

THE URGENCY OF REGULATING SEXUAL GRATIFICATION AND SEXTORTION AS PATHOLOGICAL BEHAVIOR OF BUREAUCRATS

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Abstract

Extortion, gratuities and bribery are the most common acts of corruption and are prone to involving bureaucrats, will harm the state and as crimes threaten the norms, values and integrity of the nation. The bureaucracy has a mode of corruption in the form of gratification, then sex gratification appears which gets the public's attention. Sextortion is a form of sexual extortion related to abuse of power. Sex gratification and sextortion are pathologies of bureaucrat behavior related to corrupt behavior, manifested in negative or dysfunctional behavior. There is a high urgency for regulation of sex gratification and sextortion in explicit regulations because of the urgent need for legal certainty and easier proof to be carried out by the KPK. Article 12B of Law Number 20 of 2001 does not contain the word gratification in the form of sex services. This means that there are no regulations or laws stating that the act of providing sexual services (sex gratification) is an act of corruption. Likewise, the absence of laws targeting sextortion as a form of corruption causes it to become a form of covert corruption. The novelty of the research is that sex gratification and sextortion are icebergs as a result of a void in norms, difficult to be charged with criminal law, difficult to prove and weak sanctions do not create a deterrent effect.

Keywords: behavioral pathology; sex gratification; sextortion

A. Introduction

From a cultural perspective, giving gifts is a common practice in society. The purpose of gift-giving in cultural contexts varies, including strengthening familial bonds and maintaining harmony. In such settings, the act of giving and receiving is neutral. However, this practice becomes problematic when applied to governance systems, as the meaning shifts—recipients of gratuities may experience conflicts of interest¹ affecting the independence of state officials who may perceive such gifts as "commissions" meant to secure special privileges, violating the principles of justice for the broader community.

¹Regita Pramesti, Muhammad Iftar Aryaputra, and Subaidah Ratna Juita, "Gratifikasi Seksual Dalam Perspektif Undang – Undang Pemberantasan Tindak Pidana Korupsi," *Semarang Law Review (SLR)* 2, no. 2 (December 12, 2022): 285, <https://doi.org/10.26623/slr.v2i2.3940>.

The methods of corruption among bureaucrats and politicians have evolved, including the involvement of women. Sextortion and sexual gratification are forms of corruption that have yet to be adequately addressed by anti-corruption data or literature, and these practices are emerging not only in Indonesia but also globally. The term "sextortion" is a combination of "sex" and "extortion," also referred to as sexual forms of corruption or sex and corruption².

The concept of sextortion is relatively unfamiliar, revealing that corruption is not limited to monetary exchanges—sex itself can become a currency. Corruption is generally defined as obtaining money or goods in exchange for the misuse of authority or position³. The practice of providing sexual services as gratuities violates religious and moral values in society and harms the state by providing benefits to individuals or certain groups seeking undue advantages.

Bureaucratic pathology can be categorized into five types⁴, one of which is manifested in negative or dysfunctional bureaucratic behavior. In Indonesia, bureaucratic pathology is often evident in cases of Corruption, Collusion, and Nepotism (CCN). Based on the background above, this study aims to explore:

1. How legal norms regulate the phenomenon of bureaucratic behavioral pathology in the form of sexual gratification and sextortion.
2. The urgency of explicitly regulating sexual gratification and sextortion in legal provisions.

Research Method

This research uses a normative juridical approach, examining legal norms from an internal perspective by analyzing all laws and regulations related to the legal issue under study, using a statute approach. Secondary data are sourced from legal dictionaries, books, legal journals, and commentaries on court decisions. The analysis is conducted using a qualitative descriptive approach, systematically organizing the data, classifying and categorizing them, and connecting them to understand their meaning in a social context. After gaining an overall understanding of the data quality, interpretation is carried out from the researcher's perspective.

