

## Analysis of the Proof of Gratuity as a Criminal Act of Corruption in Criminal Justice

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### ABSTRACT

This article examines the construction of proof of gratification as a form of corruption crime within the Indonesian criminal law system, particularly concerning the application of reverse proof as regulated in Law No. 31 of 1999 jo. Law No. 20 of 2001. This study uses a normative juridical method with a statutory approach, a conceptual approach, and jurisprudence review. The analysis results show that proof of gratification contains a juridical dilemma between the effectiveness of eradicating corruption and the protection of the presumption of innocence principle. Article 12B creates a shift in the burden of proof, which is normatively recognized by the Constitutional Court, but its implementation still raises issues of legal uncertainty and inconsistency in interpreting the elements of positional relationship and the intention of acceptance. The mechanism for reporting gratuities through the KPK essentially provides legal protection, but its effectiveness depends on the compliance of public officials and the capacity for oversight. This study emphasizes the need to strengthen regulations, harmonize jurisprudence, and provide technical guidelines for evidence to ensure a balance between the effectiveness of law enforcement and the protection of defendants' constitutional rights.

**Keywords :** Gratification, Criminal Justice, Corruption Crimes

### INTRODUCTION

Corruption is an *extraordinary crime* that has a systemic impact on the life of the nation and state.<sup>1</sup> Corruption not only harms state finances, but also damages the integrity of state administrators and weakens public trust in legal institutions. One of the most problematic forms of corruption in law enforcement practices in Indonesia is gratuities. Gratification is often wrapped in the form of gifts, gifts, or facilities that visibly seem reasonable in social or professional relationships, but harbor the potential for serious

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<sup>1</sup> Puanandini, D. A., Maharani, V. S., & Anasela, P. (2025). Korupsi sebagai Kejahatan Luar Biasa: Analisis Dampak dan Upaya Penegakan Hukum. *Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum*, 4(1).



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conflicts of interest when given to state administrators. This complexity leads to a difference in perception between socially legitimate giving and unlawful giving.<sup>2</sup>

In the Indonesian legal system, gratuity as a form of corruption is regulated in Article 12B and Article 12C of Law Number 31 of 1999 as amended by Law Number 20 of 2001.<sup>3</sup> The provision states that any gratuity to a civil servant or state administrator is considered a bribe if it is related to his position and contrary to his obligations or duties, unless it can be proven otherwise. This formula of proof reflects the principle of *reversed onus of proof*, which places the burden on the defendant to prove that the gratuities he received are not related to his position and do not conflict with his obligations. This concept is certainly a debate in modern criminal law, especially because it has the potential to contradict the principle of the *presumption of innocence* guaranteed in the *principle of due process of law*.

The main problem that arises in the application of the article is the absence of strict normative parameters in distinguishing between gratuities that violate the law and those that are legal. This opens up a wide scope of interpretation for law enforcement officials, both investigators, public prosecutors, and judges in assessing whether a gift is included in the category of gratuities which is a criminal act of corruption or not. On the other hand, jurisprudence in gratuity cases has also not shown consistency in terms of applying elements of office relations and proving corrupt intentions. In a number of decisions, there are fundamental differences in approach between one judge and another in assessing the evidence and facts in the trial. This inconsistency creates legal *uncertainty* that not only impacts substantive justice, but also on the legitimacy of the law itself.<sup>4</sup>

The urgency of this research is based on the urgent need to unravel the legal problems in proving gratuities that are increasingly complex, both in terms of normative substance and judicial practice.<sup>5</sup> Although it has been regulated in Law No. 31 of 1999 jo. Law No. 20 of 2001, the concept of proving gratuity in cases of corruption still leaves interpretive loopholes that can cause legal uncertainty. This phenomenon becomes more critical considering that gratuities are often camouflaged in social or official relations, making it difficult to prove the element of malicious intent (*mens rea*) and position linkage. On the other hand, reverse proof applied in gratuity cases has given rise to constitutional and academic debates regarding its applicability to the principles of legality and the principle of presumption of innocence.

The absence of comprehensive guidelines in the practice of proving gratuities, as well as the inconsistency of jurisprudence in deciding such cases, indicate the need to develop an analytical framework that is able to bridge the gap between applicable legal norms and the principles of justice and the protection of human rights. This research is urgent as an academic effort to strengthen the legal system of proof in gratuity cases, in order to ensure that law enforcement runs effectively without compromising constitutional principles. The formulation of this research problem is: 1) How is the application of the Regulation of the Minister of Trade No. 71 of 2019 in protecting the

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<sup>2</sup> Laia, F. (2022). Penerapan hukum pidana pada tindak pidana gratifikasi yang dilakukan dalam jabatan. *Jurnal Panah Keadilan*, 1(2), 1-16.

