

# CHAPTER I

## INTRODUCTION

### A. Background of Research

In 2023, a gratification case occurred in Indonesia, involving an official from the Directorate General of Taxes, Ministry of Finance. The individual was accused of being involved in acts of illegal gratification and money laundering between 2002 and 2010.<sup>1</sup> The court identified Rafael Alun Trisambodo, an official of the Directorate General of Taxes at the Ministry of Finance, as the defendant in the case involving bribery. Rafael Alun is officially known to have received a bribe of IDR 10 billion from PT Artha Mega Ekadhana (ARME).<sup>2</sup> The judge declared Rafael guilty of violating several articles of law, including Article 12B in conjunction with Article 18 of the Corruption Crime Act in conjunction with Article 55 paragraph (1) of the Penal Code, as well as Article 3 paragraphs (1)(a) and (c) of Money Laundering Crime Act No. 25 of 2003. The judge also considered Article 55 paragraph (1) number (1) of the Penal Code in conjunction with Article 64 paragraph (1) of the Penal Code, and Article 3 of Prevention and Eradication

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<sup>1</sup> Bilal Ramadhan, Republik, 2023, *Tak Hanya Gratifikasi, Rafael Alun Didakwa Cuci Uang*, <https://news.republika.co.id/berita/s073ts330/tak-hanya-gratifikasi-rafael-alun-didakwa-cuci-uang>, (accessed on February 18, 2024, at 21.00 WIB).

<sup>2</sup> Wilda Hayatun Nufus, detikNews, 2024, *Rafael Alun Divonis Terima Gratifikasi Rp 10 M, Begini Perhitungannya*, <https://news.detik.com/berita/d-7130818/rafael-alun-divonis-terima-gratifikasi-rp-10-m-begini-perhitungannya>, (accessed on February 18, 2024, at 21.37 WIB).

of the Crime of Money Laundering Act No. 8 of 2010. As a result, Rafael Alun was sentenced to 14 years in prison.<sup>3</sup>

By looking at that case, it can be said that corruption activities are a form of criminal act. If look further, gratification in corruption crimes with gratification in the aspect of taxation, until now it is still a matter of debate, because there is no legal certainty in the interpretation of gratification in the context of the formation of laws and regulations.<sup>4</sup> A legal expert who is also known as an anti-corruption activist criticizes the issue of gratification as a tax object in the Income Tax Act No. 36 of 2008. According to him, this is not in line with the spirit of eradicating corruption and is contrary to the Corruption Crime Act No. 20 of 2001 which stipulates that gratification is a type of corruption.<sup>5</sup> As explained above, in Corruption Crime Act, especially in Article 12 letter b, gratification is associated with bribery which is a type of corruption. However, it should be noted, there it is stipulated that gratification is corruption if it meets the two elements. First, gratuities are given to civil servants or state organizers. Second, the granting of gratuities

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<sup>3</sup> BBC News Indonesia, 2023, *Rafael Alun Divonis 14 Tahun Penjara Dan Bayar Uang Pengganti Rp10 Milliar; Bagaimana Perjalanan Kasusnya?*, <https://www.bbc.com/indonesia/articles/c90x38xg77xo>, (accessed on December 12, 2023, at 18.25 WIB).

<sup>4</sup> Evita Israhadi and Bayu Sasongko, "Criminal Actions of Corruption and Gratification in Legal Sociology," in *Proceedings of the 3rd Multidisciplinary International Conference, MIC 2023, 28 October 2023, Jakarta, Indonesia*, 2023, <https://doi.org/10.4108/eai.28-10-2023.2341776>. p. 2-3.

<sup>5</sup> Vincent Fabian Thomas, *tirto.id*, 2020, *Duduk Perkara 'Legalisasi' Gratifikasi Dalam UU Cipta Kerja*, <https://tirto.id/duduk-perkara-legalisasi-gratifikasi-dalam-uu-cipta-kerja-f6Ta>, (accessed on September 20, 2023, at 23.23 WIB).

relates to the position and is contrary to the obligations or duties of the civil servant or state administrator.

Furthermore, gratification is also regulated in a government system as in the Minister of Finance Regulation No. 7/PMK.09/2017.<sup>6</sup> Although it applies only within the scope of the Ministry of Finance, at least it can be an illustration that even in the government sector, gratification is not always an illegitimate item. That regulation classifies gratuities into gratuities that must be reported and gratuities that are not mandatory to be reported. Gratuities that must be reported are gratuities related to the office and contrary to obligations or duties. This includes gratification from parties who have interests. It is this type of gratification that is “prohibited”. Furthermore, gratuities that are not required to be reported can be interpreted as “allowed” gratuities. This “permissible” gratification can be related to officialdom or not. Those related to officialdom include seminar kits, honorary speakers in workshops, and lodging facilities for training activities. Then, examples of gratuities that are not related to officialdom include generally accepted discounts and shopping vouchers, as well as competition or championship prizes.<sup>7</sup>

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<sup>6</sup> “Regulation of the Minister of Finance Number 7/PMK.09/2017 Concerning Guidelines for Gratification Control within the Ministry of Finance.” (2017).