B. Discussion

Regulation of Sexual Gratification in the Anti-Corruption Law

Sexual gratification has gained attention as a form of corruption⁵ due to two main reasons: 1) the desire of officials for sexual services as a form of personal satisfaction. 2)

²Erlita Kresna, "Pelayanan Seksual Sebagai Modus Baru Gratifikasi Pejabat Publik," *Deviance Jurnal Kriminologi* 6, no. 1 (June 29, 2022): 66, <https://doi.org/10.36080/djk.v6i1.1815>.

³Dwi Putri Ayu Wardani, "Apa Itu 'Sextortion' Dan Apa Hubungannya Dengan Korupsi?," 2021, <https://magdalene.co/story/mengenal-sextortion-pemerasan-seksual>.

⁴Sondang P Siagian, *Patologi Birokrasi: Analisis, Identifikasi, Dan Terapinya* (Jakarta: Ghalia Indonesia, 1994), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=254119>.

⁵Wahyudi, "Pejabat Dan Gratifikasi Seks."

an alternative form of gratification when officials cannot be influenced by money, using sexual gratification to alter or influence their decisions.

Article 12B paragraph (1) of Law No. 20 of 2001 on the Amendment of Law No. 31 of 1999 on the Eradication of Corruption Crimes states⁶ : *“Yang dimaksud dengan "Gratification in this paragraph means giving in a broad sense, including the provision of money, goods, discounts, commissions, interest-free loans, travel tickets, lodging facilities, tourism trips, free medical care, and other facilities. These gratifications can be received domestically or abroad, using electronic means or without electronic means."*

According to research findings⁷ Article 12B paragraph (1) of the Anti-Corruption Law provides clear limitations on the types of gratification that can be prosecuted under the law. However, the law does not explicitly recognize or explain the existence of sexual gratification as a form of corruption. Although the phrase "other facilities" is included, which could potentially cover other forms of gratification, it opens the door to broad interpretations, leading to confusion among law enforcement officers. This situation creates a gray area within the Anti-Corruption Law. Sexual gratification, which involves the provision of sexual services, should ideally be accommodated under the Anti-Corruption Law. The absence of clear regulations creates an opportunity for sexual services to be chosen as a form of gratification, making it impossible to prosecute recipients of sexual gratification.

Research findings indicate⁸ that gratification is recognized as a form of corruption under the law, extending to the level and modus operandi of providing sexual services. Sexual gratification involves the use of attractive women or men as objects of gratification, offered to officials as gifts to facilitate the achievement of certain objectives. Sexual gratification is defined as the provision of gifts in the form of pleasure and enjoyment through sexual services, intended to influence state officials or public servants to perform or refrain from performing actions contrary to their duties.

The phrase "other facilities" in Article 12B paragraph (1) opens the possibility for forms of gratification not explicitly regulated in the Anti-Corruption Law. This results in various interpretations, ambiguities, and uncertainties in the application of the law, which hampers the effectiveness of its enforcement and leads to legal confusion, ultimately impacting legal certainty.

Legislative regulations must be precisely targeted, not symbolic, and should serve the public interest. The emergence of various interpretations of the definition of "other facilities" in Article 12B of the Anti-Corruption Law, particularly regarding gratification that public officials can accept, needs to consider and align multiple aspects of context to achieve legal certainty. Legal reforms are necessary, particularly through a penal approach, to clarify these provisions.

⁶Sekretariat Negara RI, “Undang – Undang No. 31 Tahun 1999 Jo Undang – Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi” (Jakarta: Sekretariat Negara RI, 2001).

⁷Pramesti, Aryaputra, and Juita, “Gratifikasi Seksual Dalam Perspektif Undang – Undang Pemberantasan Tindak Pidana Korupsi.”

⁸Pramesti, Aryaputra, and Juita.

In Indonesia, two cases of sexual gratification in 2013 exemplify the problem: 1) The corruption case involving Ahmad Fattanah and the importation of meat. 2) The case of Judge Setyabudi Cahyo, who was arrested for being involved in sexual gratification. Both cases demonstrate that requesting sexual services as a form of reward for abusing power constitutes a criminal act of corruption.

