

## **GRATIFICATION IN THE PERSPECTIVE OF THE POSITIVE LAW IN INDONESIA**

**Fazzan**

Ph.D Candidate at University of Malaya and Lecturer at UIN  
Ar-Raniry Banda Aceh  
Email: fazzan.ma@yahoo.com

**Abdul Karim Ali**

Professor and Lecturer at University of Malaya, Kuala Lumpur  
Email: abdkarim@um.edu.my

**Abstract:** A set of rules about gratification is a novelty within society and is perceived to collide with the cultural of giving in the Islamic society in Indonesia. This study is aimed to explore the meaning of gratification from the positive perspective of law in Indonesia, and the boundaries of gratification, which is interdicted by the laws. This study used the normative method which analyzes the positive law in Indonesia regulating the gratification. The result of this study shows that gratification in the positive law perspective has a wide meaning including each tribute for civil employee or governance. According to Indonesia laws, gratification could be either positive or negative. Gratification which is allowed by the laws is a gift with a pure tension of the giver to the civil employee or governance without expecting to achieve anything. In contrary, gratification which is not allowed by the laws is a gift for the civil employee or governance because of the position in that employment and unrelated with the duty or order.

**Keywords:** Gratification, Positive Laws Perspective

### **A. Introduction**

Gratification started to become a popular term among the general public after the legislation of Law No. 20 of 2001 on the amendment of Law No. 31 of 1999 on Corruption Eradication. Although it has been legislated since about 14 years ago, the concept of gratification is still considered something new, and frequently considered as something that is against the culture of exchanging gifts among the general public. There is an assumption

that the laws regarding gratification are damaging to the culture of exchanging gifts among the Muslim society, especially those in Indonesia.

In addition to contrasting the cultural norms of exchanging gifts among the Muslim society in Indonesia, the gratification laws are also deemed unsuitable with the teachings of Islam, which encourages the act of exchanging gifts. Based on this issue, there is a need for a deeper research regarding the laws of gratification in Indonesia to determine whether it prohibits every form of gratification that has become a custom among the Muslim society in Indonesia. The author therefore will elaborate on gratification from the perspective of Indonesian positive law. It consists of explanation regarding the definition, court cases, legal basis, elements, and illustration of gratification in Indonesia.

## **B. Discussion**

### **1. Gratification in the Positive Law**

Corruption is one of the most popular words in the society and has become an everyday conversation theme. Even so, many of its members are not aware of its meaning. Generally, society only sees corruption as something that is financially harming to the state.<sup>1</sup> In actuality, as mentioned in Law No. 20 of 2001 on the Corruption Eradication which is an amendment of Law No. 31 of 1999 on the same subject, there are 30 types of corruptions, elaborated in 13 articles as such:

“Bribing a civil servant is corruption; giving gifts to a civil servant because of his position is corruption; a civil servant who received a bribe; a civil servant who received a gift because of his position; bribing a judge; bribing a lawyer; a judge and a lawyer who received bribes; a judge who received a bribe; a lawyer who received a bribe; a civil servant who embezzled money or intentionally let others embezzle; a civil servant who falsified books specifically

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<sup>1</sup>According to Law No. 31 of 1999 jo. Law No. 20 of 2001 on Corruption Eradication, corruption is an illegal act of enriching oneself or another person or corporation, thereby creating loss to the state finance or state economy.

for administrative audit; a civil servant who destroyed an evidence; a civil servant who assisted others to destroy an evidence; a civil servant who intentionally let others destroy an evidence; a civil servant who extorted another person; a civil servant who extorted another civil servant; a contractor who swindled; a project supervisor who intentionally let others swindle; a partner of TNI/Polri who swindled; a supervisor of the partner of TNI/Polri who intentionally neglected the swindling; the recipient of TNI/Polri goods who intentionally neglected the swindling; a civil servant who used state land for which the right to use the land has been issued, thus inflicting loss to others; the involvement of a civil servant in a procurement in which he was assigned to arrange it; a civil servant who received a gratification and failed to report to the Corruption Eradication Commission (KPK) is corruption; the hindering of a corruption case investigation; the failure of a suspect to report his wealth; a bank which withheld a suspect's account information; a witness or expert who withheld information or gave false information; a person who holds professional confidentiality who withheld information or gave false information; and a witness who uncovered the identity of the whistleblower.”<sup>2</sup>

