



# Repositioning Gratification As an Ordinary Criminal Offense in Indonesia's Criminal Law System: A Conceptual Analysis and Directions for Legal Reform

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## Abstract

Gratification under the Indonesian Anti-Corruption Law (Undang-Undang Pemberantasan Tindak Pidana Korupsi) is classified as a special criminal offense characterized by a repressive approach, a broad legal definition, and the application of a reverse burden of proof. This regulatory framework raises normative concerns following the enactment of the 2023 National Criminal Code (Kitab Undang-Undang Hukum Pidana), which emphasizes the principles of legality, culpability, and proportionality in sentencing. This study aims to examine the legal construction of gratification, identify regulatory disharmony between the Anti-Corruption Law and the National Criminal Code, and assess the urgency of reformulating the legal status of gratification within the Indonesian criminal law system. Employing a normative juridical method with statutory, conceptual, and comparative approaches, the study finds a paradigmatic divergence and a heightened risk of overcriminalization resulting from the absence of a clearly defined *mens rea* element. The study concludes that reclassifying gratification as an ordinary criminal offense with differentiated sanctions is necessary to achieve a just, consistent, and effective criminal justice system.

**Keywords:** *Gratification, Criminal Law, Corruption, Ordinary Crimes*

## Abstrak

Gratifikasi dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi (UU Tipikor) ditetapkan sebagai delik pidana khusus dengan karakter represif, definisi luas, dan mekanisme pembuktian terbalik. Perubahan ini menimbulkan persoalan normatif pasca diberlakukannya Kitab Undang-Undang Hukum Pidana Nasional (KUHP) Tahun 2023 yang mengedepankan prinsip legalitas, kesalahan, dan proporsionalitas pemidanaan. Penelitian ini bertujuan menganalisis konstruksi hukum terkait gratifikasi, mengidentifikasi disharmoni pengaturan antara UU Tipikor dan KUHP, serta mengevaluasi urgensi perubahan gratifikasi dalam sistem hukum pidana Indonesia. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan komparatif. Hasil penelitian menunjukkan adanya perbedaan paradigma dan risiko kriminalisasi berlebih akibat tidak adanya unsur *mens rea* yang tegas. Penelitian ini menyimpulkan bahwa perubahan gratifikasi sebagai tindak pidana biasa dengan perbedaan sanksi diperlukan guna mewujudkan sistem hukum pidana yang adil, konsisten, dan efektif.

**Kata kunci:** *Gratifikasi, Hukum Pidana, Tindak Pidana Korupsi, Tindak Pidana Biasa*

## 1. INTRODUCTION

Corruption constitutes a fundamental problem within Indonesia's legal system and governance framework. As a systemic and pervasive crime with direct implications for the fulfillment of social and economic rights, corruption has long been classified as an extraordinary crime requiring extraordinary countermeasures. In response, Indonesian criminal law established a special anti-corruption regime through Law No. 31 of 1999, as amended by Law No. 20 of 2001 (the Anti-Corruption Law), which regulates various forms of corrupt conduct, including gratuities.

Gratuities are normatively positioned as a form of corruption under Articles 12B and 12C of the Anti-Corruption Law. These provisions broaden the scope of corruption to encompass any gift—whether money, goods, facilities, discounts, commissions, or other benefits—received by civil servants or state officials in connection with their official duties. This expansive approach is intended to close legal loopholes that have enabled covert bribery practices disguised as “gifts” or “tributes,” and to serve both preventive and repressive functions in safeguarding the integrity of public administration.

Nevertheless, the regulation of gratuities presents increasingly complex conceptual challenges. Data from the Corruption Eradication Commission (KPK) indicate a high volume of reported gratuities in recent years, many of which are not associated with state financial losses or abuses of authority. This trend suggests that gratuities are not inherently wrongful acts, but often occupy a gray area between ethical violations, administrative misconduct, and criminal corruption.

These challenges are further intensified by the highly repressive and absolute character of gratuity regulation under the Anti-Corruption Law. Gratuities are treated as a special criminal offense subject to severe sanctions and evidentiary rules that deviate from general principles of criminal law, particularly through the application of a reverse burden of proof. In certain circumstances, recipients are required to demonstrate that the gratuity they received does not constitute a bribe, especially when its value exceeds a prescribed threshold. This framework raises significant philosophical and legal concerns, particularly where the elements of culpability (*mens rea*) and intent (*dolus*) cannot be clearly established.<sup>1</sup>

At the same time, socio-cultural dynamics within Indonesian society indicate that the practice of giving gifts or tokens of appreciation remains deeply embedded in social norms and community relations. Numerous cases demonstrate that public officials have been convicted for accepting gifts that are symbolic, ceremonial, or unrelated to any abuse of office. This disparity between positive law and living law reflects a disconnect

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<sup>1</sup> Mohamad Yusuf Daeng M, Dedi Andriyan, and Hafidz Syukri Hamdani, “Tindak Pidana Korupsi Dalam Bentuk Gratifikasi,” *Innovative: Journal of Social Science Research* 3, no. 2 (2023): 2946–2959, <https://j-innovative.org/index.php/Innovative/article/view/660>.

between the normative construction of gratuities as a specific criminal offense and prevailing social realities.

