

## Gratification Delicts: Assessing the Existence of Legal & Moral Norms

Muhammad Rusdan<sup>1</sup>, Arifai<sup>2</sup>, Abdul Jabar Rahim<sup>3</sup>

<sup>123</sup>Faculty of Law, Universitas Muhammadiyah Kendari,  
Indonesia

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### **Abstract**

*This paper aims to examine the offense of gratification when viewed from normal morals and legal norms. The results of the study show that in essence, the gratification offense is not only contrary to Article 12B of the anti-corruption law as a legal norm, but also violates moral norms. The natural law school believes that the offense of gratification is a violation of moral norms such as the value of justice, while the positivism school considers it a violation of legal norms. Ethically, the offense of gratification is an act that is inappropriate and contrary to public morality. The perpetrators of gratification offenses are driven by the nature of hedonism which only seeks outward pleasure without adhering to moral values that such actions can harm the wider community.*

## I. Introduction

It is known that one of the biggest problems in this country is the massive and systemic corruption disorder. This delicacy spreads to all branches of power, whether it is in the legislative, executive and judicial realms. It can be said that from the New Order era until after the reform rolled out in 1998—the corrupt behavior that became a terrifying scourge for Indonesian civil society was the increase in the quantity and quality of the modus operandi of gratuity or bribery.<sup>1</sup> At the same time, the birth of Law No. 31 of 1999 as amended in Law No. 20 of 2001 concerning the Eradication of Corruption Crimes (Anti-Corruption Law), has not been able to suppress the significant rate of gratuity offenses.

Regarding this, Jeremy Pope stated that the delicacies of gratuities are actually relevant to the nature of corruption crimes that lead to the abuse of trust for personal gain. Such crimes can only be committed by state administrators or employees in the public sector whose goal is to enrich themselves inappropriately.<sup>2</sup>

In this case, the gratuity offense has a strong relationship with the low morality of state administrators. Because gratuity is an unscrupulous act committed by a person by relying on his authority. Such a situation, puts morality at a nadir, because the official—basically has received incentives from the state when carrying out his duties and responsibilities, but he still receives gratuities. In Mochtar Lubis's reading, the behavior of state administrators who are referred to as patrimonial bureaucracy is public officials who like to accept bribes or gratuities, strengthen nepotism and give special positions to their relatives and families.<sup>3</sup>

It should be emphasized that the delicacies of gratuity cannot be separated from the teachings of morality because it is believed that the dominant cause of such crimes is the low morals of state administrators.<sup>4</sup> In this case, corruption occurs not only due to necessity but also due to the greed *or greed* of the power holders.<sup>5</sup> Consequently, no matter how much salary or incentive is given to the official, of course it will never be enough because he commits corruption because he is driven by lust, for example: the desire to live

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<sup>1</sup> Andi Hamzah, *Eradication of Corruption Through National and International Criminal Law* (Jakarta: PT RajaGrafindo Persada, 2007), 19.

<sup>2</sup> Jeremy Pope, *Confronting Corruption-The Elements of National Integrity System* (London: Transparency International, 2000), 6-7.

<sup>3</sup> Mochtar Lubis and James C. Scott, *Bunga Potpai Corruption*, (Jakarta: LP3ES, 1988), xviii.

<sup>4</sup> Susan Rose Ackerman, *Corruption and Government: Causes, Consequences, and Reform*, (New York: Cambridge University Press, 1999), 12.

<sup>5</sup> Anthony A. Barret, *Caligula: The Corruption of Power*, London & New York: Routledge Taylor & Francis Group, 2001), 19.

extravagant or have luxury goods.

If you look back, the crime of gratuities is actually not new in the history of corruption in Indonesia. Douwes Dekker or often called Multatuli, loudly explained that public officials such as the Regent during the Dutch East Indies often received money or goods from merchants, both in the form of currency and goods. Multatuli himself even reported the Regent of Lebak and Wedana Parangkujang (South Banten) to his superiors at that time so that the case could be investigated. However, the compromising nature of the Dutch colonial government caused the incomplete investigation of the corruption case. This condition is exacerbated by the backwardness of the education of the population so that they cannot do anything, when they find officials who like to receive gifts.<sup>6</sup>

Normatively, the gratuity offense is regulated in Article 12B and Article 12C of the Anti-Corruption Law. In both *articles a quo*, it is clearly regulated (*lex certa*) and firmly (*lex scripta*) the *modus operandi* of gratuity offenses, the threat of criminal sanctions, and the mechanism of proof. The specific description of this will be reviewed by the author in the discussion section. In short, it can be said that the gratuity offense is actually not only considered contrary to the applicable regulations but also violates moral values, especially for a state administrator or civil servant. On that basis, the issue of gratuity or bribery is an important concern in the Anti-Corruption Law and in Law No. 28 of 1999 concerning Clean and Free State Administrators from Collusion and Corruption and Nepotism (Clean and KKN-Free State Administrators Law).

It is interesting to observe the data released by the Corruption Eradication Commission (KPK) showing that since the KPK was established in 2004 until July 18, 2023, there have been 191 members of the DPR/DPRD, 98 Regents/Mayors, 14 Governors, 17 prosecutors, 24 judges, and 5 ambassadors who have been indicted by the KPK for accepting gratuities or bribes from private parties.<sup>7</sup> The above figures, of course, cannot be underestimated, because they show the moral and ethical vulnerability of state administrators. Related to that, the problem that will be answered in this study is how to commit gratuities when viewed from the perspective of moral norms and legal norms?

Based on the author's research, there are several scientific works related to this study, including the following: *first*, an article written by Muhammad Paeway Ebiem Kahar et.al, titled Corruption and Gratification in Corruption: A Case Study of Judges' Decisions and Law Enforcement Practices. This research aims to explore the meaning and interpretation of law related to bribery and gratuity in court decisions. The results of the research show

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<sup>6</sup> Andi Hamzah, *Op.Cit*, 18.

<sup>7</sup> KPK, *Study on the Implementation of Gratuity Articles in Court Decisions*, (Jakarta: KPK, 2022), 2-5.

that the court decision provides a clear understanding of bribery and gratuity as corruption crimes. In this context, bribery is defined as giving or promising to give to public officials with the aim of influencing the decisions or actions of the official. Meanwhile, gratuity is defined as giving gifts or rewards to public officials as a form of appreciation or reward for actions or decisions that have been taken. The results of this research are published in the Anti-Corruption Journal, Volume 13 Issue 1 (2023).