The thirty forms of corruption could be simplified and grouped into seven categories, namely state financial loss, bribery, embezzlement, extortion, swindling, conflict of interests in procurement (tender), and gratification. Regarding gratification, Law No. 20 of 2001 on Corruption Eradication, the amendment to Law No. 31 of 1999, was the first to use the term gratification in the Indonesian laws and regulations, stipulated in Article 12 B.

In Article 12 B, the act of receiving gratification by a Civil Servant or State Apparatus is considered corruption if the gift was

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<sup>2</sup>Articles 2, 3, 13, and 14 of Law No. 31 of 1999 on Corruption Eradication. Articles 5, 6, 7, 8, 9, 10, 11, and 12 of Law No. 20 of 2001 on Corruption Eradication. Anti-Corruption Clearing House (ACCH), <http://acch.kpk.go.id/tentang-acch>, 6 April 2015

given because of his position in violation of his obligations.<sup>3</sup> This law was legislated to anticipate the misuse and abuse of gratification as a loophole to legalize corruption, especially in public services, hence this element was stipulated in the corruption law. There was an expectation that if the cultural norm of giving and receiving gratification by/to Civil Servants and State Apparatuses were stopped, corruption would subside or even stop altogether.

The definitions of a Civil Servant and State Apparatus in the law are. Based on Article 1 verse 2 of Law No. 31 of 1999 as amended by Law No. 20 of 2001, Civil Servants include:

1. A personnel of Supreme Court (MK), Constitutional Court (MK)
2. A personnel of a Ministry/Department and a Non-Department State Agency
3. A personnel of the Attorney General Office
4. A personnel of Bank Indonesia
5. Head and personnel of Provincial/Level Two Region of MPR/DPR/DPD/ Provincial DPRD offices
6. A personnel of a state university
7. A personnel of a commission or agency formed by a legislation, Presidential Decree, or Presidential Regulation
8. Head or personnel of Presidential Secretariat, Vice Presidential Secretariat, Cabinet Secretariat, and Military Secretariat
9. A personnel of State Owned and
10. A personnel of a State-Owned Corporations (BUMN) and Regional-Owned Corporations (BUMD)
11. A personnel of a Judicial Body
12. A personnel of the National Army (TNI) and Police (POLRI), as well as a civil servant in TNI and POLRI
13. Head and personnel in Levels One and Two Region of the Regional Government.

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<sup>3</sup>Article 2 of Law No. 28 of 1999 on State Administration and Free of Corruption, Collusion, and Nepotism. See: Doni Muhardiansyah et. al., *Buku Saku Memahami Gratifikasi* (Jakarta: Komisi Pemberantasan Korupsi Republik Indonesia, 2010), 11.

Based on Article 2 of Law No. 28 of 1999 on State Administration and Free of Corruption, Collusion, and Nepotism, State Apparatuses include:

1. A State Official of the Highest Governmental Institution
2. A State Official of a High Governmental Institution
3. A minister
4. A governor
5. A judge
6. Other state officials in accordance to the prevailing laws and regulations; An ambassador; A vice governor; and A mayor
7. Other officials with a strategic function in relation to the State Administration in accordance to the prevailing laws and regulations; A Commissioner, Director, Structural Officer of a BUMN and BUMD; A Head of BI and National Bank Restructuring Agency; A Head of a State University; First Echelon Officer and other equivalent officers in civilian, military, and national police circles; An attorney; An investigator; A clerk of the court; and A project head and treasury.<sup>4</sup>

In reality, the enforcing of the gratification regulation faces many obstacles as most of the Indonesian society generally sees gratification as something normal. Sociologically, a gift is not merely a normal and common object; it also has quite a big role in strengthening the relationships among the members of a society, societies, and even among nations.