The enactment of the National Criminal Code (KUHP) introduces a new paradigm in Indonesian criminal law by emphasizing proportionality, restorative justice, and punishment as an *ultimum remedium*. Although the KUHP codifies corruption offenses in Articles 603–606, it does not clearly distinguish between corruption, bribery, and gratuities. The absence of normative integration between the KUHP and the Anti-Corruption Law has resulted in overlapping regulations and legal uncertainty in the enforcement of gratification-related offenses.

Accordingly, a critical reassessment of the legal position of gratification within the Indonesian criminal law system is required. The central issue is not whether gratification should be eradicated, but whether all forms of gratification are normatively justified in being treated as corruption offenses subject to an extraordinary legal regime. A proportional classification of gratification based on culpability and the actual impact of the conduct is essential to preserve the moral legitimacy and rationality of criminal law.

The study of gratification as an element of corruption has thus become a central issue in contemporary Indonesian criminal law discourse. Consistent with the designation of corruption as an extraordinary crime, prior studies emphasize that the regulation of gratification under the Anti-Corruption Law functions not only as a repressive measure, but also as a preventive mechanism aimed at promoting clean and accountable governance.

Angkasa et al. argue that the persistence of corruption cannot be attributed solely to weak criminal sanctions, but rather to structural and institutional obstacles within law enforcement mechanisms. Corruption, including gratification, is conceptualized as a serious violation of the community's social and economic rights, thereby justifying the establishment of the Corruption Eradication Commission (KPK) as an institution endowed with extraordinary powers. Nevertheless, their analysis primarily addresses institutional design and inter-agency coordination, without engaging in a substantive examination of gratification as a distinct criminal offense.<sup>2</sup>

A normative critique of gratification is advanced by Nasution, who challenges the construction of Article 12B of the Anti-Corruption Law. He observes that the determination of illegality hinges on whether the gratification is reported to the KPK, thereby generating legal uncertainty and subjective assessments.<sup>3</sup> This concern is reinforced by Yulia et al., who analyze the application of the reverse burden of proof in gratification cases. While this mechanism is intended to facilitate the prosecution of

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<sup>2</sup> Nitaria Angkasa, Tirta Gautama, and Ridwan Ridwan, "Penegakan Hukum Tindak Pidana Gratifikasi Dalam Upaya Pemberantasan Tindak Pidana Korupsi," *Justice Law: Jurnal Hukum* 2, no. 2 (2022): 20–33, <https://scholar.ummetro.ac.id/index.php/hukum/article/view/2554>.

<sup>3</sup> Ingka Harsani Nasution, "Sistem Pelaporan Gratifikasi Dalam Pencegahan Tindak Pidana Korupsi Dikaitkan Dengan Undang-Undang Tindak Pidana Korupsi," *Jurnal Indonesia Sosial Teknologi* 2, no. 8 (2021): 1356–1375, <https://doi.org/10.59141/jist.v2i08.219>.

corruption, they contend that it risks undermining the presumption of innocence if not applied in a proportional manner.<sup>4</sup>

Athallah et al. examine the conceptual difficulty of distinguishing gratification from bribery. They argue that gratification often functions as a continuation of pre-existing power relations, even in the absence of a prior agreement, which is a defining feature of bribery. Law enforcement challenges arise from the lack of clear normative boundaries between criminal gratification and conduct that is merely administrative or ethical in nature. However, their study continues to situate gratification exclusively within the category of corruption offenses, without questioning the appropriateness of this classification.<sup>5</sup>

From the perspective of national criminal law, Bego et al. conduct a comparative analysis of gratification provisions under the new Criminal Code and the Anti-Corruption Law. They conclude that although corruption has been incorporated into the national codification, the regulation of gratification remains more detailed under the Anti-Corruption Law, particularly with respect to reporting obligations and the reverse burden of proof. While emphasizing the need for normative harmonization, the study does not advocate for the reclassification of gratification as an ordinary criminal offense.<sup>6</sup>

The sociological and normative dimensions of gratification are explored by Bethesda, who notes that gift-giving has long functioned as a form of social ethics and reciprocity within society. According to this view, the criminalization of gratification creates tension between positive law and prevailing social norms.<sup>7</sup> A similar argument is advanced by Maradona, who characterizes gratification as the criminalization of cultural practices, particularly in cases where no causal link exists between the gift and an abuse of authority.<sup>8</sup>

Iskandar further demonstrates that gratification occupies a gray area between social interaction and corruption, such that not all acts of gratification can be equated with bribery. Although his study offers important conceptual distinctions, it nevertheless accepts the broad categorization of gratification within the framework of

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<sup>4</sup> Yulia Monita Yulia, Andi Najemi, and Nys Arfa, "Urgensi Pengaturan Pembalikan Beban Pembuktian Dalam Perkara Gratifikasi Pada Tindak Pidana Korupsi," *Jurnal Sains Sosio Humaniora* 7, no. 1 (2023): 40–57, <https://doi.org/10.22437/jssh.v7i1.21931>.