*Second*, an article written by Muhammad Mahrus Setya Wijaksana, with the title *Delicacy Formulation Policy Accepting Gratuities in the Provisions of the Law on the Eradication of Corruption*. This article was published by the Journal of Rechtvinding Volume 9 No. 2 (2020). The issue of the judge in question is regarding the formulation of the offense of accepting gratuities which seems to be the reason for the abolition of the crime. The results of the study showed that the receipt of gratuities reported to the KPK was considered a bribe, so it seemed to be the reason for the criminal abolition. This must be considered rational, reasonable and appropriate in order to be able to suppress the gratuity offense.

*Third*, an article entitled *Sexual Gratification as a Form of Corruption*, was written by Syaiful Akbar. Published by the Ius Journal of Law and Justice Studies. The question to be answered is whether civil servants or state administrators who receive gifts in the form of sexual services can be categorized as a criminal act of gratuity? The results of the analysis that the word other facilities can be interpreted broadly, so that sexual services can be categorized as gratuities. However, it must also meet the elements of Article 12 B of Law No. 20 of 2001 concerning the Eradication of Corruption.

Fourth, an article written by Airman Sitompul, titled *Gratification development in corruption in Indonesia*. The problem studied is why the quantity of gratuities is so high in Indonesia? The results of the study are that gratuities can be classified as corruption crimes, bribery and gratitude which can be a type of corruption crime without reward. The receipt of the gratuity is contrary to his obligation. In order for the gratuity not to be considered a criminal act of bribery, the recipient of the gratuity is required to submit a report to the Corruption Eradication Commission, no later than 30 days from the receipt of the gratuity. This article was published in the International Journal of Asia of Law and Money Laundering Vol 3 No. 1 (2024).

Fifth, a study conducted by Desi Priya V and M. Annapoorni, entitled *Impact of use & gratification theory and user generated content on purchase intention*. This article aims to uncover and analyze the relationship between Use and Gratification factors, User Generated Content, Customer Engagement and Purchase Intention and to test whether Customer Engagement has a mediating effect between Use and gratification factors and

User Generated Content (Independent Variable) and Purchase Intention (Dependent Variable). The results of his research show that there is a strong relationship between generated content on purchase intention in realizing gratuity offenses. This article was published in the International Journal of Health Sciences Vol 6 No. 3 (2022).

Based on the results of research from several journals above, it is clear that this article has newness compared to previous studies. The novelty can be seen in the substance of the study, namely analyzing the gratuity delicacies using the perspective of moral philosophy or ethics and legal positivism. So this article can be said to offer new thoughts on the phenomenon of gratuity offenses involving civil servants or state administrators in Indonesia.

## 2. Research Method

McFadzean and Ryan stated that legal research requires skills in 3 things, namely: a) *identifying and analysing legal problems or questions*; b) *finding appropriate information to answer the question*; and c) *communicating the results of analysis and research effectively*.<sup>8</sup> This explanation can be said to be an affirmation of practical ways to conduct legal research, starting from identifying legal problems, finding facts or information and narrating the results of research effectively so that it can be understood by the public.

When viewed from the epicenter of the study, this article is closer to *socio-legal legal research*, which is to look at legal problems with an interdisciplinary theoretical and methodological approach.<sup>9</sup> The interdisciplinary approach (non-legal discipline) aims to sharpen doctrinal analysis, so that it can unravel and solve legal problems or realities in the field that are the object of research.<sup>10</sup> In this case, the gratuity offense was analyzed using a multidisciplinary approach. To unravel and find answers to the problems in this study, a conceptual approach method is used,<sup>11</sup> which refers to the doctrines that have developed in criminal law.

## 3. Results and Discussion

### Understanding Gratification Delik

In *The Longman's Dictionary of Law*, gratuity is considered part of *bribery as the offence of taking, or bestowing, or promising, a price, reward or favour intended to influence the judgment or conduct of a public official. In its legal sense, it implies corruption*.<sup>12</sup> So gratuity or bribery is an act that can be in the form of: taking or awarding, promising, price, gift or

<sup>8</sup> McFadzean dan Gareth Ryan, *Legal Method*, (Dundee: Dundee University Press, 2013), 5.

<sup>9</sup> Reza Banakar, *Normativity in Legal Sociology*, (Lund: Springer, 2015), 11-12.

<sup>10</sup> Ingo Venzke, "International Law and It's Metodology", *Leiden Journal of Internantional Law*, 28 No. 2, (Februari 2015): 185.

<sup>11</sup> Piter Mahmud Marzuki, *Introduction to Legal Research*, (Jakarta: Kencana Prenada Media, 2014), 117.

<sup>12</sup> L.B Curzon & P.H Richards, *The Longman Dictionary of Law*, (London: Pearson Longman, 2007), 69.

assistance intended to influence the judgment or behavior of public officials.

The definition above has a positive correlation with the formulation of gratuity in the explanation of Article 12 B paragraph (1) that included in the scope of gratuity is a gift in a broad sense, namely including the provision of money, goods, rebates (discounts), interest-free loan commissions, travel tickets, lodging facilities, tourist trips, free medical treatment, and other facilities. The gratuities are both received domestically and abroad and are carried out using electronic means or without electronic means. If you look carefully—the explanation of Article 12 B paragraph (1) above, including the definition of gratuity, is limited to the sentence: giving in a broad sense. Meanwhile, in the next sentence, it is related to showing the *modus operandi* of the gratuity offense.

Normatively, the formulation of<sup>13</sup> the gratuity *delic* can be seen as follows:

Article 12 B paragraph (1): any gratuity to a civil servant or state administrator is considered to be a bribe, if it is related to his position and contrary to his obligations or duties, with the following provisions:

- a. whose value is Rp 10,000,000.00 (*ten million rupiah*) or more, proving that the gratuity is not a bribe committed by the recipient of the gratuity;
- b. whose value is less than Rp 10,000,000.00 (*ten million rupiah*), proving that the gratuity was bribed by the public prosecutor.

Article 12B paragraph (2): the penalty for civil servants or state administrators as referred to in paragraph (1) is life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years, and a fine of at least Rp 200,000,000.00 (*two hundred million rupiah*) and a maximum of Rp 1,000,000,000.00 (*one billion rupiah*).

