



Nugroho Hibnu,
Professor, Faculty of Law,
Jenderal Soedirman University,
Indonesia, Grendeng-Purwokerto
e-mail: hibnunugroho@gmail.com

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GRATIFICATION PREVENTIVE MODEL FOR LAW ENFORCERS IN DISTRICT COURTS OF INDONESIA

Corruption act relentlessly evolves along with the changes of human behavior, one of which is gratification. At glimpse, gratification might be viewed differently from corruption act since in practice people commonly consider it as an expression of gratitude to state officers or authoritativeas decision makers. Gratification in court setting is intolerable regarding the court is the final destination for those who seek justice for what they experience in life. This paper discusses the concept of preventive models of gratification in district courts. This is a juridical study as it focuses its object on law. Emphasizing its study on the preventive models of gratification performed in the district courts, this applies juridical approach in broader sense along with the empirical approach. Specifically, this is an analytical descriptive study.

Keywords: prevention; gratification; District Court.

Хибне Нугрохо, професор, юридичний факультет, Університет ім. генерала Судірманна, Індонезія, м. Гренденг-Пурвокерто.
e-mail : hibnunugroho@gmail.com

Превентивна модель заохочення працівників окружних судів в Індонезії

Форми корупційних правопорушень, однією з яких є заохочення, постійно змінюються і залежать від моделей поведінки людини. На перший погляд заохочення може сприйматися не як корупційне діяння, оскільки на практиці люди зазвичай розглядають його як вираз подяки державним службовцям або посадовим особам, які ухвалюють відповідальні рішення. Проте в судовій практиці заохочення є неприпустимим, оскільки суд виступає останньою інстанцією для тих, хто чекає справедливого рішення щодо проблем, з якими вони стикаються у своєму житті, й останньою надією відновлення порушених прав чи отримання відповідної компенсації. У статті аналізується концепція використання превентивних моделей заохочення в окружних судах Індонезії. Основну увагу приділено дослідженню суто правових проблем заохочення працівників окружних судів, при цьому в основному застосовано емпіричний і теоретичний підходи, а саме дослідження має описовий характер. Наведені у статті пропозиції в цілому стосуються доброчесності суддів, яка має постійно підтримуватись, вивчатись і вдосконалюватись. Визнання й підтримання високого рівня доброчесності суддів є пріоритетним у роботі судових органів. Зроблено висновок,

що спроба вдосконалити судову систему, спрямована на усунення контактів між окремими сторонами судового процесу та суддями, не виявилась ефективною для запобігання і попередження заохочення як форми корупційного правопорушення.

Ключові слова: профілактика; заохочення; окружний суд.

Introduction. Judicial system in Indonesia is based on the amended 1945 Constitution, Article 24 (1) stating “The Judicial Power shall be independent and shall possess the power to organize the judiciary in order to enforce law and justice”. The judicial power in Indonesia is performed by a Supreme Court and judicial bodies underneath it in the form of public courts, religious affairs courts, military tribunals, state administrative courts and by a Constitutional Court.

The court institution is independent, free from any intervention. The court conducts judicial performance to enforce law and justice, thus, it puts the judges as the executors of judicial power even calls them as the God representative in earth. Corruption offenses undoubtedly bring about abominable impact on life facets since this crime always causes negative consequences.¹ One of the negative impacts of systemic corruption on the democratization and sustainable development is illegitimacy of democracy process by decreasing the public trust toward the public policy and disregarding the rule of law.

Corruption occurred among the law enforcers causes considerable impacts as those of economic and political field. Indonesia as the state of law puts Law as the main entity. Corruption done by the law enforcers then counteracts the public trust in a greater extent. On the other hand, the law will not run in accordance with the given regulation. The court which should have restored the damaged sense of justice among people cannot uphold justice due to the integrity loss of the law enforcers. The judge will be unfair and stand for those who give money. Finally, people will not be afraid of committing crime as long as they can buy the justice including the judge decision as he wishes.

Gratification is one of crimes which brings the equal impact as corruption crimes. The gratification occurred within the court recorded by the Judicial Commission from 2012 to 2017 stated that almost every year the judges were red-handed caught in an operation. During this period, out of 28 law enforcers arrested, 17 are judges including those who are in charge in corruption court.

The arise of corrupted behaviour within the law enforcers cannot be separated from either personal or environmental factors. The strict monitoring and the given regulations in court are still neglected by the perpetrators. As a law enforcer, a judge is granted a standard salary and sufficient facilities comparing to other officials to support their performance in serving law as well as preventing themselves from being involved in gratification. Nevertheless, the personality background, morality, mentality and environment significantly affect the judges personality.