<sup>5</sup> Arraeya Arrineki Athallah, K N Sofyan Hasan, and Henny Yuningsih, "Penegakan Hukum Terhadap Tindak Pidana Gratifikasi Di Indonesia," *Lex Lata: Jurnal Ilmiah Ilmu Hukum* 6, no. 1 (2024): 51–64, <https://doi.org/10.28946/lexl.v6i1.2854>.

<sup>6</sup> Karolus Charlaes Bego et al., "Tindak Pidana Gratifikasi Dalam Jabatan Publik: Studi Perbandingan Antara KUHP Dan UU Tipikor," *Jurnal Kolaboratif Sains* 8, no. 8 (2025): 5074–81, <https://doi.org/10.56338/jks.v8i8.8429>.

<sup>7</sup> Elisabeth Bethesda, "Masyarakat Memandang Gratifikasi Dalam Tindak Pidana Korupsi," *Jurnal Komunikasi Hukum* 5, no. 2 (2019): 62–75, <https://doi.org/10.23887/jkh.v5i2.18311>.

<sup>8</sup> Tigana Barkah Maradona, "Tindak Pidana Gratifikasi Di Indonesia Ditinjau Dari Aspek Budaya Hukum," *Jurnal Hukum Dan Pembangunan Ekonomi* 9, no. 1 (2021): 26–39, <https://doi.org/10.20961/hpe.v9i1.52526>.

corruption offenses.<sup>9</sup> In contrast, Sitompul maintains that gratification may be classified as bribery insofar as it conflicts with the recipient's official duties, with reporting serving as an exculpatory factor.<sup>10</sup>

More recent studies have expanded the discourse on gratification by linking it to the offense of trading in influence.<sup>11</sup> These works highlight the limitations of existing gratification regulations, which primarily target formal public officials and fail to address the involvement of informal actors within power networks. However, this line of scholarship remains focused on expanding the scope of criminalization, rather than reassessing culpability levels and the proportionality of sanctions.

Although the scholarly literature on gratification is extensive, a significant research gap remains in evaluating the normative repositioning of gratification within the framework of national criminal law reform, particularly in light of the principles of *ultimum remedium*, culpability (*mens rea*), and proportionality in sentencing. Existing studies have largely concentrated on regulatory harmonization or the optimization of law enforcement, without systematically questioning whether all forms of gratification should continue to be classified as special criminal offenses. The originality of this study lies in its effort to propose a conceptual reconstruction that proportionally reclassifies gratification as an ordinary criminal offense, without undermining the broader anti-corruption agenda. This study aims to:

- 1) analyze the concept of gratification as a special criminal offense under the Anti-Corruption Law, including its philosophical foundations, legal construction, and evidentiary mechanisms;
- 2) identify forms of normative disharmony and regulatory gaps between the Anti-Corruption Law and the newly enacted National Criminal Code;
- 3) assess the urgency and normative justification for repositioning gratification as an ordinary criminal offense based on the principles of legality, culpability, and proportionality of punishment; and
- 4) formulate directions for criminal law reform in restructuring the legal status of gratification within the Indonesian criminal law system.

## 2. RESEARCH METHODOLOGY

This study employs normative legal research (doctrinal legal research) to analyze the legal status and proposed repositioning of gratification within the Indonesian criminal

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<sup>9</sup> Irvan Sebastian Iskandar, "Konsepsi Gratifikasi Sebagai Korupsi Bagi Pejabat Publik," *Jurnal Administrasi Publik* 14, no. 2 (2023): 101–15, <http://dx.doi.org/10.31506/jap.v14i2.21863%0A>.

<sup>10</sup> Ariman Sitompul, "Gratification Development in Corruption in Indonesia," *International Asia of Law and Money Laundering* 3, no. 1 (2024): 17–22, <https://doi.org/10.59712/iaml.v3i1.77>.

<sup>11</sup> Dewic Sri Ratnaning Dhumillah and Setya Budi Dias Oktavianto, "Konsep Relevansi Kejahatan Trading Influence Dan Gratifikasi Dalam Tindak Pidana Korupsi," *Iblam Law Review* 5, no. 1 (2025): 7–14, <https://doi.org/10.52249/ilr.v5i1.526>.

law system following the reform introduced by the National Criminal Code. A normative approach is adopted because the analysis centers on the evaluation of legal norms, principles, and doctrines, rather than on empirical patterns of legal behavior.