## **2. Gratification in the Perspective of the Law in Indonesia**

### **a. The Definition of Gratification**

In the Indonesian Dictionary, *gratifikasi* (gratification) is defined as the giving of a money gift to an employee outside of the determined salary.<sup>5</sup> The Law dictionary explains that the

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<sup>4</sup>Article 1 verse 2 of Law No. 20 of 2001 on amendment of Law No. 31 of 1999 on Corruption Eradication. Article 2 of Law No. 28 of 1999 on State Administration and Free of Corruption, Collusion, and Nepotism. Doni Muhandiansyah et. Al., Buku Saku, 11.

<sup>5</sup>Tanti Yuniar, *Kamus Lengkap Bahasa Indonesia* (Jakarta: Agung Media Mulia, tt.) 224.

word gratification comes from Dutch word *gratificatie*, while the English word is *gratification*, meaning a money gift. Based on the given definitions, it could be concluded that both Indonesia and Law dictionaries define gratification as the act of giving money as a gift. The definitions in both dictionaries are neutral. It could be understood that the act of gratification itself is not necessarily a misconduct or negative action. In the Indonesian dictionary, the object of gratification is clearly addressed to employees, while the Law dictionary does not address it to any object.<sup>6</sup>

The definition of gratification according to the law could be found in Article 12 B verse 1 of Law No. 31 of 1999 jo. Law No. 20 of 2001, where it states “referred to as ‘gratification’ is reward in the broad sense, including money, goods, discounts, fees, interest-free loans, travel tickets, lodging, tours, free medicine, and other facilities, whether it was received at home or abroad, done through the use of electronic device or not.”<sup>7</sup>

After observing the explanation given by Article 12 B verse 1 above, it could be understood that the definition given for gratification is only limited to the sentence “reward in the broad sense”, whereas the sentence after describes the types of gratification. From this explanation, it could be concluded that gratification has a neutral meaning, without any negative connotations. When this explanation is then combined with the stipulations of Article 12 B, one could deduce that not all gratifications are against the law, so long as it does not fulfill the criteria mentioned in Article 12 B.

It is necessary to look at the conditions defined in Article 12 B Verse 1 of Law No. 20 of 2001 to determine whether a gratification is considered as a criminal act or not. As stated therein, every gratification given to a Civil Servant or State Apparatus is considered corruption, if it was given because of his position in violation of his obligations.<sup>8</sup>

It can be concluded from the citation above, that

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<sup>6</sup>Eddy OS Hiareij, *Memahami Gratifikasi*, 13 Juni 2011, Kompas.com

<sup>7</sup>Article 12 B verse 1 of Law No. 20 of 2001 on Corruption Eradication.

<sup>8</sup>*Ibid.*

gratification or gift giving will be considered an act of criminal if a Civil Servant or State Apparatus received said gift in regard and because of his position or job. However, if the gift has nothing to do with his position or job and not violating against his obligations, it is considered lawful.

One of the customs commonly occurs in society is the giving of a gift, whether goods or money, as a token of gratitude to the services provided by a "staff". This could become a negative custom and could potentially lead to corruption in the future. This potential is what the laws and regulations are trying to prevent. Therefore, the law does not prohibit the act of gratification among the general public; only that which is given to and or received by Civil Servants and State Apparatuses, because of the underlying potential of it becoming a loophole for corruption.

The author observes that there are at least three differences between the act of gratification and other acts of corruption. Firstly, the strictness or certainty of the law. The acts of corruption, such as inflicting loss to the state finance, bribery, embezzlement and position abuse, swindling, conflict of interests in procurement, are definitely illegal if they were proven to have happened. However in gratification, even after it was proven to have happened, it still needs to be put under consideration to determine whether or not it is illegal. This consideration, as mentioned above, is to determine whether the gift was given because of a Civil Servant's or State Apparatus' position in violation of their obligations. Basically, gratification is an act which could become a medium or means to other acts of corruption. Secondly, the scope of the act. All acts of corruption apart from gratification are limited to a certain amount of acts determined by the law, while the act of gratification is unlimited, because it is a reward in the broad sense. Therefore, other acts not included in the law could be included in the regulation concerning gratification. Thirdly, valuation emphasis. Other acts of corruption aside from gratification are judged based on the agency or authorized official. It means that the valuation is limited to the opportunity of a position or authorization to do such acts. However,

in the act of gratification, besides judging the agency or authorized official sides, it is also judged from the society side, because of their support towards gratification that leads to the commitment of a criminal act.