Corruption Eradication Commission (KPK), an anti corruption institution idealizes what so-called National Integrity System. KPK believes that integrity is the key of all. The higher integrity a person has, the higher self prevention he has from

¹ BPKP. *Cause of Corruption*. Accessed on 11 March 2018. P. 4. URL: <http://www.transparansi.or.id>.

corruption and vice versa. Considering the high importance of integrity, it requires not only individual but also system and institution. The next question would be how the concept of preventive models of gratification conducted in the District Court.

Theoretical Concept. Criminal Judicial System is a system aimed to regulate criminal issues which disrupt social order and security which functions as an effort to control crime in a tolerable degree.¹ According to Mardjono Reksodipoetro² the objectives of the Criminal Judicial System is to prevent community from criminal victim; to solve criminal cases proportionally for legal assurance as well as to provide deterrent effect for the perpetrators.

To do so, a collaborative performance is required. The collaboration is carried out by the four law enforcers including police department, office of the prosecution, court and correctional facilities. Further, he added that if is not achieved, the following might happen:

“1. Difficulties in measuring the self achievement and failure in each institution dealing with their shared duty;

2. Difficulties in solving their own main problems (as a sub system of the criminal judicial system);

3. Since it is on each institution responsibility, the whole effectiveness of the criminal judicial system is ignored”.³

Corruption offense constantly shifts along with the changes of human behavior, one of which is gratification. At glance, gratification might be viewed differently from corruption since in practice people commonly consider it as an expression of gratitude to state officers or authoritative decision makers.

Basically, receiving gratification is not a crime. Black’s Law Dictionary defines gratification as “*a voluntarily given reward or recompense for a service or benefit; a gratuity.*” Moreover, in the explanation of Article 12 B (1) of Law No. 31 Year 1999 of Law No. 20 Year 2001 on the Corruption Eradication (Corruption Law), gratification is defined as:

“payment or gifts in broad sense including money, goods, discount, recompense, interest-free loan, travel ticket, lodging, tour, free medicine, and other facilities. The gratification includes the one received either at home or from abroad and the ones done with or without using electronic devices”.

The change of gratification meaning⁴ to civil servants or state apparatus cannot be separated from the development of Indonesian people. Koentjaraningrat explained the characteristics and traits of Indonesian community after independence which affect on the acknowledgement of new norms in the community. Indonesian community have been accustomed to being inferior before colonials which causes resistance toward the given regulations. The developing patterns of behaviour are as follows:

¹ Abdussalam & DPM Sitompul, 2007. *Criminal Justice System*, Jakarta: Restu Agung. P. 4.

² Nyoman Serikat Putrajaya, 2007. *Criminal Justice System*. Course Module of Master of Law, UNDIP, Semarang. P. 11.

³ Ibid. P. 13.

⁴ Laola Easter et al. 2014, *Study of the Application of Gratification Articles which are considered bribes in the Corruption Law*. Jakarta: ICW. P. 11.

a) unawareness on meaning and quality; b) attitude to achieve something instantly/ result-based effort rather than process-based effort; c) irresponsibility; d) apathetic and sceptic.

Gratification crime to state apparatus is governed in the provision of Article 12 B of Law No. 20 Year 2001. Gratification is defined as payment or gifts in broad sense including money, goods, discount, recompense, interest-free loan, travel ticket, lodging, tour, free medicine, and other facilities. The gratification includes the one received either at home or from abroad and the ones done with or without using electronic devices. The provision states as follows:

“Any gratification for 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”.

Based on this law, gratification is categorized into:

1. Gifts in form of goods and money as gratuity;
2. Reward or donation on a marriage of the state apparatus' son or daughter by the partnership of work.
3. The travel ticket given to the state apparatus and family for personal business for free.
4. Discount given by the partnership to the state apparatus for a good or service purchase.
5. An interest-free loan to the state apparatus by the partnership.
6. Pilgrimage fund for the state apparatus by the partnership.
7. A birthday gift or any other personal occasion by the partnership.
8. Souvenirs given at religious holidays by the partnership or his subordinates.

All those rewards are considered as gratification if there is a partnership or institutional relation between the giver and the state apparatus and/or solely related to the position of the apparatus.

The reward given to the civil servant aimed to ease an agreement with the government commonly occurs in terms of goods and service procurement. In this case, the giver will take advantages of the agreed project. Therefore, the gift in this context cannot be defined merely as a reward since there is an expectation for a larger benefits given by the civil servant who has authority for his or her position.

Corruption offenses and gratification are commonly perceived as beyond the law crime since it involves high level economy offenders and high level bureaucratic, either economic bureaucrat or government. Consequently, it takes much effort to prove. Moreover, an attempt of corruption eradication is frequently hampered by the conflict of bureaucrat interest who might involve in the crime. Needless to say then the corruption offense is beyond the law and untouchable by the law.¹

¹ Margareth Carla Rampengan, *The function of the BPK Audit Report in the Corruption Case*. Available at <http://ejournal.unsrat.ac.id/index.php/lexcrimen/article/download/1575/1267>. Accessed on, 10 June 2018.