The research utilizes a statutory approach, a conceptual approach, and a limited comparative approach. The statutory approach examines the regulation of gratification under the Anti-Corruption Law, particularly Articles 12B and 12C, as well as relevant provisions of the National Criminal Code, in order to identify normative disharmonies and their legal implications. The conceptual approach is employed to assess gratification through the lens of criminal law theory, with particular attention to the principles of legality, culpability, *mens rea*, proportionality of punishment, and *ultimum remedium*. In addition, a selective comparative approach is applied by referencing the United Nations Convention against Corruption (UNCAC) and contemporary practices in the regulation of gratification within modern criminal law systems as normative benchmarks.

The legal materials consist of primary sources, including statutory provisions and relevant judicial decisions; secondary sources, comprising scholarly literature and reputable academic journal articles; and tertiary sources serving as conceptual support. Data were collected through a comprehensive literature review and analyzed qualitatively using a prescriptive and argumentative method, employing systematic, teleological, and historical interpretation. The findings of this analysis form the basis for normative recommendations concerning the repositioning of gratification within the broader framework of national criminal law reform.

### **3. RESEARCH RESULT AND DISCUSSION**

#### **3.1. The Concept of Gratification as a Special Criminal Offense under the Anti-Corruption Law**

This section examines the concept of gratification as a special criminal offense under the Indonesian Anti-Corruption Law (Undang-Undang Pemberantasan Tindak Pidana Korupsi), focusing on its philosophical foundations, legal construction, and evidentiary mechanisms. The analysis situates gratification within the broader dynamics of the Indonesian criminal law system following the enactment of the 2023 National Criminal Code (KUHP). The primary emphasis is placed on normative questions concerning the relevance and coherence of maintaining gratification as an extraordinary crime amid the evolving paradigm of national criminal law.

From its inception, gratification under the Anti-Corruption Law has been formulated as a special criminal offense with characteristics distinct from bribery as regulated under general criminal law. Article 12B of the Anti-Corruption Law defines gratification as a “gift in a broad sense” that is deemed equivalent to bribery when it is related to an official position and is not reported to the Corruption Eradication Commission (KPK) within a prescribed period. This formulation is philosophically

grounded in a preventive and repressive anti-corruption paradigm, premised on the assumption that entrenched power relations within bureaucratic structures render conventional bribery difficult to prove.

The distinctive feature of the gratification offense lies in its evidentiary mechanism, namely the application of a reverse burden of proof. Rather than requiring the public prosecutor to fully establish the elements of unlawfulness and culpability, the legal burden is shifted to the recipient of the gratification to demonstrate that the gift does not constitute a bribe. While this mechanism has proven pragmatically effective in advancing anti-corruption enforcement, it represents a significant theoretical departure from fundamental principles of criminal law, particularly the presumption of innocence and the principle of culpability.

Under the Anti-Corruption Law, gratification is effectively treated as an objective offense, with emphasis placed on the existence of the gift and its nexus to official authority, rather than on the presence of *mens rea* or malicious intent on the part of the recipient. As a result, gratification is classified as an extraordinary crime even in the absence of elements such as prior agreement, reciprocity, or demonstrable abuse of authority. This approach generates conceptual tension when contrasted with the bribery provisions of the National Criminal Code, which require a causal and intentional relationship between the benefit conferred and the official act.

These findings are consistent with earlier studies by Nasution and Yulia et al., which criticize the subjectivity and doctrinal fragility inherent in the application of the reverse burden of proof in gratification cases.<sup>12</sup> However, unlike Bego et al., who emphasize the urgency of regulatory harmonization without questioning the legal status of gratification itself<sup>13</sup>, this study advances the discussion by highlighting the theoretical incompatibility between gratification as a special offense and the general principles embedded in the National Criminal Code.

The results also corroborate the observations of Bethesda and Maradona, who point to a disjunction between positive law and living law, particularly in societies where gift-giving practices remain socially embedded.<sup>14</sup> This study moves beyond sociological critique by systematically linking this disjunction to the broader agenda of criminal law reform and the shifting philosophy of punishment reflected in the National Criminal Code.

The findings indicate that the current legal position of gratification is transitional in nature. Normatively, gratification continues to fall under the Anti-Corruption Law as

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<sup>12</sup> Nasution, "Sistem Pelaporan Gratifikasi Dalam Pencegahan Tindak Pidana Korupsi Dikaitkan Dengan Undang-Undang Tindak Pidana Korupsi"; Yulia, Najemi, and Arfa, "Urgensi Pengaturan Pembalikan Beban Pembuktian Dalam Perkara Gratifikasi Pada Tindak Pidana Korupsi."

<sup>13</sup> Bego et al., "Tindak Pidana Gratifikasi Dalam Jabatan Publik: Studi Perbandingan Antara KUHP Dan UU Tipikor."