The development of the definition of sexual corruption by Lindberg and Stensöta⁹ introduces various forms of sexual corruption based on the situation and dynamics between the involved parties. The identified forms of sexual corruption are as follows:

1. Sexual Petty Corruption:

This form involves an exchange between two parties in the context of corruption, where sexual services are used situationally in connection with public services or facilities. It typically occurs in lower-level interactions where personal gain is sought through sexual favors.

2. Sexual Grand Corruption:

Similar to Sexual Petty Corruption, this form of corruption occurs on a larger scale, often involving political positions, public officials, or other decision-makers. In this case, sexual services are exchanged alongside bribes in the form of goods or money. One party possesses power, while the other offers sexual services or material benefits in return for favorable decisions.

3. Transmitted Sexual Corruption:

In this type of sexual corruption, the exchange is carried out with the involvement of a third party. The third party provides sexual services either upon the request or at the expense of the party offering the bribe. A key aspect of this form is that the recipient of the bribe is distanced from feelings of guilt or moral stigma because the services are provided without using their own money

Burden of Proof

Sexual gratification uses a limited reverse burden of proof system, meaning both the defendant and the prosecutor must prove the following:

1. Whether or not the defendant received sexual services;
2. If true, it must be determined whether the sexual gratification came as a package with goods or money, or if it was separate;
3. If true, it must be proven whether the gratification is related to the defendant's position and whether it contradicts their duties and obligations.

⁹Helen Lindberg and Helena Stensöta, "Corruption as Exploitation: Feminist Exchange Theories and the Link Between Gender and Corruption," in *Gender and Corruption* (Cham: Springer International Publishing, 2018), 237–56, https://doi.org/10.1007/978-3-319-70929-1_12.

asons why sexual gratification has not yet been categorized¹⁰ as a violation of criminal law in corruption cases¹¹:

1. The Anti-Corruption Law (UU Tipikor) does not explicitly mention sexual services as a form of gratification. It only includes the phrase "other facilities", which lacks further explanation, meaning that sexual gratification perpetrators cannot be prosecuted under the principle of legality.
2. The proof system for gratifications is said to apply when the value is Rp10 million or more. For gratifications with a value less than Rp10 million, proof of its existence is not sufficient for prosecution under the reverse burden of proof system. If applied to sexual services, this could lead to the degradation of dignity, as it would involve proving the "price" of a sexual encounter, potentially reducing the act to a criminal offense based on the monetary value of the sexual service.
3. The recipient of sexual gratification must report what they have received within a specific period (thirty days); if they fail to report, they can be prosecuted. If reported within the timeframe, the KPK determines the status of the gratification within thirty days. However, it remains unclear whether the KPK would consider the "sexual gratification" as belonging to the recipient or the state.
4. Sexual services cannot be quantified, making it difficult to prove that the provision is not a form of gratification to the recipient.

This means that the proof of sexual gratification must align with the elements of Article 12B of the Anti-Corruption Law, which applies not to the giver of the gratification but only to the recipient.

Reporting becomes a weakness in cases of sexual gratification, as public officials are unlikely to report receiving such gratification. This is because receiving sexual services is prohibited and violates societal norms in Indonesia, potentially leading to moral degradation within the government structure. The provision of sexual services as a form of gratification¹² aimed at facilitating corrupt behavior between the giver and the receiver, as seen in cases like Ahmad Fattanah and Setyabudi Cahyo, remains unaddressed in the regulations on criminal corruption cases. While the Anti-Corruption Law does not explicitly regulate sexual gratification for public officials, it is interpreted under the phrase "other facilities."¹³

Sextortion: The Iceberg Phenomenon of Bureaucratic Behavioral Pathology

Sextortion is a form of abuse of power that combines sexual abuse components and corruption components. The abuse of authority involves seeking personal gain

¹⁰Harris Kristanto and Yani Osmawati, "Fenomena Gratifikasi Seksual Di Indonesia Sebagai Bentuk Kejahatan Korupsi," *Deviance Jurnal Kriminologi* 6, no. 2 (2022): 182–199, <https://doi.org/10.36080/djk.v6i2.1794>.