Based on the analysis above, it could be concluded that the gratification permissible by the positive law in Indonesia is a gift to another with pure intentions without any attached self-interest, i.e. a token of gratitude without expecting anything in return. Whereas the gratification prohibited by the law is the act of receiving gratification by a Civil Servant or State Apparatus because of his position in violation of his obligations. This is considered an act of corruption.

### **b. Court Cases Regarding Gratification**

Before the author presents several gratification act cases with its final and binding court decisions (*inkracht*), the author would first give a general illustration of the latest data on the progress of gratification eradication, including those that are proven to be corruption. As of 27 February 2015, there are four *inkracht* cases in 2015. From 2005-2015, there are 126 *inkracht* cases in the District Court, 28 in the High Court, and 133 in the Supreme Court, totaling to 287 *inkracht* cases.<sup>9</sup>

The latest 2015 data on gratification and gratification type corruption will be elaborated by the author as follows:

#### 1) Gratification based on ownership status.

As of the 27 February 2015, there are a total of 278 reported gratuities to the Corruption Eradication Commission (KPK) in 2015 alone, 17 reports of which are state-owned, 6 recipient-owned, 5 partly state-owned, 191 in process, and 59 non-decree reports.

#### 2) Gratification based on agency

As of 27 February 2015, there are 278 reports in 2015, 120 of which are from the executive branch, 148 from BUMN/

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<sup>9</sup>Anti-Corruption Clearing House (ACCH), <http://acch.kpk.go.id/gratifikasi-berdasarkan-status-kepemilikan>, 6 April 2015.



BUMD, 6 from the judicative branch, 0 from the legislative branch, and 4 from independent institutions.

There are a total of 278 reports on gratification in 2015 alone based on the data above. It needs to be underlined that not all report would become illegal gratification acts (corruption). To determine whether the gratification is illegal or not there needs to be evidence that the reported gratification is because of the Civil Servant's or State Apparatus' position and in violation of their obligations.

The author will bring forward an example of a court case concerning a non-gratification corruption act, as a comparative data for a court case concerning illegal gratification (corruption). The case is a corruption case on the procurement of goods and services which caused a great loss to the state finance, and the embezzlement as well as positional abuse done by Abdullah Puteh, who at the time was the Governor of the Province of Nanggroe Aceh Darussalam (now Aceh Province) from 2000-2004. The corruption that he did was the purchase of a 2000-2001 type MI-2, VIP Cabin civilian version helicopter from the Mil Moscow Helicopter Plant Russia factory.<sup>10</sup>

Based on the Supreme Court decision No. 1344 K/Pid/2005, dated September 14, 2005, Abdullah Puteh was sentenced to 10 years imprisonment and a fine of Rp 500,000,000.<sup>11</sup> The sentence was given to the corruption convict in the procurement of goods and services because the accusations were backed with strong evidence that suggested the convict did actually commit the criminal act of corruption. The evidence suggested that the convict intentionally transferred Rp 4 billion of state funds to his private account with the purpose of purchasing a Rp 9,1 billion helicopter, even if there was no helicopter purchase contract yet. In addition to the embezzlement of state funds, the convict also abused his position.

In this case, the criminal act done by Abdullah Puteh is clear in the eyes of the Indonesian law, because he intentionally took

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<sup>10</sup>Anti-Corruption Clearing House (ACCH), <http://acch.kpk.go.id/abdullah-puteh>, 7 April 2015.

<sup>11</sup>*Ibid.*

the state funds for his own personal use by abusing his position and responsibilities, as well as causing loss to the state finances. There are clearly no elements of gratification in this case, because the criminal act done by the convict was not based on the desire of others to give him money. Hence this case is categorized as a corruption case rather than a gratification case.