<sup>14</sup> Bethesda, "Masyarakat Memandang Gratifikasi Dalam Tindak Pidana Korupsi"; Maradona, "Tindak Pidana Gratifikasi Di Indonesia Ditinjau Dari Aspek Budaya Hukum."

*lex specialis*. Theoretically, however, the enactment of the National Criminal Code signals a reorientation of criminal law toward a more proportional, intent-based, and fault-oriented framework. The incorporation of corruption offenses into the Criminal Code—while preserving certain special characteristics—reflects a broader tendency to normalize corruption within the general criminal law system.

This paradigm shift poses significant challenges to the continued justification of gratification as a special offense grounded in objective liability and a reverse burden of proof. As the National Criminal Code increasingly prioritizes intent, motive, and causal linkage as core elements of criminal liability, maintaining the current construction of gratification becomes increasingly difficult to defend, particularly in cases involving ceremonial, cultural, or social gifts that lack malicious intent or tangible harm to state interests.<sup>15</sup>

It can be argued that the concept of gratification under the Anti-Corruption Law was historically and politically constructed to support extraordinary criminal policies aimed at eradicating corruption. However, within the framework of national criminal law reform, this construction reveals a fundamental inconsistency with the core principles of modern criminal law. This study demonstrates that the central issue is not the necessity of eliminating gratification, but rather the absence of a clear normative distinction between gratification that genuinely constitutes corruption and gratification that is merely administrative or ethical in nature.

The findings further reinforce the need for a conceptual re-examination of gratification to ensure its conformity with the principles of culpability, proportionality, and *ultimum remedium*. Accordingly, this study provides a substantive foundation for the ongoing discourse on harmonizing the Anti-Corruption Law with the Indonesian Criminal Code, while simultaneously creating space for a more rational and principled repositioning of gratification within the national criminal law system, without undermining the broader commitment to corruption eradication.

### **3.2. Normative Disharmony and Regulatory Gaps between the Anti-Corruption Law and the National Criminal Code**

This section examines normative disharmony and regulatory gaps in the regulation of gratification between the Anti-Corruption Law (Undang-Undang Pemberantasan Tindak Pidana Korupsi) and the newly enacted National Criminal Code (KUHP). The analysis focuses on the implications of divergent legal paradigms, offense constructions, evidentiary mechanisms, and sentencing systems, all of which have the potential to generate legal uncertainty in the enforcement of gratification-related offenses.

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<sup>15</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Prenada Media, 2016), <https://prenadamedia.com/produk/bunga-rampai-kebijakan-hukum-pidana/>.



The normative disharmony between the Anti-Corruption Law and the Criminal Code originates from the fundamentally different paradigms underpinning their respective formulations. The Anti-Corruption Law is grounded in the doctrine of extraordinary crime, positioning corruption—including gratification—as an exceptional offense that warrants special and highly repressive legal mechanisms. In contrast, the National Criminal Code adopts a modern criminal law paradigm that emphasizes proportionality, *ultimum remedium*, and systematic coherence in sentencing. This divergence in orientation produces normative tension regarding whether gratification should remain classified as a special offense or be reconceptualized within the general framework of bribery.

Article 12B of the Anti-Corruption Law expressly defines gratification as the acceptance of gifts related to official duties and introduces a reverse burden of proof when the value of the gift exceeds a prescribed threshold. By contrast, the National Criminal Code does not explicitly recognize the concept of gratification. Instead, it regulates bribery under Articles 603–609, which require proof of intent, solicitation, or a purpose to influence an official act. The absence of a specific gratification norm in the Criminal Code creates a definitional vacuum, particularly given its role as the primary codification of national criminal law.

The disharmony extends beyond terminology to substantive legal principles, most notably in the evidentiary framework. The Anti-Corruption Law applies a reverse burden of proof, obligating the recipient to demonstrate the absence of a nexus between the gift and official authority. Conversely, the Criminal Code adheres to the general principle of *onus probandi*, under which the burden of proof rests entirely with the public prosecutor. This divergence creates significant practical ambiguity, especially when law enforcement authorities must determine which legal regime governs conduct of a similar nature.

Further inconsistencies arise in the sentencing framework. The Anti-Corruption Law imposes severe criminal penalties for gratification, while the Criminal Code introduces a tiered sentencing system that prioritizes proportionality and provides alternative sanctions. This lack of synchronization risks producing sentencing disparities and may encourage forum shopping in enforcement practices.