<sup>3</sup> Suryanto, A. F. B. (2021). Penegakan hukum dalam perkara tindak pidana korupsi suap menuap dan gratifikasi di Indonesia. "Dharmasiswa" *Jurnal Program Magister Hukum FHUI*, 1(2), 4.

<sup>4</sup> Ismail, N. V., Wantu, F. M., & Tome, A. H. (2025). Ambivalensi Putusan Hakim: Tantangan dalam Upaya Hukum dan Penegakan Hukum Pilkades di Indonesia. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(3), 2920–2933.

<sup>5</sup> Sudirman, S., Mas, M., & Hamid, A. H. (2020). Analisis Penerapan Sistem Pembuktian Terbalik Terhadap Tindak Pidana Korupsi. *Indonesian Journal of Legality of Law*, 3(1), 38-42.

interests of franchisors and franchisees in franchise agreements in the culinary sector in Indonesia? 2) What is the dispute resolution mechanism regulated in the culinary franchise agreement in Indonesia?

## **METHOD**

The type of research used in this study is normative juridical legal research, which is a research approach that focuses on the study of the legal system as a norm that lives in society and is written in laws and regulations.<sup>6</sup> Normative juridical research aims to understand law in a dogmatic or doctrinal sense, namely as a written norm that has the power to bind and regulate human behavior in an order of the state of law. In this approach, law is positioned as a normative rule that is prescriptive, meaning that the law does not only explain what happens, but regulates how something should be done in accordance with the values, principles, and structures contained in the positive legal system.<sup>7</sup>

Normative juridical research is based on a literature study that examines legal materials as the primary source. These legal materials include laws and regulations, official state documents, court decisions, opinions of legal experts (doctrine), as well as general principles in criminal law that are recognized both nationally and internationally.<sup>8</sup> This research does not conduct field observations on social phenomena empirically, but rather examines and interprets the applicable legal provisions in order to answer problems that have been formulated conceptually.

In this normative juridical law research, two main approaches are used, namely the *statute approach* and the *case study approach*.<sup>9</sup> The two approaches are used in a complementary manner to gain a complete understanding of the legal norms that govern gratuity as a criminal offense and to analyze how these norms are applied in law enforcement practices in Indonesia.

In normative juridical law research, legal materials are the main elements that form the basis of juridical analysis and argumentation. Legal materials are used to study, interpret, and assess positive legal norms that are relevant to the problem being researched.<sup>10</sup> This study uses two types of complementary legal materials, namely primary legal materials and secondary legal materials, which are methodologically selected and analyzed systematically to achieve an in-depth normative understanding of the issue of gratuity in criminal law.

The analysis of legal materials in this study is based on a normative juridical approach that focuses on the study of relevant positive legal norms, both written and

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<sup>6</sup> Ali, Z. (2021). *Metode Penelitian Hukum*. Sinar Grafika.

<sup>7</sup> Suyono, Y. U., & Firdiyanto, D. (2020). *Mediasi penal: alternatif penyelesaian perkara dalam hukum pidana*. LaksBang Justitia.

<sup>8</sup> Suriyo, S., Astutik, S., Subekti, S., & Widodo, E. (2025). Penegakan Hukum Bagi Pelaku Tindak Pidana Peredaran Rokok Tanpa Pita Cukai. *Journal of Innovation Research and Knowledge*, 5(2), 1241–1246.

<sup>9</sup> Raihan, M. (2023). Perlindungan Data Diri Konsumen Dan Tanggungjawab Marketplace Terhadap Data Diri Konsumen (Studi Kasus: Kebocoran Data 91 Juta Akun Tokopedia). *Jurnal Inovasi Penelitian*, 3(10), 7847–7856.

<sup>10</sup> Rudyanto, E., Subekti, S., Suyono, Y. U., & Widodo, E. (2025). Analisis Sanksi Pidana Dan Pertanggungjawaban Hukum Dalam Tindak Pidana Penyalahgunaan Kartu Kredit. *Media Bina Ilmiah*, 19(9), 5661–5668.

unwritten. The primary legal materials analyzed include the provisions of the laws and regulations that are the legal basis in proving the crime of gratuity, especially Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001. In this context, Article 12B and Article 12C are the main focus because they contain norms regarding gratuities and their reporting mechanisms, as well as the construction of reverse proof used in the criminal justice process.