Next, the author will bring forward several examples of gratification cases that already have the final court decision, meaning that the gratifications mentioned below are proven to be corruptions. The author will give several case examples of both recipient and provider of gratification:

1) The Case of Angelina Sondakh (Gratification Recipient)

Angelina Sondakh was a member of the 2009-2014 Period of the Republic of Indonesia House of Representatives (DPR-RI) who was incriminated as a recipient of gratification in 2009-2010. Based on the court decision No. 1616 K/Pid.Sus/2013, dated November 20, 2013, the Supreme Court sentenced her to 12 years imprisonment, a fine of Rp 500,000,000, and substitute money as additional punishment of Rp 12,580,000,000 and US\$ 2.350.000.<sup>12</sup>

The amount of money that Angie received was Rp 12,58 billion and US\$ 2,35 Million, as a gratification or kickback for securing the budgets for higher education activity/program projects in the Ministry of National Education and the procurement of facilities and infrastructures procurement program in the Ministry of Youth and Sports Affairs to be adjusted according to the demand of Permai Group.<sup>13</sup>

2) The Case of Miranda Swaray Goeltom (Gratification Provider)

Miranda Swaray Goeltom worked as a Senior Deputy Governor of Bank Indonesia (DGSBI) in 2004-2009. She provided gratification in order to be elected as a DGSBI before her election. There were three DGSBI candidates participating in the fit and proper test conducted by DPR-RI at that time,

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<sup>12</sup>Anti-Corruption Clearing House (ACCH), <http://acch.kpk.go.id/angelina-patricia-pingkan-sondakh>, 7 April 2015.

<sup>13</sup>*Ibid.*

they were Miranda Goeltom, Hartadi A Sarwono and Budi Rochadi.<sup>14</sup>

Before the election, Miranda, who failed to get elected as a Governor of Bank Indonesia in 2003, conducted a meeting with Nunun Nurbaetie. In the meeting, she asked Nunun's assistance to help her pass the fit and proper test for the position as the 2004 Senior Deputy Governor of Bank Indonesia. Miranda asked Nunun to introduce her to Nunun's friends in the Commission IX DPR-RI to seek support for her candidacy. Nunun accepted Miranda's request, and a meeting was conducted to introduce her.<sup>15</sup>

As reward for the support, Miranda, through her assistant, distributed the International Bank of Indonesia's (BII) traveler's checks during the fit and proper test to members of the Commission IX conducting the test. They are Duhie Makmun Murod, who received BII traveler's checks worth Rp 9,8 billion, Endin AJ Soefihara received Rp 1,25 billion worth, and Hamka Yandhu received Rp 7,8 billion worth. The checks are accepted by the three recipients, who then proceeded to distributed to their colleagues of the same party in the same commission.<sup>16</sup>

Miranda Goeltom, with the help of Nunun Nurbaetie, has given gratuities in the form of BII traveler's checks worth Rp 20,85 billion, which is a part of the total amount of 480 traveler's checks worth Rp 24 billion given to the members of DPR-RI. Because of this, she was sentenced to 3 years imprisonment and a fine of Rp 100,000,000, based on the Supreme Court decision No. 545 K/Pid.Sus/2013, dated April 25, 2013.

It is clear from both court cases above that the criminal act is based on the desire from the society to give money to State Apparatuses. After an investigation, it was clear that Angleina Sondakh did an act that was in violation of her obligations as

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<sup>14</sup>Anti-Corruption Clearing House (ACCH), <http://acch.kpk.go.id/miranda-swaray-goeltom>, 7 April 2015.

<sup>15</sup>*Ibid.*

<sup>16</sup>*Ibid.*

a member of the RI House of Representatives (DPR-RI), and she received gratuities which are in fact given because of her position as a member of the parliament. The gratification given by Miranda Swaray was also because of the positions of the recipients as members of the parliament. As a result of her gift, they did an act that was in violation of their obligations and responsibilities of conducting an impartial DGSBI candidacy test. They should have conducted a fair and neutral test with the purpose of selecting candidates based on their integrity, instead of gratification.