¹¹Hazel Feigenblatt, *Breaking the Silence Around Sextortion the Links between Power, Sex and Corruption* (Transparency International, 2020), https://images.transparencycdn.org/images/2020_Report_BreakingSilenceAroundSextortion_English.pdf.

¹²Kristanto and Osmawati, "Fenomena Gratifikasi Seksual Di Indonesia Sebagai Bentuk Kejahatan Korupsi."

¹³Kresna, "Pelayanan Seksual Sebagai Modus Baru Gratifikasi Pejabat Publik."

through the power entrusted to an individual, while the sexual abuse component pertains to the request for or provision of unwanted sexual activity or support.

Sexual gratification, as mentioned earlier, is not categorized as part of "gratification," creating a gap in the norms or regulatory framework. This gap occurs because the parties responsible for drafting legislation, both the Legislative and Executive branches, take a long time to enact laws, and the conditions to be regulated may no longer align with the evolving dynamics of society.¹⁴ This situation aligns with sextortion, a form of corruption that has been quietly hiding in plain sight for a long time. The absence of a specific "name" for sextortion means that it remains invisible to the public, with limited legislation, research, or strategies developed to address it. Until now, sextortion has never been formally discussed or recognized as part of gender-based violence or as a distinct phenomenon within the framework of corruption¹⁵.



Source: <https://m.clicks.id>¹⁶

Figure 1. Percentage of Sextortion Practices

Transparency International included sextortion in the Global Corruption Barometer Asia 2020¹⁷. Figure 1 shows that Indonesia has the highest sextortion cases in Asia, ranked first according to the data and findings from the GCB Asia 2020 research, which introduced a new indicator, sextortion.

The survey involved 20,000 respondents from 17 Asian countries, with 1,000 respondents from Indonesia. Compared to other countries, Indonesia ranks at the top, with 18% of respondents acknowledging that they have seen or experienced sextortion, particularly in public service sectors, surpassing India, where rape cases are very high and have sparked significant protests.¹⁸

Sextortion has become a tool to facilitate corruption-related interests, replacing gratifications such as money, goods, vouchers, vacation tickets, and others. Sextortion is

¹⁴Hario Mahar Mitendra, "Fenomena Dalam Kekosongan Hukum," *Jurnal Rechtsvinding Online*, no. April (2018): 2, [https://rechtsvinding.bphn.go.id/jurnal_online/Fenomena Dalam Kekosongan Hukum.pdf](https://rechtsvinding.bphn.go.id/jurnal_online/Fenomena%20Dalam%20Kekosongan%20Hukum.pdf).

¹⁵Feigenblatt, *Breaking the Silence Around Sextortion the Links between Power, Sex and Corruption*.

¹⁶<https://m.clicks.id>, "Marak Di Indonesia, Apa Itu Pemerasan Seksual Atau Sekstorsi?," 2022, <https://m.clicks.id/read/BvaGAO-marak-di-indonesia-apa-itu-pemerasan-seksual-atau-sekstorsi>.

¹⁷Feigenblatt, *Breaking the Silence Around Sextortion the Links between Power, Sex and Corruption*.

¹⁸Syauket and Wijanarko.

*difficult to report as a form of corruption*¹⁹. In Indonesia, there is no law focusing on the relationship between corruption and sexual exploitation, and many anti-corruption frameworks do not explicitly criminalize coercive sexual acts as a form of abuse of power, bribery, or wrongful corrupt acts.

Sextortion is rarely reported even though it meets the definition of corruption involving the abuse of power for personal gain. Some countries do not recognize sextortion as a form of corruption and grant impunity to the perpetrators. Factors contributing to the neglect of sextortion include victim-blaming behavior, the difficulty of gathering formal evidence due to higher power, social stigma, and anti-corruption laws that only criminalize bribery for financial gain.²⁰

There are four purposes that distinguish sextortion from other types of offenses: 1) someone in a position of entrusted authority; 2) a quid pro quo element, where the person in power demands sexual benefits in exchange for personal gain; 3) the benefit is sexual in nature; and 4) the person involved relies on the power threat from authority to gain sexual benefits.²¹