The findings of this study are consistent with those of Bego et al., who emphasize the urgency of harmonizing the Anti-Corruption Law and the Criminal Code.<sup>16</sup> However, this study advances the discourse by identifying a specific normative vacuum resulting from the omission of gratification regulation in the Criminal Code. Meanwhile, earlier studies by Nasution and Yulia et al. focus on the problematic application of the

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<sup>16</sup> Bego et al., “Tindak Pidana Gratifikasi Dalam Jabatan Publik: Studi Perbandingan Antara KUHP Dan UU Tipikor.”

reverse burden of proof, but do not systematically link this issue to the broader paradigm shift embodied in the National Criminal Code.<sup>17</sup>

In contrast to sociological analyses that emphasize tensions between positive law and living law<sup>18</sup>, this study contributes a normative legal perspective by situating the conflict within the structural disharmony between two hierarchically equivalent legal regimes.

The enactment of the National Criminal Code reflects a shift in the normative foundation of corruption eradication from an extraordinary, exception-based approach toward a systemic and proportional model. However, the absence of corresponding integration of gratification norms into the Criminal Code has resulted in an internally inconsistent criminal law framework. The ambiguous relationship between *lex specialis* (the Anti-Corruption Law) and *lex generalis* (the Criminal Code) in the regulation of gratification increases the risk of overlapping authority and enforcement gaps.

This disharmony directly affects the ability of law enforcement officials to classify gifts as symbolic, ceremonial, or non-material in nature.<sup>19</sup> The blurred boundaries between ethical, administrative, and criminal violations demonstrate that the current regulation of gratification fails to achieve an appropriate balance between the effectiveness of corruption eradication and the fundamental principles of criminal justice.

The normative disharmony and regulatory gap between the Anti-Corruption Law and the National Criminal Code constitute a structural deficiency that has the potential to undermine legal certainty and the effective enforcement of gratification offenses. The absence of a clear bridging norm between the two statutory regimes generates significant ambiguity in determining the applicable legal framework.

This study demonstrates that, in the absence of explicit normative harmonization, gratification will remain a problematic construct—formally retained as a special offense, yet increasingly difficult to reconcile conceptually with the principles underlying the national criminal law framework. These findings provide a critical foundation for the formulation of future criminal law policy, particularly in restructuring the relationship between the Anti-Corruption Law and the National Criminal Code to ensure coherence, proportionality, and legal certainty, while preserving the integrity of the anti-corruption agenda.

### 3.3. The Urgency and Rationality of Repositioning Gratification from a Special to an Ordinary Criminal Offense

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<sup>17</sup> Nasution, “Sistem Pelaporan Gratifikasi Dalam Pencegahan Tindak Pidana Korupsi Dikaitkan Dengan Undang-Undang Tindak Pidana Korupsi”; Yulia, Najemi, and Arfa, “Urgensi Pengaturan Pembalikan Beban Pembuktian Dalam Perkara Gratifikasi Pada Tindak Pidana Korupsi.”

<sup>18</sup> Bethesda, “Masyarakat Memandang Gratifikasi Dalam Tindak Pidana Korupsi.”

<sup>19</sup> Romli Atmasasmita, *Reformasi Hukum, Hak Asasi Manusia & Penegakan Hukum* (Bandung: Mandar Maju, 2001).

This section evaluates the urgency and normative rationality of repositioning gratification from a special criminal offense to an ordinary criminal offense within the Indonesian criminal law system, based on the principles of legality, culpability, and proportionality of punishment. The analysis focuses on the compatibility of gratification provisions under the Anti-Corruption Law (Undang-Undang Pemberantasan Tindak Pidana Korupsi) with the fundamental principles of general criminal law as reformulated in the 2023 National Criminal Code (KUHP).

The construction of gratification as a special offense under the Anti-Corruption Law raises fundamental concerns from the perspective of general criminal law. Conceptually, gratification is defined in broad and objective terms, encompassing virtually all forms of gifts received by public officials in connection with their positions, without expressly requiring malicious intent (*mens rea*) or a demonstrable causal link to an abuse of authority. This regulatory model effectively places gratification within a strict liability framework, thereby deviating from the principle of *geen straf zonder schuld*, which holds that criminal punishment must be predicated on morally and legally attributable fault.

The absence of culpability as a constitutive element of the gratification offense creates a substantial risk of overcriminalization. In practice, many forms of gratification—such as ceremonial gifts, cultural tokens, or social expressions—do not necessarily involve corrupt intent or an effort to influence official decision-making. In this regard, the findings of this study reinforce the position articulated by Handayani, which distinguishes gratification from bribery based on the presence of a “meeting of minds.” Where no corrupt agreement between the giver and the recipient can be established, attributing a corrupt character to the conduct becomes normatively problematic.<sup>20</sup>

Moreover, the formulation of gratification under the Anti-Corruption Law fails to fully satisfy the principle of *lex certa*. The phrase “gifts related to official duties” is inherently broad and susceptible to arbitrary interpretation. This uncertainty is further exacerbated by the application of a reverse burden of proof, which in practice shifts the evidentiary burden from the public prosecutor to the accused. Consistent with earlier critiques, this mechanism—while intended to strengthen anti-corruption enforcement—poses a tangible risk to due process guarantees and the presumption of innocence.<sup>21</sup>

From the perspective of proportionality, a clear imbalance exists between the degree of culpability and the severity of sanctions imposed. The Anti-Corruption Law treats all forms of gratification as serious criminal offenses subject to severe penalties,

<sup>20</sup> Asri Reni Handayani, “Indikator Keberhasilan Pemberantasan Korupsi,” in *Pengetahuan Dasar Antikorupsi Dan Integritas*, ed. Zeni Zaenal Mutaqin (Bandung: CV Media Sains Indonesia, 2022), 39–57.