Referring to the formulation of Article 12B paragraphs (1) and (2), it can be emphasized that it is referred to as a gratuity if a civil servant or state administrator receives a bribe related to a position that is contrary to his obligations or duties. Evidence against the gratuity offense which is worth Rp. 10. 000,000 (*ten million rupiah*) or more, carried out by the recipient of the gratuity. Meanwhile, for gratuities that amount less than Rp. 10,000,000 (*ten million rupiah*), the proof is carried out by the public prosecutor. The formulation of *the article a quo*, implicitly, has adopted a theory of proof called the term *refersal of burden of proof*. This theory can be applied to corruption offenses such as gratuities that are considered bribes that are carried out in a limited and balanced manner.<sup>14</sup>

The issue of gratuities is also the focus of *the 2003 United Nations Against Corruption*, even

<sup>13</sup> The term *delic*, adapted from the word *delict, delictum* (Latin) which means criminal act. This term is also referred to as *strafbaar feit* (Dutch) meaning an act that can be punished. Moeljatno defined it as a prohibited act and with a criminal penalty for anyone who violates the prohibition. Read, Moeljatno, *Criminal Acts and Criminal Liability in Criminal Law*, (Jakarta: Bina Aksara, 1983), 11.

<sup>14</sup> Hariman Satria, "Towards a Shift in the Burden of Proof", *Journal of Integrity*, 3, No 1 (March 2017): 93.

though it uses the term *bribery* instead of *gratuities*. Explicitly, for example, it can be found in several articles, namely *Article 15* under the title *of bribery of national public officials*. It is also regulated in *Article 16* with the title *Bribery of foreign public officials and officials of public international organizations*. Finally, it is also regulated in *Article 21*, with the title *of bribery in the private sector*. The inclusion of gratuities as bribes in the 2003 UNCAC is actually inseparable from its characteristics as a group of extortion offenses in office or *knevelarij*.<sup>15</sup>

### **Delic Gratification: The Ethical and Moral Drought of State Administrators**

In the study of legal philosophy, the very elementary discussion is related to ethics and morals. These two things occupy a strategic position because they are not only related to the legal profession but also concern state administrators<sup>16</sup> or public officials who deal with the public interest. Ideally, the moral attitude of state administrators must be maintained so that it can be used as a benchmark for the general public. Reflection on morality is actually in the realm of ethics.<sup>17</sup> In other words, talking about morals, *mutatis mutandis* also talking about ethics. Both moral and ethical, axiology, is a branch of philosophy that focuses on the essence of values, including their criteria.<sup>18</sup> In short, ethics or morality is one of the branches of philosophy, namely the philosophy of values.

Therefore, before the author elaborates further on the relationship between the gratuity and the ethics or morals of state administrators—it will first be explained about the meaning of ethics and morals. Etymologically, ethics comes from ancient Greek, *ethos* means customs, habits, morals, dispositions and feelings. The word *ethos* itself refers to the plural word *ta thea*, which means custom.<sup>19</sup> So when viewed from the origin of the word, ethics can be interpreted as the science of customs or morals.<sup>20</sup> In the Great Indonesian Dictionary, ethics is interpreted in 3 ways, namely: *first*, knowledge about what is good or bad and about moral rights and obligations. *Second*, the basic group or values related to morality. *Third*, the principle of behavior that becomes a guideline.<sup>21</sup>

Still regarding ethics, Franz Magnis Suseno stated that ethics is the orientation for human efforts to answer the most fundamental question: how should I live and act? The answer

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<sup>15</sup> Andi Hamzah, *Loc.Cit.*, 232.

<sup>16</sup> Article 2 of Law No. 28 of 1999 concerning Clean and Collusion-Free State Administrators of Corruption and Nepotism, mentions seven categories of state administrators, namely: 1) State officials in the highest state institutions; 2) state officials in high state institutions; 3) Minister; 4) Governor; 5) Judges; 6) other state officials in accordance with the provisions of the applicable laws and regulations; and 7) other officials who have a strategic function in relation to state administrators in accordance with the provisions of applicable laws and regulations.

<sup>17</sup> Shidarta, *The Law of Reasoning and the Reasoning of Philosophical Root Law*, (Yogyakarta: Genta Publishing, 2013), 1.

<sup>18</sup> *Ibid.*, 5.

<sup>19</sup> K. Bertens, *Ethics*, (Jakarta: PT Gramedia Pustaka Utama, 2004), 4.

<sup>20</sup> Topo Santoso and Hariman Satria, *Election Criminal Law*, (Jakarta: PT RajaGrafindo Persada), 60-61.

<sup>21</sup> *Great Dictionary of Indonesian*, (Jakarta: Gramedia Pustaka Utama, 2015), 1490.

to this question may vary, but ethics will help us find orientation. The goal is so that humans do not live by just following along, but so that we can understand for ourselves why we have to behave this way or that? In short, it can be emphasized that ethics can help humans to be willing and able to account for their lives.<sup>22</sup>

Referring to this explanation, K. Bertens defines ethics in three forms, namely: (1) the word ethics can be used in the sense of values and moral norms that are a guide for a person or a group in regulating their behavior. (2) ethics can be interpreted as a set of principles or moral values. This means that this is related to the code of ethics. (3) ethics is the science of what is good or bad.<sup>23</sup> Meanwhile, the word moral comes from the Latin *mos* or *mores* which means custom or custom. So the meaning of the word moral is the same as ethics, as reviewed above. Morality can be defined as values and norms that are a guide for a person or a group of people to regulate their behavior.<sup>24</sup> In other words, morality is a reference in determining the good and bad of human beings as human beings. For this reason, moral norms are needed as a benchmark in determining whether a person's attitude or action is true or not.<sup>25</sup>

It should also be emphasized that the word moral is related to 3 other words, which are as follows: *first*, morality means the moral aspect or the whole of principles and values related to the good or bad of an action *Second*, immorality, comes from the word *unconcerned with, out of the sphere of moral, non-moral* (English). So *that immorality* can be interpreted as something that is not related to the moral context or outside the ethical atmosphere. Simply put, the word immoral is defined as behavior that is morally neutral or has no ethical relevance. *Third*, immorality, also derived from English, is described as *opposed to morality; morally evil*. So immorality means that it is contrary to good morality. It can also be said that it is a morally bad or unethical act.<sup>26</sup> Returning to the issue of ethics, there are several theories, namely: (1) ethical idealism. This theory basically assumes that idealism is seen as an understanding that believes that the essence of something is an idea or idea, not a material. That humans are creatures who have ideas so that ideas are the ones that affect material or experience, not the other way around.<sup>27</sup>

In ethical idealism, two other terms are known: *first*, rationality idealism which assumes that it is human ratio or reason that knows the norms in attitude and behavior. So it is the rationale that gives an understanding of which behavior is good or bad. *Second*, aesthetic idealism that holds that humans are part of the vast nature. Therefore, the purpose of human behavior is the desire to live in harmony with nature itself.<sup>28</sup>

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<sup>22</sup> Frans Magnis Suseno. *Basic Ethics: Main Problems of Moral Philosophy*, (Yogyakarta: PT Kanisius, 2016), 13.

