new that is more fair , sovereign and dignified .

So anyway to handle cases of graft notch living law must be becoming a judgment judge in impose sanctions or charges against the case of acts of criminal gratification , the judge must have a reason justifying that sufficiently strong to provide a sanction of law , do not generalize all the accused gratuities should be no synchronization between cultures and legal case is important because in addition to maintaining the integrity of the justice that exist in Indonesia is also related to trust public against the enforcement of the laws that exist in Indonesia. Freedom of judges in check and try a case is a crown for the judge and must remain guarded and respected by all parties without exception , so that did not exist a single party that can intervene judges in the running duties such . Judge in dropping a decision , should take into consideration a lot of things well that is related to the case that is being examined , the level of actions and errors that do actors to consider the sense of justice of society . Before making a decision by the judge in the check case , judges should pay attention to the consideration of the facts and on the law as stipulated in the Criminal Procedure Code. As that became the basis of consideration of the judge, which is considered to be jurists , which is proof of the elements ( *bestanddelen*) of an offense of criminal whether the act the accused are already meets and in accordance with the acts of a criminal who was charged by the Attorney prosecutor general . So that consideration of yuris this is directly going to affect large to *amar / dictum* decision of the judge. And the judge needs to consider things that are burdensome and that relieve the defendant so that effective , fair and dignified law is created .

The issue of enactment of law can be effective in supporting the realization of order in society , so there are 2 components to be considered, namely :

- 1.As far as where changes in society must gain adjustment by law or in other words how the law to adjust themselves to the changes in society .
- 2.As far as where legal acts to move society towards a planned change, in terms of this law plays an active or known by the term as a function of the law as a means of engineering social " *a tool of social engineering* " .

In case this should change in the law is always perceived need to start since the gap between the states , events , and relationships in the community , with the law that set it up . However the rule of law is not possible we remove it from the things that changed in such a form , of course demanded a change of law to adjust themselves so that the law is still effective in its settings . In a state that is very urgent , regulatory legislation is to be adapted to changes in society.

By because it can be drawn the conclusion that there is a behavior that causes people to run the business and practice patterns of gratification in it in order to establish a business relationship. This economic foundation of thought makes people not hesitate to give someone an item or service or other facilities in a certain form to another party. By reading the reality of existing knowledge at this time especially the reality relating to the physical reality of a dynamic development of culture, social, religion and others . *Consilience of law* always tries to connect ideas from all disciplines with facts of objective reality. If it is related between law and moral do have differences, law as an instrument of rules and social control. Therefore it can be identified that the problem of drafting the law on corruption is not only related to legal material, legal structure but also the problem of increasing public legal awareness and the legal culture of the community, a review needs to be made of Law Number 20 Year 2001 regarding Corruption , reformulation is needed, especially in the substance of the meaning of gratification, reporting of acceptance of gratification to the Corruption Eradication Commission, criminal sanctions, and qualifications of gratuities and grants, so that the optimal implementation and enforcement of law is in accordance with the objectives to be achieved, namely certainty and dignified justice

### **Conclusion:-**

Gratuities in the category of corruption that still occur frequently are caused by two factors: first, a lack of in-depth knowledge (comprehensive) of the limits of recommendations and prohibitions, especially in terms of laws relating to gratification itself. Second, from the cultural aspect, because of the strong suspicion that the phenomenon of gratification is inseparable from the habits of the people who have been entrenched, whether it is realized or not. the formulation of gratification and bribery sentences in Law Number 20 of 2001 on amendments to Law Number 31 of 1999 concerning Eradication of Corruption, is indeed unclear and even contains many similarities. Judging by law, there is actually no problem with gratuity. This action is just an act of someone giving a gift or gift to someone else. Of course this is allowed. However, as time evolved, culture, and lifestyle, gifts often called gratification began to experience a dualism of meaning. Because of the wide scope of this gratification, there are many difficulties in applying it to prove that the gift is included in an act of corruption.

The most important thing in distinguishing between gratuity and bribery is whether or not there is a meeting of mind at the time of acceptance. In bribery, there is a meeting of mind between the giver and receiver of the bribe, while in the crime of gratuity there is no meeting of mind between the giver and the recipient. Meeting of Mind is another name for consensus or things that are transactional in nature. Thus the Judge as the decision maker must be wise in addressing this issue because gratuities are usually given on initiatives that come from the gift giver as a gift of gratitude and a sign of gratitude for the help he received, and most importantly the prohibition in gratification cases is the act of receiving a gift, not give a gift. Cultural values such as the principle of cultivating and repaying are part of the values of local cultural wisdom in Indonesia. However, in its development, the implementation of the cultural value system of cultivating favors and reciprocity, if carried out in the work environment of government, state officials, and state administrators, can be interpreted as a form of modus operandi from the practice of gratification. It is appropriate if in practice the handling needs to be distinguished between a mode of giving related to the position and contrary to the obligations or duties of the recipient or bribe with pure acts of reciprocity given in the form of gifts to civil servants or state administrators. If law enforcement officers beat evenly against all organizers who receive gratuities are corruptors, then it can clearly be understood that there is a criminalization of gratification which is part of cultural values, namely reciprocation. Therefore the cultural value of reciprocity cannot be seen as a crime as long as there is no mens rea related to the position, legal obligations and influence to commit fraud and gratuity elements should be adopted or merged into elements of bribery. Thus, aspects of cultural values of



reciprocity are not criminalized in the form of gratification, but efforts to eradicate corruption are still carried out through eradicating bribery..

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