Methodology. It is a juridical study by taking law as the object.¹ Since the focus of the research is a preventive model on corruption and gratification carried out in District Courts, it applies juridical in broad sense by employing empirical method.² Further, it is descriptive analytical study as it attempts to describe facts in the effort of preventing corruption and gratification offenses performed within the District Courts along with the obstacles that finally explains the application of a more comprehensive preventive system in the District Courts.

The data in this research include primary and secondary data. The primary data are in the form of verbal information gathered from the selected informants while the secondary data involve law and regulation which deal with the prevention of corruption and gratification crimes in the District Prosecution and other relevant sources. Informants in this research involve judges and deputy registrar on the District Court of Purwokerto and Purbalingga Central Java. Besides, it requires input from other law enforcers as well as legal experts. From the key informants, the data gathering was developed through snowballing which means that the information keeps expanding until no more new information found. This research takes place in legal area of the District Court of Purwokerto and Purbalingga.

Technique of data collection in this research is carried out depending on the type of data. The primary data are gathered through interview with judges of the District Court of Purwokerto and Purbalingga while the secondary data are obtained from observing document and other relevant sources within the legal area of the District Court of Purwokerto and Purbalingga.

The analysis is done by qualitative descriptive and content analysis by making use of law interpretation, law principles and theories of law. The descriptive qualitative analysis is employed to find out the methods to prevent corruption and gratification offenses occurred in District Courts as well as the solution.

Findings. Gratification crime to state apparatus is governed in the provision of Article 12 B of Law No. 20 Year 2001. Gratification is defined as payment or gifts in broad sense including money, goods, discount, recompense, interest-free loan, travel ticket, lodging, tour, free medicine, and other facilities. The gratification includes the one received either at home or from abroad and the ones done with or without using electronic devices. The provision states as follows:

“Any gratification for 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”.

The Corruption Law categorizes gift or gratification into eight categories: (1) Gifts in form of goods and money as gratuity; (2) Reward or donation on a

¹ Barda Nawawi Arief, September 1995, *Normative Law Research (An Understanding Reorientation Effort)*, MPIH Upgradingin Unsoed Purwokerto, 11-15 September 1995.

² Sudarto, 1981, *Law and Cıinal Law*, Bandung, Alumni, P. 13.

Juridical method itself can be viewed from either broad or narrow sense, the use of method which only sees the logical and systematical relation in a whole norm set is called juridical method in narrow sense while it does not only see the relation within the norm sets but also the social effect and the importance of community background, then it is the juridical method in broad sense.

marriage of the state apparatus' son or daughter by the partnership of work; (3) The travel ticket given to the state apparatus and family for personal business for free; (4) Discount given by the partnership to the state apparatus for a good or service purchase; (5) An interest-free loan to the state apparatus by the partnership; (6) Pilgrimage fund for the state apparatus by the partnership; (7) A birthday gift or any other personal occasion by the partnership; and (8) Souvenirs given at religious holidays by the partnership or his subordinates.

All those rewards are considered as gratification if there is a partnership or institutional relation between the giver and the state apparatus and/or solely related to the position of the apparatus.

Judges as one of the law enforcers must have high integrity, as stated by the president of Indonesia, Joko Widodo in his speech on the CPNS briefing of judges candidates within Supreme Court of Republic of Indonesia 2018. He explained that a judge must uphold honesty and integrity throughout his or her career, as a role model for other professions since Indonesian people expect the judges candidates to be a fair, professional, high integrity and dignity and justice serving model. By doing so, it is expected that they provide strong foundation for the accelerated development as well as improve social justice for the whole people of Indonesia.¹

Integrity for a judge is one of the judge codes of conduct worldwide as in *The Bangalore Principles of Judicial Conduct*. This is an unquestioning thing a judge must have as the key to open justice for the people as promised in the 1945 Constitution. However, nowadays, Indonesian judges suffered from integrity crisis indicated by the widespread misconduct performed by judges and several judges red-handed caught in corruption cases.²

The Supreme Court as an institution responsible for supervising the judges behaviour has issued the Supreme Court Regulation No. 8 Year 2016 on the Monitoring and Guidance of Direct Supervisor in the Environment of the Supreme Court and Judicial Bodies underneath. In the regulation, it is stated that monitoring is necessarily conducted by the direct supervisor of the judges to prevent them from misconduct on their duty or violation of court officers. This guidance shall be consistently carried out for the effective result.

In the theory of Legal System by Lawrence Meir Friedman,³ there are four key elements of the legal system determining the success or failure of a law and regulation. These are (1) Legal Structure; (2) Legal Substance; (3) Legal Culture and (4) Legal Impact.