<sup>23</sup> K. Bertens, *Op.Cit.*, 6.

<sup>24</sup> *Ibid.*, 7.

<sup>25</sup> Frans Magnis Suseno, *Op.Cit.*, 19.

<sup>26</sup> K. Bertens, *Loc.Cit.*, 7-8.

<sup>27</sup> Shidarta, *Op.Cit.*, 56.

<sup>28</sup> *Ibid.*, 57.

(2) ethical deontology. This theory argues that the goodness or badness of a behavior is judged from the point of view of the action itself, not the consequences. A behavior is declared good if it conforms to existing norms. Ethical deontology, often referred to as regulatory ethics. In this case, human beings are considered good as long as they do not violate applicable norms, including religious norms.<sup>29</sup> (3) ethical teleology. If deontological theory emphasizes behavior, on the other hand, teleological is more oriented towards the element of outcome. A behavior is declared good if the fruit of that behavior is more profitable than lost. This view gave birth to a new pattern of thinking called the term ethical and psychological egoism. Ethical egoism emphasizes that the measure of the good or bad behavior of a person is the obligation to seek his happiness or interests above the interests of others. Meanwhile, psychological egoism believes that everyone acts only for their own interests.<sup>30</sup>

It should be noted that both ethical and psychological egoism gives birth to several models of behavior, including the following: *first*, hedonism emphasizes that pleasure is the most valuable good in human life. The measure of whether an attitude or behavior is good or bad is the extent to which it can provide pleasure for oneself. So the most important thing is not the nature of the pleasure but the quantity of the pleasure as an external pleasure. Hedonists believe that such a character is in accordance with human nature.

*Second*, eudemonism. In substance, eudemonism also makes happiness or enjoyment its goal. It's just that the enjoyment referred to in eudemonism is in the form of spiritual impatience. The problem is that in order to achieve spiritual pleasure, everyone must first feel external pleasure. Meanwhile, external pleasures are something that is difficult to satisfy and must be limited. Thus was born the teaching that affirms that lust must be governed by reason or ratio because this is what characterizes a wise man. *Third*, Stoicism which emphasizes that the characteristic of a wise human being is a human being who no longer has worldly desires. Such a way of life, it is believed to be able to make humans free, independent and not tied to anyone. In other words, the smaller one's worldly interests, the higher the level of happiness one attains.<sup>31</sup>

Starting from the above description of ethics, it can be affirmed that it is closely related to human morality. In this case, as Hans Kelsen said, *morals as regulation of internal behavior*.<sup>32</sup> That means, ethics is a field of science that focuses on human behavior related to morality. In this regard, Frans Magniz Suseno stated that in order for ethics to be well maintained, morality must pay attention to three basic principles, namely: *first*, a good attitude. That the attitude required of a person in his relationship with others is a positive and good attitude. *Second*, justice. That everyone should be treated the same to everyone in the same situation. *Third*, respect yourself. That everyone should be obliged to treat

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<sup>29</sup> Frans Magnis Suseno, *Loc.Cit.*, 102-103.

<sup>30</sup> Shidarta, *Loc.Cit.*, 63.

<sup>31</sup> *Ibid.*, 64.

<sup>32</sup> Hans Kelsen, *Pure Theory of Law*, (New Jersey: The Lawbook Exchange Ltd, 2008), 60.

himself as something valuable to himself, such as maintaining his dignity or honor.<sup>33</sup> Paying attention to some of the arguments regarding ethics and morals above—if it is related to the character of state administrators or civil servants involved in gratification, can be read as behavior that is contrary to ethics and morals.

In this case, the crime of gratuity can be referred to as behavior that is immoral, which is contrary to good morality or as an act that is morally bad or unethical. Why is it said so? When viewed from the point of view of ethical substance, gratuity is clearly an act that tends to lead to selfishness, both ethical and psychological. In that context, the recipients of the gratuity offense have clearly shown individual behavior that is only concerned with the happiness of their person, family or cronies, rather than the interests of society.

In another perspective, the perpetrator of gratuity offenses can be stimulated by the trait called hedonism, which is only seeking pleasure in life as a person without any moral value that the act can harm society. When a state administrator is ridiculed by hedonistic behavior, he will only pursue happiness or material or external interests without paying attention to spiritual interests anymore. His happiness is determined by how much material he gains. The consequence of such behavior is the emergence of a desire to live in luxury without being supported by a strong work ethic.

When correlated with anti-corruption values, hedonism is the forerunner of the emergence of gratuity delicacies – not only contrary to the values of work ethic but also contrary to the values of honesty, care, responsibility, simplicity and justice. In the context of honesty, the state administrator involved in the gratuity offense has of course concealed the bad behavior that he has committed in the form of accepting money or goods from the gratuity giver even though he knows that such an act is an inappropriate act. He emphasized that officials who behave in this way have violated the principle of honesty in carrying out their duties or obligations.

It is still about honesty, if you look deeper—it is related to the nature of trust or trustworthiness of a person for the obligations or positions given to him. In the context of Islam, Allah SWT said: "O you who believe, do not betray Allah and the Messenger (Muhammad) and do not betray the mandates entrusted to you, while you know."<sup>34</sup> The textuality of the Qur'an is then further explained in several hadiths of the Prophet PBUH, including: From Abdullah Ibn Uma, Muhammad PBUH said: "Allah curses those who bribe and those who accept bribes." Another hadith states that, from Usamah Ibn Malik, Muhammad PBUH said: "The gift can deprive hearing, close the heart and vision."

In addition, gratuity delicacies motivated by hedonistic behavior, of course, can be referred to as the concretization of their individual attitude so that they do not have concern for others. At a time when other communities are experiencing economic and social difficulties, the perpetrators of gratuities actually show arrogance and individualism in the

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<sup>33</sup> Frans Magnis Suseno, *Loc.Cit.*, 136.

<sup>34</sup> Quran Surah Al Anfal verse 27.

form of personal pleasure without caring about the interests of the public. Without care, it is difficult for anyone to be held accountable. In Frans Magniz Suseno's reading, as the author has described above—it is considered part of the ethics of regulations, where a person has ethics not because he feels responsible but because of regulations. Behavior that does not care about the interests of others or prioritizes their interests over the public interest is also considered behavior that is contrary to religious values, one of which is Islam. This can be seen in the following words of Allah: "And do not eat some of your possessions in an unrighteous way, and do not bring them to the judge, so that you may eat a portion of another's possessions by sin, even though you know it."<sup>35</sup>

Meanwhile, regarding anti-corruption values in the form of work ethic and simplicity, these have a positive correlation with each other. Hard workers will obtain material happiness in proportion to their proportions, while the act of accepting gratuities shows that such state administrators do not have a work ethic but want to obtain various kinds of luxuries in their lives. Finally, regarding the value of justice, if referring to the teachings put forward by Frans Magniz Suseno, the perpetrator of gratuity offenses considers justice only limited to his own interests without paying attention to violations of the rights of others or society in general. In essence, the state administrator who committed the gratuity offense has shown unfair behavior so that at that point, he has committed an unethical and immoral act. It also shows the drought of ethical and moral values as a state administrator or civil servant.