In the context of Indonesia²² sexual activity is not classified as gratification, making it difficult to determine whether it belongs to the recipient or the state. Including sexual activity as a form of gratification would not allow the Corruption Eradication Commission (KPK) to seize women victims of sextortion as evidence. Due to the lack of norms, sexual gratification is often not reported, and proving forced sexual relations becomes difficult.²³

The lack of a proper category to bring sexual gratification cases into the criminal justice system, and the failure to handle complaints appropriately²⁴ results in perpetrators never being held accountable for the sextortion they have received. The lack of formal social reaction or legal instruments means prosecution in sextortion cases is inadequate. Not categorizing it as a form of corruption causes a lack of awareness that sextortion harms the victims directly and society indirectly. Public awareness and fear of the crime will not develop in society, which neutralizes the issue of sexual gratification.

Research findings²⁵ show that the components of sextortion are fulfilled, including sexual activity involving implicit or explicit requests and a corruption element from individuals in authority positions abusing their power to demand sexual activity. Sextortion is considered common and often occurs²⁶, causing corruption through sextortion to be rarely discussed and neutralized by the general public.

¹⁹Feigenblatt, *Breaking the Silence Around Sextortion the Links between Power, Sex and Corruption*.

²⁰Kresna, "Pelayanan Seksual Sebagai Modus Baru Gratifikasi Pejabat Publik."

²¹Aksel Sundström and Lena Wängnerud, *Sexual Forms of Corruption and Sextortion: How to Expand Research in a Sensitive Area* (Gothenburg: University of Gothenburg, 2021), https://www.gu.se/sites/default/files/2021-12/2021_10_Sundstrom_Wangnerud.pdf.

²²M Ali, A Halim, and W N Permana, *Differences between Bribery and Gratification: A Review of Anti-Corruption Act of Indonesia* (Medico-Legal Update, 2021).

²³Feigenblatt, *Breaking the Silence Around Sextortion the Links between Power, Sex and Corruption*.

²⁴Feigenblatt.

²⁵Kristanto and Osmawati, "Fenomena Gratifikasi Seksual Di Indonesia Sebagai Bentuk Kejahatan Korupsi."

²⁶Feigenblatt, *Breaking the Silence Around Sextortion the Links between Power, Sex and Corruption*.

In a sociological criminological approach, the negative impact on society is formulated, as all crimes and sextortion, as well as sexual gratification received and carried out by public officials who are sworn in, are deviant acts that violate their oaths of office, involving immoral conduct and adultery, which violate the criminal law under the Criminal Code (KUHP).²⁷

Corruption as a Bureaucratic Pathology

The categorization of bureaucratic pathology can be divided into five categories²⁸:

1. Pathology Due to Bureaucratic Perceptions and Managerial Styles: This includes abuse of authority and position, accepting bribes, obscuring issues, prejudiced perceptions, a tendency to maintain the status quo, conflicts of interest, empire building, extravagance, fear of change, favoritism, fraud, indifference to criticism and suggestions, arrogance, unwillingness to act, fear of making decisions, unfairness, intimidation, blame-shifting, lack of commitment, poor coordination, low credibility, lack of creativity, lack of imaginative vision, envy, nepotism, acting beyond authority, patronage, irrational actions, paranoia, reluctance to delegate, reluctance to take responsibility, ritualism, and xenophobia.
2. Pathology Due to Low Knowledge and Skills Among Operational Staff: This includes inability to interpret leadership policies, complacency, acting without thinking, inaccuracy, confusion, unproductive actions, lack of growth capacity, superficiality, low-quality work outcomes, inability to learn, incompetence, inappropriate actions, lack of dexterity, performing irrelevant actions, disorder, hesitation, lack of imagination, low capability, unproductive work, untidiness, lack of initiative, and stagnation.
3. Pathology Due to Bureaucratic Actions Violating Legal Norms and Regulations: This includes accepting bribes, dishonesty, cost inflation, corruption, criminal actions, kleptocracy, fraud, fictitious contracts, sabotage, theft, and improper bookkeeping.
4. Pathology Manifested in Negative or Dysfunctional Bureaucratic Behavior: This includes arbitrary actions, coercion, pretending to be busy, conspiracy, inaccessibility, declining quality, fear, vested interests, rudeness, discrimination, dramatization, suboptimal performance, indifference, rigidity, lethargy, insensitivity, lack of discipline, inhumane behavior, neglecting duties, irrelevance, paparazzi-like behavior, lack of professionalism, misplaced enthusiasm, misbehavior, low responsibility, negligence, negativism, self-interest, territorial imperative, abnormal attitudes, overstepping authority, and wastefulness.
5. Pathology Due to Internal Situations in Various Government Agencies: This includes incorrect goal-setting, exploitation, social obligations as burdens, improper motivation, unresponsiveness, hidden unemployment, inadequate compensation, incompatible work, inadequate working conditions, lack of performance indicators,