In implementing gratification prevention in court institution, the element of legal structure and legal substance has been well applied. The supervising performed based on the applicable regulation should have made the judges avoid gratification. Yet, the gratification persists.

¹ <https://nasional.sindonews.com/read/1283930/13/presiden-jokowi-minta-calon-hakim-pegang-teguh-kejujuran-1519197511>. Wednesday, 21 February 2018. Accessed on 22 October 2018.

² Siti Nurhalimah, 2017, *Integrity of Judges in Indonesia*. Buletin Hukum dan Keadilan, Volume 1 No. 8, February 2017. Jakarta : UIN Syarif Hidayatullah. P. 1.

³ Lawrence M. Friedman, 2011, *Social Sciences Perspective Law System*. Bandung: Nusa Media. P. 5.

Dealing with Legal Culture, it is known there is a close relation among people as a justice seeker, judges, court officers, prosecutor, and advocates. Each element has their own interest. From the interview with an advocate, it reveals that advocate play a dominant role in a trial since it is commonly found that the advocate has an emotional bound with judges, registrar and court officers. This closeness tends to be misused for gratification. From 2005 to the early 2018, there are 22 advocates involved in bribery case. This number keeps increasing counted up to the end of 2018 following some recent Red Handed Operation of Judges in some District Court.

In Legal Impact perspective, how a legal product brings impact on the society is closely related to the purpose of a sanction imposed and to what extent the decision makers are consequent in passing the verdict.

In handling ethic violation and major crimes, it is commonly seen a conflict of interest between the Supreme Court and the Judicial Commission. It seems that the Supreme Court is reluctant to consider Judicial Commission suggestion. It will surely put the Supreme Court in difficulty for its selfishness.

The judge contribution as a law enforcer shall have been in accordance with the legal objectives, that is, to represent the people justice. The judge's crown is a verdict which is always initiated by the utterance "Based on the Belief in the One and Only God" implying what is decided in the verdict truly upholds honesty and the given facts during the trial, to which a judge passes a verdict refer.

Conclusion and Suggestion. The Supreme Court as an institution which is responsible as the highest supervisor of the judicial implementation constantly attempts to perform monitoring and issuing regulation on the monitoring as stated in the Regulation of Supreme Court No. 8 Year 2016 on the Monitoring and Guidance of Direct Supervisor in the Environment of the Supreme Court and Judicial Bodies underneath. In addition, as a profession, a judge has a code of conduct as stipulated in the Shared Decision of Chief of Supreme Court of Republic of Indonesia and Chief of Judicial Commission of Republic of Indonesia Number: 047/KMA/SKB/IV/2009 – 02 SKB/P.KY/IV/2009 on the Code of Conduct and Guidance of Judges governing ten principles of Judges Conduct. In supervising, the state judges mandate Constitutional Court to act as an external supervisor for the judges as governed by Law No. 18 Year 2011, the supervising includes monitoring the judges conduct; receiving complaint of community concerning about ethical violation; verifying, clarifying and investigating on the report of allegedly ethical misconduct; and take any measure toward individual, group or legal bodies who defame the judge dignity. The supervising the Constitutional Court is external while the Supreme Court is internal. Both internal and external supervising have been complementary yet the synchronization cannot be well implemented due to the sectoral interest of the Supreme Court.

The suggestions proposed in this research are the continuous improvement of judge integrity since it should be persistently maintained, trained and improved. Establishing a high integrity environment shall be the priority among judicial bodies. In addition, the attempt for system improvement aimed to eliminate contact between

particular party and judges has not proved effectively to prevent gratification. Thus, formal approaches without a mental revolution among judges would be far from effective to implement.

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Нугрохо Хибну, профессор, юридический факультет, Университет им. генерала Судирмана, Индонезия, г. Гренденг-Пурwokerto.
e-mail : hibnunugroho@gmail.com

Превентивная модель поощрения работников окружных судов в Индонезии

Формы коррупционных правонарушений постоянно меняются и зависят от моделей поведения человека, одной из которых является поощрение. На первый взгляд поощрение может восприниматься не как коррупционное деяние, поскольку на практике люди обычно рассматривают его как выражение благодарности государственным служащим или должностным лицам, которые принимают ответственные решения. Однако в судебной практике поощрение недопустимо, поскольку суд выступает последней инстанцией для тех, кто ожидает справедливого решения проблем, с которыми они сталкиваются в своей жизни, и последней надеждой восстановления нарушенных прав или получения соответствующей компенсации. В статье анализируется концепция использования превентивных моделей поощрения в окружных судах Индонезии. Основное внимание уделено исследованию правовых проблем поощрения работников окружных судов, при этом использованы эмпирический и теоретический подходы. Предложения автора в целом касаются честности судей, которая должна постоянно поддерживаться, изучаться и совершенствоваться.

Ключевые слова: профилактика; вознаграждение; окружной суд.

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