In addition, the provisions in the Criminal Procedure Code (KUHAP) are also important legal materials, especially regarding the general principles of proof, the rights of the defendant in the judicial process, and the burden of proof. This study analyzes how the principle *of presumption of innocence* guaranteed in Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power is influenced by the provisions of reverse proof contained in the law on corruption eradication. The tension between the principle of conventional proof and reverse proof is the main focus of the analysis, because it is directly related to the guarantee of the defendant's human rights and the principle of fair trial.

Furthermore, secondary legal materials in the form of literature, scientific journals, the views of criminal law and criminal procedural law experts, as well as official publications from law enforcement institutions such as the Corruption Eradication Commission (KPK), the Supreme Court, and the Attorney General's Office were comprehensively analyzed to enrich the theoretical perspective in assessing the validity and fairness of the construction of gratuity proof. In this case, a review of the legal literature is used to assess whether the norm of reverse proof in the case of gratuity is in accordance with the principles of legality, proportionality, and legal certainty.

## DISCUSSION

### Proving Gratification as a Crime of Corruption

Corruption in Indonesia's criminal law system has long been recognized as an extraordinary crime, a category that marks the existence of a crime whose impact goes beyond mere material losses and undermines the main joints of the rule of law and democracy. The category of extraordinary crime is not just rhetorical terminology, but contains juridical and institutional consequences for how the crime must be dealt with, proven, and eradicated systemically. In this context, corruption, including those in the form of gratuities, is seen as a direct threat to the integrity of the bureaucracy, the effectiveness of public services, and public trust in the state.

The recognition of corruption as an extraordinary crime is inseparable from the complexity of the modus operandi, the involvement of power actors, and the systemic impact it has on governance.<sup>11</sup> The Constitutional Court in its various considerations has emphasized that corruption cannot be approached with a conventional criminal law paradigm that is purely reactive, but requires an extraordinary approach that includes a distinctive evidentiary system, independent law enforcement agencies, and a legal regime that provides more flexible evidence space. As emphasized, corruption is not just a crime against state finances, but a crime against humanity because it destroys the structure of social justice and widens economic disparities in society.<sup>12</sup>

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<sup>11</sup> IMRAN, I. (2023). Politik Hukum Pemberantasan Korupsi Di Indonesia Pasca Orde Baru.

<sup>12</sup> Yusni, M. (2020). *Keadilan dan Pemberantasan Tindak Pidana Korupsi Perspektif Kejaksaan*. Airlangga University Press.

However, in an effort to realize effective corruption eradication, the state has established various laws and regulations, both in the form of substantive laws, implementing regulations, and technical guidelines by law enforcement agencies such as the KPK and the Supreme Court. The many regulations that regulate proof in corruption crimes, especially gratuities, although intended to strengthen eradication efforts, actually cause a paradox in practice. This regulatory fragmentation often creates inconsistencies in legal interpretation, overlapping authority between institutions, and ambiguity in the application of norms which ultimately has an impact on legal uncertainty for actors and whistleblowers.

One of the real examples of such negative impacts can be seen in the proof of gratuities regulated in Articles 12B and 12C of the Law on the Eradication of Corruption Crimes, which in practice must be read together with the provisions of technical regulations such as KPK Regulation Number 02 of 2019 and various jurisprudence decisions that are not yet completely uniform. The diversity of these legal instruments is often not followed by a complete understanding of law enforcement officials, resulting in inconsistencies in evidence in the courtroom. Gratuities can be subject to a burdensome burden of proof, while law enforcement officials can broadly interpret the element of "related to position" without definite objective parameters.

More than that, the wealth of regulations without uniformity of interpretation also causes a chilling effect on civil servants and state administrators who actually have good faith. Fear of criminalization, fear of administrative sanctions, and institutional pressure have led to low gratuity reporting, even though the legal system needs it as a tool of prevention and early proof. In this case, policies that overemphasize the repressive aspect without considering legal protection for whistleblowers and a fair procedural framework, can actually hinder the effectiveness of the eradication of corruption itself.