The single example of corruption by positional abuse, swindling, conflict of interests in the procurement of the purchase of a helicopter is clearly different that the three gratification examples mentioned after. The difference is the taking of state funds for personal use is an evidence of corruption.

Whereas in the gratification cases, even if one is proven to have received a gratification, an evidence supporting the accusation is required to prove that the gratification was given because of one's position and in violation of one's obligations, as could be seen in the first example. In the second example, an investigation must first be conducted to determine if the gratification was given because of the recipients' position and responsibility as a judge in the DGSBI fit and proper test.

### **c. The Legal Basis of Gratification and its Elements**

The regulations concerning gratification are required to prevent the emergence of corruption committed by a Civil Servant or State Apparatus. It is hoped that this regulation will encourage Civil Servants, State Apparatuses, and the general public to choose the correct steps and refuse or immediately report any gratification that they received. Gratification is specifically regulated in Law No. 20 of 2001 on Corruption Eradication:

Article 12 B

- 1) Any gratification given to a civil servant or state apparatus shall be considered as a bribe when it has something to do with his/

her position and is against his/her obligation or task, with the provision that:

- a) When the gratification amounts to Rp 10,000,000 (ten million rupiahs) or more, it is the recipient of the gratification who shall prove that the gratification is not a bribe;
  - b) When the gratification amounts to less than Rp 10,000,000 (ten million rupiahs), it is the public prosecutor who shall prove that the gratification is a bribe.
- 2) A civil servant or state apparatus who is found guilty of the criminal offense as referred to in paragraph (1) shall be sentenced to life imprisonment or a minimum of 4 (four) years imprisonment and a maximum of 20 (twenty) years imprisonment and be fined a minimum of Rp 200,000,000 (two hundred million rupiahs) and a maximum of Rp 1,000,000,000 (one billion rupiahs).

#### Article 12 C

- 1) The provisions as referred to in Article 12B paragraph (1) shall not be valid if the recipient reports the gratification to the Commission for Corruption Eradication.
- 2) The recipient of gratification shall convey the report as referred to in paragraph (1) no later than 30 (thirty) working days after the gratification has been received.
- 3) The Commission for Corruption Eradication within a period of 30 (thirty) working days at the latest after the receipt date of the report shall decide whether the gratification belongs to the recipient or the state.
- 4) The procedures for conveying the report as referred to in paragraph (2) and for determining the status of the gratification as referred to in paragraph (3) shall be laid down in Law on the Commission for Corruption Eradication.<sup>17</sup>

It could be understood from the legal basis above that if a gratification fulfills every aforementioned element it will be considered as a criminal offense. The punishment for gratification

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<sup>17</sup>Articles 12 B and C of Law No. 20 of 2001 on Corruption Eradication.

offenders could be found in Article 12 B, where the guilty party will be sentenced to life imprisonment, or a minimum of 4 years imprisonment and a maximum of twenty years imprisonment, and be fined a minimum of Rp 200,000,000 and a maximum of Rp 1,000,000,000. Any gratification received by a Civil Servant or State Apparatus is considered as a bribe, except if it was reported to the Corruption Eradication Commission (KPK) no later than thirty days after it has been received.

The receiving parties referred to in this legal basis are: firstly, Civil Servant or State Apparatus who received a gift or promise believed to have been given to encourage him/her to do something or not to do anything because of his/her position in violation of his/her obligation. Secondly, a Civil Servant or State Apparatus who intentionally benefits him/herself or other people in violation of the law, or by abusing his/her power, forces a person to give something, pay, or receive discounted payment, or to do something for him/herself.<sup>18</sup>

Based on Article 12 B verse 1 of Law No. 20 of 2001, there are four elements to be fulfilled to consider a gratification illegal, namely:

- 1) A Civil Servant or State Apparatus;
- 2) Giving and receiving of gratification;
- 3) Because of or in regard to one's position;
- 4) In violation of one's obligation or task.

To conclude, these are the elements used to determine whether a gratification is illegal or not. These four elements must be fulfilled if the gratification were to be considered unlawful. If one or more elements are absent, a gratification would not be considered illegal.