### **Delicacy Gratification: Law versus Morality**

Discourses on law and morality are actually not new in the study of legal philosophy as a meta-meta-theory and legal theory as a meta-theory. The emergence of such an issue is motivated by the difference in views of two schools, namely natural law and legal positivism.<sup>36</sup> Related to that, both the core teachings of natural law and legal positivism have been reviewed by the author in the literature review section. Therefore, this section will only focus on the perspectives of the two schools in looking at the relationship between law and morality.

In essence, natural law places legal ontology at a very abstract level. Law is interpreted more as principles than norms.<sup>37</sup> In the vessel of natural law, the existence of positive law is still recognized for its existence but at any time it can be threatened by its existence, when it does not meet the morality requirements imposed by natural law.<sup>38</sup> Morality in natural law actually starts from the idea put forward by Saint Thomas Aquinas (1225-1275

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<sup>35</sup> Quran Surah Al Baqarah verse 188. Some scholars translate this verse by stating 'and do not eat the wealth among you by an unruly way such as by corruption, deception, or robbery, and do not bribe the judges with the wealth to be able to legalize your evil deeds with the intention that you may eat, use, possess, and control some of the property of others by means of sin because it violates the provisions of Allah. even though you know that it is forbidden by Allah".

<sup>36</sup> Hans Kelsen, *Loc.Cit.*, 67.

<sup>37</sup> Lorens Bagus, *Dictionary of Philosophy*, (Jakarta: Gramedia Pustaka Utama, 1996), 21.

<sup>38</sup> Shidarta, *Loc.Cit.*, 188.

AD) in his book entitled *Summa Theologica*. Starting his idea, Aquino defined the law by declaring *quondam rationis ordinatio ad bonum commune, ab eo promulgata*.<sup>39</sup> If you pay attention, the definition of law put forward by Aquinas contains 4 things, namely: *first*, law as a logical command. *Second*, it is intended for the welfare of the community, *Third*, it is made by those who represent the community. *Fourth*, promulgated.

Aquinas further divided the law into 4 categories, namely: (1) *lex aeterna* is the ratio of God Himself who regulates everything and is the source of all sources of law. (2) *Lex Divina*, the part of God's ratio that man can grasp based on the revelation he receives. (3) *Lex naturalis*, is the incarnation of *Lex aeterna* in humans. (4) *lex positivist* that the applicable law is the implementation of natural law by human beings in relation to the special conditions required by the human condition. It should be noted that *the positive lex* or positive law is still divided into two, namely those made by God as stated in the holy books and man-made positive laws.<sup>40</sup>

Especially for the principle, *lex aeterna* and *lex divina*—need to highlight that these two principles place the law in a container that is inseparable from the creator. The premise developed by the law of nature is that all humans love truth and justice. Such a premise, crystallized into legal principles, is then translated in the form of legal norms.

The four types of laws, according to Aquinas, are bound by two principles, namely *principa prima* is a basic principle that is absolute for human beings from birth and *principa secundaria* is a principle derived from *principa prima* but is not absolute so that it can change according to time and place.<sup>41</sup> The argument regarding the natural law concretized by Aquino, in the reading of Muslehuddin is referred to as a madhhab based on revelation. The essence of the teaching is that the concept of justice or truth must refer to the revelation of Allah SWT through the holy book. For only Allah knows what is absolute, good and just for man.<sup>42</sup>

It is important to explain that morality in the perspective of natural law—no longer trapped in the separation of law as it *is* and law *as ought to be*, like dogma in legal positivism, but tends to see the validity of norms that are morally contrary or not. If it is contradictory, then *mutatis mutandis* the norm will be rejected because it is difficult to expect it to achieve legal goals, such as truth and justice.

Related to that, Budiono Kusumohamidjojo emphasized that the morality carried out by natural law is actually more about the value of an act that is good or bad by referring to a certain order of personal, social and cultural values. Likewise, legal norms will be judged

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<sup>39</sup> Phil Harris, *Introduction to Law*, (New York: Cambridge University Press, 2007) 30.

<sup>40</sup> Lili Rasjidi, *Introduction to Legal Philosophy*, (Bandung: Mandar Maju, 2002), 48-49.

<sup>41</sup> Phil Harris, *Op.Cit.*, 31.

<sup>42</sup> Abdul Ghafoor Ansari, *op.cit.*, 92.

for good or bad when applied in society.<sup>43</sup> Norms that lack benefits or are contrary to justice or truth, will automatically be rejected because they are considered to have no integrity. Legal norms with integrity will eventually survive because they are in accordance with the values that grow and develop in society.

It is not surprising, therefore, that natural law emphasizes its dogma on the philosophy of values, which concerns ethics.<sup>44</sup> In this case, ethics is used as the foundation for norm formation because it is closely related to the morality of norm-forming. Related to that, the legal norms that are formed must be free or neutral from various interests and based on good faith so that when applied they do not cause discrimination and overlap with each other.

The moral norm in Lon L. Fuller's reading is referred to as *the inner morality of law*. In that context, everyone must comply with the legal norms that apply in society because of the trust in the integrity of these norms. On that basis, positive law must have moral integrity so that it is easily accepted by the community. Integrity may not be placed as a guarantee for the achievement of justice, but through integrity it can guarantee a certain degree of morality in every legal product, so that legislation is avoided from being a mere product of political power.<sup>45</sup>

Referring to the view put forward by Fuller, moral norms can be referred to as internal imperatives that lie solely in the human mind. In this case, moral norms become more lasting than legal norms. Because legal norms can change at any time when desired by lawmakers. However, there is a close correlation between moral norms and legal norms. Moral norms work in a constant manner while legal norms work as variables that apply the constant in a concrete event. In essence, moral norms are more hierarchical than legal norms.<sup>46</sup> In other words, moral norms give a high sense of awareness to everyone because they are located in the human conscience. This moral norm becomes an analytical knife in determining the good and bad of a person's actions. Compliance with legal norms based on moral norms is born as an awareness that something is indeed not good to do or must do.