<sup>21</sup> Dhumillah and Oktavianto, “Konsep Relevansi Kejahatan Trading Influence Dan Gratifikasi Dalam Tindak Pidana Korupsi”; Maradona, “Tindak Pidana Gratifikasi Di Indonesia Ditinjau Dari Aspek Budaya Hukum.”

without meaningful differentiation based on factors such as the value of the gift, the underlying motive, or the actual impact on the public interest. This approach contrasts sharply with the National Criminal Code, which adopts a graded and proportional classification of offenses and explicitly allows for alternative sanctions beyond imprisonment. Repositioning gratification as an ordinary criminal offense therefore enables a more contextual, differentiated, and substantively just application of punishment.

A comparison with prior studies reveals a consistent conclusion that the absolute criminalization of gratification tends to be symbolic and excessively repressive. Several scholars have observed that a “zero tolerance” approach to all forms of gratification is not always proportionate to its effectiveness in eradicating corruption and may instead burden law enforcement with minor cases lacking systemic significance.<sup>22</sup> This study extends existing scholarship by emphasizing that the repositioning of gratification should not be construed as a dilution of the anti-corruption regime, but rather as a rationalization of criminal law policy aimed at enhancing coherence, fairness, and effectiveness.

The repositioning of gratification as an ordinary criminal offense carries strong normative urgency. The principle of *ultimum remedium* embodied in the National Criminal Code requires criminal law to function as a measure of last resort, particularly where administrative, ethical, or regulatory mechanisms remain adequate. Numerous forms of gratification are more appropriately addressed through reporting obligations, ethical supervision, or administrative sanctions, without the immediate imposition of severe criminal liability.<sup>23</sup> This approach is also consistent with international standards, particularly the United Nations Convention against Corruption (UNCAC), which does not require the criminalization of all forms of giving, but only those constituting an “improper advantage.”

The findings of this study further demonstrate that repositioning gratification represents a strategic step toward enhancing coherence within the national criminal law system. By reclassifying gratification as an ordinary criminal offense, Indonesian criminal law can realign with the principles of strict legality, *mens rea* as the foundation of criminal liability, and proportionality in sentencing. Such repositioning also facilitates a clearer normative distinction between bribery as an extraordinary crime and gratification as conduct that is punishable only when proven to involve malicious intent and tangible harm to the public interest. Accordingly, the repositioning of gratification should not be understood as a retreat from anti-corruption efforts, but rather as a

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<sup>22</sup> Bustomi Bustomi, “Kajian Yuridis Tindak Pidana Gratifikasi Oleh Pejabat Negara,” *Aladalah: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 1 (2024): 284–292, <https://doi.org/10.59246/aladalah.v2i1.798>; Sitompul, “Gratification Development in Corruption in Indonesia.”

<sup>23</sup> Andi Hamzah, *Asas - Asas Hukum Pidana*, 1st ed. (Jakarta: PT Yarsif Watampone, 2005).

normative recalibration aimed at ensuring that criminal law operates in a fair, rational, and effective manner within a modern rule-of-law framework.

### 3.4. The Direction of Criminal Law Reform in Restructuring the Legal Position of Gratification in Indonesia

This section seeks to formulate a direction for criminal law reform in restructuring the legal position of gratification within the Indonesian criminal law system. The analysis focuses on harmonizing the special criminal law regime under the Anti-Corruption Law (Undang-Undang Pemberantasan Tindak Pidana Korupsi) with the general criminal law framework codified in the 2023 National Criminal Code (KUHP), while preserving the effectiveness of corruption eradication and ensuring legal certainty and substantive justice.

The current regulation of gratification remains in a transitional phase and has not yet achieved full systemic integration. On the one hand, the Anti-Corruption Law retains a highly repressive approach characterized by a broad definition of gratification, exceptional evidentiary mechanisms, and severe criminal sanctions. On the other hand, the National Criminal Code reflects a reform-oriented paradigm that emphasizes comprehensive codification, proportionality, culpability as the foundation of criminal liability, and punishment as an *ultimum remedium*. This divergence in paradigms generates normative tensions that contribute to uncertainty in the enforcement of gratification-related offenses.