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<sup>18</sup>A Civil Servant is a Civil Servant (PNS), both regional and central. State Apparatus is a person who is in charge of state administrations, directly or indirectly, and whose duties are financed by state budgets or BUMN. It could be concluded that the subjects that could receive gratuities are very broad.

#### **d. Illustrations of Gratification Acts**

To understand gratification better, the author has listed the following examples to illustrate which are considered lawful and which are not according to Article 12 B of Law No. 20 of 2001. Of course, these are only a small part of commonly practiced gratuities. The following are the most common forms of gratifications:

- 1) Giving gifts or parcels to state officers during religious holidays by colleagues or subordinates.
- 2) Bringing gifts during an officer's son/daughter marriage ceremony by colleagues.
- 3) Giving free tickets to an officer or his family.
- 4) Giving a special discounted price to an officer when buying from a colleague.
- 5) Giving pilgrimage fare to an officer by colleagues.
- 6) Birthday gifts or other personal events
- 7) Giving gifts or souvenirs to officers during work visits.
- 8) Giving gifts or money as a token of gratitude.<sup>19</sup>

The illustrations above still have two possibilities, legal and illegal. If it contains the elements mentioned in the previous section, then it is considered illegal. If it does not, then it is considered legal. A more detailed investigation is needed to determine the permissibility of a gratification.

To easily determine whether a gratification is legal or not, one could ask several reflective questions (self-interrogating questions) as could be seen in the table below:

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<sup>19</sup>Doni Muhardianysah et. al. *Buku Saku*, 19.

Table 2. Reflective Question Guide.<sup>20</sup>

No.	Reflective Question	Answer
1	What is the motive of the gift given by the giver?	If the motive is to influence his/her decision as a civil servant, then the gift is more inclined to be illegal and should be declined.
2	a. Was the gift given to by someone who is equal in position/ authority? For example, if the gift was given by a subordinate, superordinate, or other parties that are not equal in position/authority, whether in working circles or work related social context	If the answer is yes (equal position), then it is likely that the gift was given on the basis of friendship or brotherhood (social). Even then, just to be careful, try to answer question 2b.  If the answer is no, then you need to increase your alertness regarding the motive of the gift and answer question 2b to get further understanding.
	b. Is there any strategic authoritative relationship? i.e., there is something to do with the access to assets and control of economic, politic, social, and cultural strategic sources assets as a result of his position at that time, for example as a committee on goods and services procurement or others.	If yes, then one should be wary of the gift as it is more than likely to be an illegal gratification.

<sup>20</sup>Source: [acch.kpk.go.id](http://acch.kpk.go.id)



3	Does the gift have a potential to create a conflict of interests now or in the future?	If the answer is yes, then it is better to refuse the gift with a polite way so as to not offend the giver. If the gift could not be refused because of certain circumstances then it should be reported and consulted with the authorities to avoid any slander or to give certain answers regarding the status of the gift.
4	How was it given? Publicly or secretly?	Be wary of gratuities that are not given directly and with secrecy. The secretive manner of the gift shows that it tends to be illegal.
5	How frequent is the gift and how standard is the value compared to other social gifts?	If the value is above standard values of the society norm or too frequent, making a person with common sense to expect an ulterior motive behind the gifts, then it should be reported to the authorities or refused.

These questions can be used in every forms of gratification, including those that are socially acceptable, such as giving gifts during a marriage, engagement, birthday, and other events, as the author has mentioned above.

### C. Conclusion

From the explanation of gratification in the perspective of the positive law in Indonesia it could be concluded that gratification has been regulated in Law No. 31 of 1999 jo. Law No. 20 of 2001 on Corruption Eradication. Gratification has a broad meaning according to the positive law, which is every type of gift or reward given to a Civil Servant or State Apparatus.

Gratification has a positive as well as negative meaning, depending on the intention and motive of the gift. The gratification considered lawful by the law is a gift given by someone to a Civil Servant or State Apparatus with a pure intention and without expecting anything in return. It is considered illegal if it was given because of his/her position in violation of his obligations and tasks. As conclusion, the positive law in Indonesia does not prohibit every form of gift (gratification) in the society.

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