²⁷Kresna, "Pelayanan Seksual Sebagai Modus Baru Gratifikasi Pejabat Publik."

²⁸Siagian, *Patologi Birokrasi: Analisis, Identifikasi, Dan Terapinya*.

excessive workload, miscommunication, misinformation, excessive staffing, unclear objectives, favoritism, uncomfortable working conditions, sudden attitude changes, and inappropriate facilities and infrastructure.

The causes of bureaucratic pathology stem from incorrect interactions between bureaucratic structures and environmental factors. Generally, these errors arise from the formation of excessive relationships²⁹. Maladministration is a form of systematic, not individual, bureaucratic pathology. Organizational weaknesses lead to deviant behavior that is collectively accepted due to the failure to establish a system capable of preventing bureaucratic diseases. Even individuals with strong character and high ideals cannot survive in bureaucracy due to the attacks of complex diseases. Bureaucrats are faced with the choice of becoming part of a sick system, leaving the bureaucracy, or being considered abnormal for not being part of the system.

Corruption develops in three stages: 1) Elite Stage: A social pathology typical among officials. 2) Endemic Stage: Spreading and affecting the wider community. 3) Critical Stage: Corruption becomes systemic, with every individual in the system infected by the same disease. In Indonesia, corruption has reached a systemic stage. Corruption is closely related to power, where rulers can abuse their power for personal, family, or group interests. Efforts to eradicate corruption in Indonesia require a heavy struggle because it has damaged all layers of society, necessitating extraordinary and comprehensive measures for its resolution..

C. **Conclusion**

Based on the analysis and discussion presented, two conclusions can be drawn: Sexual Gratification and Sextortion as Bureaucratic Behavioral Pathology: 1) Sexual gratification and sextortion are manifestations of corrupt behavior within bureaucratic settings, characterized by negative or dysfunctional tendencies. Article 12B of Law No. 20 of 2001 does not explicitly mention sexual gratification as a form of gratification. This means there is currently no law or regulation in Indonesia that explicitly states that providing sexual services (sexual gratification) constitutes an act of corruption. Similarly, there are no laws explicitly targeting sextortion, which is sexual extortion involving an abuse of power, making it a form of covert corruption.

This situation presents an imperfect choice between prosecuting such actions as sexual offenses or as acts of corruption. 2) The Urgent Need for Explicit Regulation of Sexual Gratification and Sextortion: There is an urgent need for explicit legal regulations on sexual gratification and sextortion to ensure legal certainty. This necessity arises because sexual gratification and sextortion have occurred in Indonesia, and such regulations would simplify the process of proving these cases, especially for the Corruption Eradication Commission (KPK). This would prevent ambiguity in prosecuting

²⁹Eko Prasajo, "Gayus Dan Patologi Birokrasi, Dikutip Dari Kompas," 2010.

sextortion as a form of corruption, even though sextortion clearly meets the definition of corruption, which involves the abuse of power for personal gain.

Based on the research findings, it is recommended that in dealing with various empirical symptoms of pathology within the bureaucracy, efforts should be made to strengthen the bureaucracy's resilience against these diseases. Radical and comprehensive bureaucratic reform, moving towards e-government, is essential because bureaucratic pathology does not occur in isolation but also involves law enforcement officers, politicians, and others.

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