In short, everyone obeys the law not because of external commands like the dogma that develops in legal positivism but because of one's own consciousness. A person will feel ashamed if he commits an act that is unlawful and unlawful. This is the importance of morality because it determines the degree of compliance with legal norms. If natural law views morality or moral norms as something inseparable from legal norms. A contrasting mindset can actually be found in the school of legal positivism that sharply separates law and morality. Epistemologically, legal positivism was born as a criticism of the natural law school. With its flagship weapon, namely ratio, legal positivism rejects the law of nature,

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<sup>43</sup> Budiono Kusumohamidjojo, *Legal Theory of the Dilemma Between Law and Power*, (Bandung: Yrama Widya, 2016) 165.

<sup>44</sup> Risieri Frondizi, *What is Value*, (New York: Open Court Publishing Company, 1963), 72.

<sup>45</sup> Shidarta, *Loc.Cit.*, 190.

<sup>46</sup> Budiono Kusumohamidjojo, *Op.Cit.*, 171.

which according to its adherents is too idealistic.<sup>47</sup> One of the postulates that is often used by positivism in attacking the law of nature is that the law of nature with all its variants has placed the ontology of law at a very abstract level so that it is considered not concrete.

In such a position, legal positivism believes that the idea of natural law is ambiguous or multi-interpreted and is threatened with failing to provide legal certainty as a legal ideal. In short, if the school of natural law is busy with the validity of abstract values, then legal positivism actually wants to reduce it in a concrete problem. If we pull back further, the birth of the school of legal positivism is closely related to a school called the teaching of legism. This teaching equates law with law. So there is no law other than the law. As a result, there is only one source of law recognized by the teachings of legalism, namely the law.

In addition, the legal system is seen as *a logical gescholssenheit* or as a logical closed structure, and there is no contradiction to each other. Academically-philosophically, the teachings of legism are often referred to as traditional normative views. Its adherents struggle with the law in books without paying attention to the law in reality in society or *law in action*.<sup>48</sup> If you read the navigation of modern legal philosophy, there are 3 names that played a big role in starting and developing the school of legal positivism, namely John Austin, Hans Kelsen and H.L.A Hart. These three figures can be said to be the axis and mainstream in the development of various doctrines and norms on the altar of philosophy by legal positivism.

First, John Austin. Austin's main thoughts on legal positivism can be found in his book entitled *The Province of Jurisprudence Determined* and *Lecture on Jurisprudence*. Referring to the two literatures, there are at least 4 thoughts of Austin that negate his position as a figure of legal positivism, namely as follows: (a) *law is a command of lawgiver or every law or rules is a command*. (b) *law as a closed legal system*. (c) *law improperly so called positive law*. (d) *the command or the duty is said to be sanctioned or enforced*.<sup>49</sup> Second, Hans Kelsen. In *Pure Theory of Law*, Kelsen expresses his opinion while establishing himself as an exponent of legal positivism, in the following two statements: (1) *the pure theory of law is a theory of positive law. It is a general theory of law not a specific legal order*. So pure legal theory is a theory about positive law. That is to say, he honestly admits that the so-called law is a pure positive law. Kelsen then strengthened his argument, stating, *the theory attempts to answer the question what and how the law is, not how it ought to be*.<sup>50</sup>

(2) *it is called pure theory of law, because it only describes the law and attempts to eliminate from the object of this description everything that is not strictly law: it's aim is to free the*

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<sup>47</sup> Widodo Dwi Putro, *Criticizing Legal Positivism: The First Step to Entering a Methodological Discourse in Legal Research*, in Irianto, Sulistyowati & Shidarta. *Legal Research Methods*, (Jakarta: Yayasan Pustaka Obor Indonesia 2011), 5.

<sup>48</sup> Sudarto, *Law and Criminal Law*, (Bandung: Alumni, 2007) 8-9.

<sup>49</sup> John Austin, *Op.Cit.*, 22 & 27.

<sup>50</sup> Hans Kelsen, *Loc, cit.*, 1.

*science of law from the alien elements*. Thus, it is called a pure legal theory because it only explains the law and tries to clean the object of its explanation from everything related to the law. Strictly speaking, he wants to clean legal science from other elements. The next question is, which is called *the alien element*? Kelsen answered this by stating *elements of psychology, sociology, ethichs and polithical theory*.<sup>51</sup>

In short, pure law as a positive law is interpreted by Kelsen, only limited to the norm of law itself without mixing with other elements. He stated *norm we mean that something out to be or ought to happen, a specially that a human being ought to behave in a specific way*.<sup>52</sup> In essence, what Kelsen calls a norm is something that should exist or should be what happens so that humans can behave in a certain way. Through such arguments, Kelsen has placed law not only as *pure law* that must be separated from factors outside the law but also considers law as a prioritative science or *ought to be (ought to be)* not as a science of reality (*law as it is*). If we follow Kelsen's frame of mind, then the law, as Roberto Mangabeira Unger once said, *a bureaucratic law is a law model that is subordinated to the interests of bureaucracy, power and capital institutions*. So the law is more subordinate to the interests of the bureaucracy, power and capital institutions.<sup>53</sup>

*Third*, H.L.A Hart. It can be said that Hart is the successor of Austin and Kelsen's thinking in interpreting law as a positive legal norm. However, in some ways, he criticized Austin's thinking, especially regarding his doctrine *of law as a command of lawgiver, a valid law and the orders of gunman*. Hart attacked Austin's postulate, stating that there are two fundamental weaknesses of his theory, namely: (1) *transpersonal continuity*. That the law must have the ability to survive beyond the people who created it. If the law is provided only for a certain person, in this case the absolute ruler, it will create a legal vacuum when the person concerned dies. (2) *problem of self-limitation*. In this case, it is not easy for a ruler to command or restrict, let alone punish himself.<sup>54</sup>

Although Hart sharply criticized Austin's thinking, it cannot be denied that he openly agreed with the definition of positive law as a law or norm in the form of a ruler's order that must be obeyed. Hart clearly stated *that the most prominent general feature of law at all times and places is that it's existence means that certain kinds of human conduct are no longer optional, but in some sense obligatory*.<sup>55</sup> On another occasion, Hart emphasized *the primary rules thos that grant rights or impose obligation upon members of the community. Secondary rules are those that stipulate how and by whom may be formed, recognized, modified or extinguished*.<sup>56</sup>

In short, Hart called positive laws as social rules that consist of two forms of rules, namely

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<sup>51</sup> *Ibid.*, 2.

<sup>52</sup> *Ibid.*, 4.

<sup>53</sup> Roberto Mangabeira Unger, *Law in Modern Society Toward A Criticism of Social Theory*, (New York: The Free Press, 1977) 58.