Criminal law reform should begin with terminological and structural harmonization between the Anti-Corruption Law and the National Criminal Code. Conceptual inconsistencies—most notably the absence of the term “gratification” in the Criminal Code—create space for divergent interpretations and the risk of inconsistent judicial decisions. This study demonstrates that, in the absence of a clearly defined relationship between *lex specialis* and *lex generalis*, the national criminal law system risks losing internal coherence. Accordingly, a bridging norm is required to explicitly clarify the position of gratification within the national criminal law framework, either through a targeted revision of the Anti-Corruption Law or through interpretative provisions incorporated into the Criminal Code.

Equally important is the clarification of the element of fault (*mens rea*) in the offense of gratification. To date, the criminalization of gratification has primarily emphasized the objective nexus between the gift and the official position, without sufficient attention to the intent of the recipient. This objective model of criminalization has been criticized for its potential incompatibility with the principle of *nullum crimen*

sine culpa.<sup>24</sup> While prior studies have focused largely on the implications of the reverse burden of proof, this study advances the discourse by positioning mens rea as a central element of normative reform, such that gratification is criminalized only where there is clear proof of intent to influence official conduct or to facilitate an abuse of authority.

Treating all forms of gratification as serious criminal offenses also fails to reflect meaningful moral differentiation or the varying degrees of social harm involved. The findings of this study support the adoption of a tiered sanctioning framework that distinguishes between administrative violations, ethical breaches, and criminal acts. This approach is consistent with the National Criminal Code, which permits the use of non-custodial sanctions and administrative resolutions. Unlike prior scholarship that situates gratification reform exclusively within the anti-corruption policy framework, this study underscores the importance of integrating such reform with the theory of punishment and the principle of *ultimum remedium*, thereby promoting a more rational, proportional, and coherent criminal law system.

Reform of the regulation of gratification cannot be divorced from improvements in reporting and clarification mechanisms. Existing gratification reporting systems primarily serve administrative functions but carry significant criminal law consequences. Legal reform should therefore establish a clear, legally protected regularization mechanism for recipients of gratuities who lack corrupt intent.<sup>25</sup> Reporting should no longer be viewed merely as a defensive measure, but rather as an integral component of preventive ethical governance.

In the absence of uniform guidelines for assessing intent, the value of the benefit, and indicators of quid pro quo, enforcement of gratification offenses is likely to remain highly case-specific and potentially discriminatory. These findings reaffirm prior scholarship that identifies fragmentation in law enforcement practices, while extending the analysis by emphasizing the need for stronger institutional coordination and shared interpretative standards across enforcement agencies.

This study ultimately concludes that the direction of criminal law reform concerning gratification must be grounded in the principles of legality, culpability, proportionality, and *ultimum remedium*. Reforms that recalibrate the legal status of gratification—whether by repositioning it as an ordinary offense or by introducing clearer normative differentiation—should not be construed as weakening anti-corruption efforts. On the contrary, such reforms constitute a strategy to enhance the legitimacy, coherence, and effectiveness of criminal law enforcement. Through normative harmonization, clarification of offense elements, and the strengthening of non-penal mechanisms, the Indonesian criminal justice system can move toward a more

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<sup>24</sup> Bethesda, “Masyarakat Memandang Gratifikasi Dalam Tindak Pidana Korupsi”; Nasution, “Sistem Pelaporan Gratifikasi Dalam Pencegahan Tindak Pidana Korupsi Dikaitkan Dengan Undang-Undang Tindak Pidana Korupsi.”

<sup>25</sup> Handayani, “Indikator Keberhasilan Pemberantasan Korupsi.”

just, consistent, and integrated framework aligned with the objectives of National Criminal Code reform and the principles of a modern rule of law.

#### 4. CONCLUSION

This study examines the concept of gratification as a special criminal offense under the Corruption Eradication Law (UU Tipikor), identifies normative disharmony between the Anti-Corruption Law and the 2023 National Criminal Code (KUHP), evaluates the urgency of repositioning gratification in light of the principles of legality, culpability, and proportionality of punishment, and formulates a direction for just criminal law reform within the Indonesian legal system. The findings indicate that the current construction of gratification under the Anti-Corruption Law is predominantly repressive and objective in nature, characterized by a reversed burden of proof and an expansive definition, which may deviate from the foundational principles of general criminal law. The study further reveals conceptual and structural inconsistencies between the Anti-Corruption Law and the KUHP, particularly with respect to the element of culpability, evidentiary mechanisms, and sentencing frameworks.

The principal findings confirm that repositioning gratification as an ordinary offense constitutes a normative necessity to prevent overcriminalization and to promote legal certainty and justice without undermining anti-corruption efforts. This research contributes theoretically to the development of national criminal law and offers practical guidance for legislators and law enforcement authorities in formulating more proportionate and coherent policies. A limitation of this study lies in its normative legal approach, which does not incorporate empirical data on law enforcement practices. Accordingly, future research is recommended to integrate normative analysis with empirical and comparative legal studies in order to further refine models for reforming the regulation of gratification in Indonesia.

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