<sup>7</sup> Leandra Lederman, “The Fraud Triangle and Tax Evasion,” in *Proceedings. Annual Conference on Taxation and Minutes of the Annual Meeting of the National Tax Association*, Vol. 112 (JSTOR, 2019), <https://www.jstor.org/stable/27067393>, p. 25-26.

Based on the explanation above, if look at the legal aspects the legal interpretation of gratification has existed since the issuance of the Corruption Crime Act, however, after there is Income Tax Act appears with different rules and different meanings. The Establishment of Laws and Regulations Act No. 15 of 2019 that it has the potential to violate two principles of statutory formation, namely the principle of “clarity of formulation” and the principle of “enforceable”. For example, the principle of clarity in its formulation, the inclusion of the amended article is directly combined with the old article, making it difficult for anyone who reads it. The second principle that has the potential to be violated is the “enforceable” principle.<sup>8</sup>

Nur Mauliddar<sup>9</sup> explains that the position of the gratification giver as contained in Article 5 of the Corruption Crime Act is any gift made to civil servants and state administrators intended for the gratification recipient to do something or not do something contrary to his duties solely to fulfill the wishes of the gratification giver. The loss of the unlawful nature of the gratification giver in corruption crimes related to the existence of a gratification recipient report, namely that the giver still has an unlawful nature for the act of giving gratification, while the existence of a gratification recipient report is not a reason for the criminal omission. Nonetheless, the

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<sup>8</sup> United states Department of Justice – Civil Right Division, “Investigation of the Feguson Police Department” (US, 2015).

<sup>9</sup> Nur Mauliddar, Mohd Din, and Yanis Rinaldi, “Gratifikasi Sebagai Tindak Pidana Korupsi Terkait Adanya Laporan Penerima Gratifikasi,” *Kanun Jurnal Ilmu Hukum*, Vol. 19, No. 1 (April, 2017), p. 155–73.

reason for the criminal omission was directed against the recipient of the gratification.<sup>10</sup>

To find out the existence and unlawful nature of gratification in corruption crimes, it is recommended to the framers of the Law to provide restrictions on the meaning of gratification so that the multiple interpretations of gratification can be eliminated through legal harmonization so that the corruption crimes in Indonesia can be eradicated by providing legal certainty through related laws. Based on the reasons mentioned, the author wrote an academic writing entitled **“URGENCY TO HARMONIZE THE GRATIFICATION PROVISION WITHIN THE CORRUPTION CRIME ACT AND INCOME TAX ACT AS AN EFFORT TO ERADICATE CORRUPTION”**.

## **B. Problems Formulation**

Based on the background explained above, the author addressed two questions that needed to be answered in accordance with the study background details mentioned above:

1. How are gratification provisions regulated in Indonesia viewed from the Income Tax Act which is contrary to the Corruption Crime Act?

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<sup>10</sup> Eddy Rifai, “Law Enforcement and Justice Issues in Gratification Criminal Cases,” *International Journal of Criminal Justice Sciences*, Vol. 16, No. 2 (July, 2021), p. 198-199.

2. What is the urgency of harmonizing the gratification provision in Income Tax Act and the Corruption Crime Act as an effort to eradicate corruption in Indonesia?

### **C. Objectives of Research**

In light of the research issue that was outlined earlier, the following are the objectives of this research:

1. To understand the gratification provision in Indonesia based on Income Tax Act and the Corruption Crime Act and analyzing the disharmony regarding this law regarding gratification which is the object of tax.
2. To analyze the urgency of legal harmonization related to multiple interpretations of laws and to explore the current efforts to eradicate corruption crimes in Indonesia.

### **D. Benefits of Research**

Given the objective of the research described above, there are some benefits of this research, namely:

1. Theoretical Benefit

The benefit of this research is to develop legal science in the field of Constitutional Law, especially in the legal issue of multi-interpretations of the law and regulation.

## 2. Practical Benefit

The study aims to provide valuable input to DPR on establishing precise parameters for defining Gratification. As well as to immediately carry out legal harmonization which will help eliminate multiple interpretations and contribute to the development of a good legal system in Indonesia. Also, to provide insights to KPK for addressing instances of corruption and enhancing collaboration among State entities to eradicate corruption crimes across all sectors.