<sup>54</sup> H.L.A. Hart, *The Concept of Law*, (New York: Clarendon Press-Oxford, 1997), 19-20.

<sup>55</sup> *Ibid.*, 32.

<sup>56</sup> *Ibid.*

*primary rules* and *secondary rules*. *Primary rules* are interpreted as rules that give rights or impose obligations on members of the community. Meanwhile, *secondary rules* are defined as rules that determine when and by whom primary rules are formed, recognized, modified or eliminated. Referring to the views of the two schools, it is clearly illustrated that the two are like being between two opposite poles when interpreting or defining legal science. This definition also affects the weight and enforceability of the law in the eyes of the public. For the school of natural law, law is not identified with the product made by the ruler as mandated by legal positivism, but is born from the power of the creator who in the reading of Aquinas is referred to as *lex aeterna* or *lex divina*. Although the basic idea of natural law seems abstract, this school tries to idealize the law not only guided by man-made norms but also refers to moral norms made by Allah SWT.

Adherents of the school of natural law also believe that the most powerful law and gain authority for human beings is the one based on morality. Through this way of thinking, natural law seeks to prioritize the validity of norms by emphasizing the doctrine that these norms must be ascertained whether they are morally contrary or not. If it is contradictory, *mutatis mutandis* the norm will be rejected because it is difficult to expect it to achieve legal goals, such as justice and truth. This is done because the fundamental purpose of the creation of law is to achieve the degree of justice as the embodiment of divine power.

In practical terms, natural law also emphasizes that legal norms that are contrary to justice will automatically be rejected because they are considered to have no integrity. Legal norms with integrity will eventually survive in the midst of society because it is in accordance with the values in society. It is not surprising, therefore, that the natural law emphasizes its dogma on the philosophy of values, which concerns ethics and morals. In this case, ethics is used as a foundation in shaping norms because it is closely related to the morality that forms norms.

If you pay attention—the natural law mindset has placed moral norms above legal norms. This has the consequence that violations of legal norms have actually violated moral norms. In fact, these moral norms are the highest value that is closely related to ethics. The upstream refers to the norms created by the forces of the universe. In that context, people who violate moral norms in the eyes of natural law are individuals who do not have integrity. His obedience to legal norms was not born out of moral personal consciousness but out of fear of getting sanctions from human authority.

Related to the delicacies of gratuity, in the eyes of the law of nature—such state administrators or public servants are referred to as individuals who do not have moral values or lack integrity. Obedience to the anti-corruption law is more about the fear that surrounds his psychology because there is a threat of criminal sanctions in the form of imprisonment or fines, not because of personal awareness that such an act has violated moral values that are not only punished by man-made legal norms but also desecrated by the power of the creator through moral norms. In short, the perpetrator of the gratuity offense views his actions as only a violation of legal norms as emphasized by adherents of legal positivism. So it is not surprising that gratuity offenses occur repeatedly because it is

only considered a violation of the law by the perpetrators, not betraying public trust as part of moral responsibility.

### **Law as a Moral Radiance: Eliminating Gratification**

If above, the author has clearly reviewed the difference in thinking between natural law and legal positivism that also affects the viewpoint of state administrators or civil servants involved in gratuity offenses, then the question then is whether the two schools reject gratuity offenses or simply define them as prohibited acts? The answer to this question will be reviewed by the author below.

The delicacies of gratuities must be recognized as acts that violate public trust or acts that deny divine authority. Such state administrators or civil servants can be called individuals who do not have integrity so it is difficult to trust. If the KPK or other law enforcers do not investigate the gratuity, then it will not be known to the public. Moreover, in terms of quantity, the number of perpetrators who consciously report the gratuities they have received is still very small. So there is no moral awareness that such an act is dirty and dirty.

To systematically unravel the problem of gratuities, according to the author, it can no longer only be seen as a violation of the anti-corruption law but must also be considered as a moral violation. In that context, the perpetrator must get moral and social sanctions from the community. At this point, the state must realize that the purpose of the formation of the law is not only to accommodate legal certainty as the main postulate of legal positivism and the reality that is currently developing in Indonesia, but must also pay attention to the most basic legal purpose, namely justice and truth or usefulness as the basis for natural law arguments.

In this regard, by referring to the doctrine of natural law that moral norms are the highest legal products—the arrangement of criminal sanctions in the form of imprisonment or fines is actually still far from justice as the ideal of law. The framers of the anti-corruption law, it is time to think about other sanctions that are more pronounced for perpetrators of gratuity or bribery. For example, a court decision that proves that the perpetrator of the gratuity offense is guilty, must be published for 5 consecutive years and not given the opportunity to occupy public positions again.

In addition, additional criminal sanctions in the form of revocation of political rights are still relevant to be maintained but it will be more interesting if there are social sanctions that are clearly and firmly formulated in anti-corruption regulations. The social sanction is an early warning, so that the perpetrator realizes that he has deviated from the mandate that has been given to him. He is a person whose integrity is problematic both socially and religiously. Through these social sanctions, the anti-corruption law implicitly accommodates the mindset *of the sociological jurisprudence* school.

Then, education to state administrators or civil servants about religious postulates, such

as Islam which strictly prohibits acts of gratuity, must be carried out continuously, especially when a person is inaugurated or when holding his or her position. In this case, it is necessary to reaffirm the command of Allah SWT in the Quran, which reads: "Say, my Lord only forbids heinous acts, both visible and hidden, and sinful deeds, violating human rights without a right reason, associating Allah with something that Allah does not give an argument for and making up against Allah whom you do not know."<sup>57</sup>

The words of Allah are further explained in the hadith of the Prophet PBUH which affirms, "whoever we give the task of a work, he should give up everything he gets, little or much. Furthermore, whatever reward (we) give him for his work, please take it. But everything that he forbids from him should not be taken away."<sup>58</sup> Both the words of Allah and the hadith philosophically emphasize the importance of maintaining integrity or moral values under any circumstances when receiving a mandate in a public office.

As a final note, the author can say that viewing the law through the lens of positivism actually distances legal norms from its main goal, which is to achieve the value of justice or truth. Now is the time, shift this mindset towards moral norms that are not only concerned with legal certainty but also justice. This can be used as an ideological landscape, in the study of law so that it is not rigid and pragmatic like today.

Eliminating gratuitization, by relying only on the doctrine of legal positivism, actually backfires because obedience to the law is not born out of moral personal awareness but because of fear of getting sanctions from the state. On the other hand, if the basis is a moral or ethical norm, then the obedience that arises is not because of the threat of sanctions but because there is moral awareness in a person's personal self. Strictly speaking, facing the gratification offense, the law must be seen as a moral emanation.

#### **4. Conclusion**

There are several things that can be concluded in this study, namely the following: first, normatively, gratuity offenses are a violation of the Anti-Corruption Law as clearly

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<sup>57</sup>Quran Surah Al A'raf verse 33. The Ministry of Religion of the Republic of Indonesia interprets the verse as follows: Then Allah explains what is actually forbidden. O Prophet Muhammad, say to those who narrow themselves so that they forbid anything that is permissible, my Lord only forbids all heinous deeds, which are very bad deeds, both in word and deed, both visible to others and hidden, and also he forbids sinful deeds, wrongful deeds without right reasons, and forbids you to associate Allah with anything. while he does not give a reason to justify the deed, and he also forbids you to talk about God what you do not know, much less what you know. The wrongdoers who commit heinous deeds as explained in the previous verses do not immediately receive punishment and retribution for their deeds, because Allah has determined the time and death of each people. And every people or nation that denies Allah and His Messenger has the stipulation of His end, which is the time limit for advancing or retreating, glory or destruction. When the end, which is the period of Allah's punishment to the ummah or nation, arrives, Allah's punishment will surely descend and they cannot ask for a delay in their arrival or an acceleration of their advancement even for a moment or a moment.

<sup>58</sup> Hadith narrated by Muslims.

regulated in Article 12B. Second, the proliferation of gratuity offenses should be suspected as a result of the influence of the positivist school that views prohibited acts as mere violations of legal norms. Third, ethically—the gratuity offense is an inappropriate act and is contrary to moral values or immoral behavior.

Fourth, the perpetrators of gratuity offenses are driven by the nature of hedonism that they only seek pleasure or happiness in life as a person without adhering to the moral value that these actions can harm many people. Fifth, from the perspective of natural law, gratuity is an act that violates moral norms so that it is condemned by the creator. Sixth, ontologically—gratuity cannot be seen as a mere violation of legal norms as believed by the school of legal positivism but also violates moral principles, for example those outlined by Allah SWT in the Quran and the hadith of the Prophet PBUH.

## References

- Ackerman, Susan Rose, *Corruption and Government: Causes, Consequences, and Reform*, New York: Cambridge University Press, 1999.
- Anshori, Abdul Ghofur, *Filsafat Hukum*, Yogyakarta: Gadjah Mada University Pres, 2016.
- Austin, John, *The Province of Jurisprudence Determined*, New York: Cambridge University Press, 2001.
- Bagus, Lorens, *Kamus Filsafat*, Jakarta: Gramedia Pustaka Utama, 1996.
- Banakar, Reza, *Normativity in Legal Sociology*, Lund: Springer, 2015
- Barret, Anthony A, *Caligula: The Corruption of Power*, London & New York: Routledge Taylor & Francis Group, 2001.
- Bertens, K, *Etika*, Jakarta: PT Gramedia Pustaka Utama, 2004.
- Curzon, L.B & Richards, P.H, *The Longman Dictionary of Law*, London: Pearson Longman, 2007.
- Fronzizi, Risieri, *What is Value*, New York Open Court Publishing Company, 1963.
- Fuller, Lon L, *The Morality of Law*, Viriginia: Yale University, 1969.
- Hamzah, Andi, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*, Jakarta: PT RajaGrafindo Persada, 2007.
- Hart, H.L.A, *The Concept of Law*, New York: Clarendon Press-Oxford, 1997.
- Harris, Phil, *Introduction to Law*, New York: Cambridge University Press, 2007.
- Kamus Besar Bahasa Indonesia*, Jakarta: Gramedia Pustaka Utama, 2015.
- Kelsen, Hans, *Pure Theory of Law*, (New Jersey: The Lawbook Exchange Ltd, 2008.
- KPK, *Kajian Implementasi Pasal Gratifikasi Dalam Putusan Pengadilan*, Jakarta: KPK, 2023.
- Kusumohamidjojo, Budiono, *Teori Hukum Dilema Antara Hukum dan Kekuasaan*, Bandung: Yrama Widya, 2016.
- Lubis, Mochtar dan Scott, James C, *Bunga Rampai Korupsi*, Jakarta: LP3ES, 1988.
- Marzuki, Piter Mahmud, *Pengantar Penelitian Hukum*, Jakarta: Kencana Prenada Media, 2014.
- McFadzean dan Ryan, Gareth, *Legal Method*, Dundee: Dundee University Press, 2013.
- Moeljatno, *Perbuatan Pidana dan Pertanggungjawaban Pidana Dalam Hukum Pidana*, Jakarta: Bina Aksara, 1983.

- Pope, Jeremy, *Confronting Corruption-The Elements of National Integrity System*, London: Transparency International, 2000.
- Putro, Widodo Dwi, *Mengkritisi Positivisme Hukum: Langkah Awal Memasuki Diskursus Metodologis dalam Penelitian Hukum*, dalam Irianto, Sulistyowati & Shidarta. *Metode Penelitian Hukum*, Jakarta: Yayasan Pustaka Obor Indonesia 2011.
- Rasjidi, Lili, *Pengantar Filsafat Hukum*, Bandung: Mandar Maju, 2002.
- Salman, H.R Otje, *Filsafat Hukum-Perkembangan dan Dinamika Masalah*, Bandung: Refika Aditam, 2012.
- Santoso, Topo dan Satria, Hariman, *Hukum Pidana Pemilu*, Jakarta: PT RajaGrafindo Persada.
- Satria, Hariman, “Ke arah Pergeseran Beban Pembuktian”, *Jurnal Intgeritas* 3, no 1 (2017): 93.
- Shidarta, *Hukum Penalaran dan Penalaran Hukum Akar Filosofis*, Yogyakarta: Genta Publishing, 2013.
- Sudarto, *Hukum dan Hukum Pidana*, Bandung: Alumni, 2007.
- Suseno, Frans Magnis, *Etika Dasar: Masalah-Masalah Pokok Filsafat Moral*, Yogyakarta: PT Kanisius, 2016.
- Unger, Roberto Mangabeira, *Law in Modern Society Toward A Criticism of Social Theory*, New York: The Free Press, 1977.
- UU No. 28 Tahun 1999 tentang Penyelenggara Negara Yang Bersih dan Bebas Kolusi Korupsi dan Nepotisme
- UU No. 20 Tahun 2001 tentang Perubahan UU No. 28 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.
- Venzke, Ingo, “International Law and It’s Metodology”, *Leiden Journal of Internantional Law*, 28 No. 2, (Februari 2015): 185.