### **Gratuity Reporting Mechanism in Whistleblower Protection**

Based on Indonesia's positive legal framework, gratuity reporting has a strategic position in preventing and tackling corruption crimes, especially in the form of gratuities received by state administrators or civil servants. The juridical basis of gratuity reporting is not solely intended as an administrative obligation, but is part of a substantive evidentiary mechanism in the criminal justice process. The legal provisions that explicitly regulate the reporting of gratuities are contained in Article 12C of Law Number 20 of 2001, and are regulated more technically in the Regulation of the Corruption Eradication Commission (KPK) Number 02 of 2019 concerning Gratification Reporting.

Article 12C of Law Number 20 of 2001 states that any gratuity to a civil servant or state administrator is considered a bribe if it is related to the position and contrary to his obligations or duties, unless the recipient of the gratuity reports it to the Corruption Eradication Commission within a maximum period of 30 (thirty) working days from the date the gratuity is received. This norm explicitly constructs that reporting has legal force as a mechanism for exemption from criminal liability. This means that reporting gratuities within a predetermined deadline and in accordance with applicable procedures can function as a valid exculpatory instrument according to the law.

Furthermore, to support the effectiveness of the implementation of this article, the KPK issued Regulation Number 02 of 2019 concerning Gratification Reporting, which provides a technical elaboration of the reporting procedure, reporting channels, forms of gratuities that must be reported, and procedures for assessing gratuities by the KPK. In this regulation, it is emphasized that reporting can be done online through the electronic

gratification reporting system (GOL-HKPN), through official letters, or directly to the gratification control units in each agency. This regulation not only regulates the administrative mechanism, but also explains that the results of the KPK's assessment of the reporting are the legal basis for the legal status of the receipt of gratuities in question whether they are categorized as gratuities that can be owned or must be submitted to the state.

Furthermore, in the context of legal certainty theory, gratuity reporting is an important part of the construction of criminal law that ensures clarity of legal norms, procedures, and consequences. With a definite reporting time (30 working days), standard reporting procedures, and clear legal consequences between legitimate and non-legitimate reporting, this system meets the principle of legality in criminal law. However, so far there are still normative loopholes in reporting arrangements, especially in terms of protection for internal whistleblowers, which has led to uncertainty among state administrators regarding the consequences of their reporting. This vacuum can obscure the principle of legal certainty, especially when the whistleblower actually suffers losses because the protection system does not work effectively.

The reporting of gratuities is also in line with the principle of restorative justice, in the sense that it provides an opportunity for state administrators to correct administrative or ethical errors before they develop into criminal law violations. This approach encourages voluntary self-improvement, not through coercion, and reinforces the values of honesty and individual accountability in the performance of office. More than that, gratuity reporting also has significant educational value.<sup>13</sup> With reporting, state organizers learn to distinguish between legally acceptable gifts and those that have the potential to give rise to conflicts of interest. This encourages the creation of a legal culture that is aware of integrity and professionalism.

Given the complexity and weaknesses in the existing reporting system, recommendations for legal reformulation and institutional strengthening are needed to ensure that gratuity reporting is truly a tool to liberate from legal entanglements, not the other way around, becoming an entry point for criminalization or intimidation of whistleblowers. First, the confidential reporting mechanism must be strengthened so that the whistleblower can submit reports safely and anonymously without fear of being identified. This can be done through the development of an encrypted reporting system, independent evaluation of reports, and integration with witness and victim protection agencies.

Second, it is necessary to establish an independent reporting unit outside the KPK, which serves as an alternative reporting channel, especially for sectors that have high conflicts of interest or distrust of internal reporting mechanisms. This unit must be autonomous, have legal authority, and be supervised by an external supervisory agency to ensure its accountability and credibility.<sup>14</sup>

Third, legal literacy regarding gratuities and reporting needs to be systematically improved for state civil servants, state-owned employees, and state administrators in general. This increased understanding includes not only normative aspects, but also ethical contexts, juridical implications, and correct reporting procedures. Socialization, training, and integration of gratuity materials in ASN training must become a national

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<sup>13</sup> Sopiyati, S., Hidayatulloh, S., & Arifin, O. C. M. (2025). Perlindungan hukum terhadap pelapor dalam kasus tindakan pidana korupsi. *Jurnal Ilmu Multidisiplin*, 3(2), 454-467.

<sup>14</sup> Kasiyanto, A., & Jatmikowati, S. W. (2023). Efforts to Prevent Bribery and Gratuity in Land Agency. *PETITA*, 8, 50.

policy so that reporting is not understood as a burden, but as part of a respectable professional responsibility.

Gratification reporting needs to be constructed not only as a formal legal mechanism, but as a reflection of the spirit of bureaucratic reform and the embodiment of public office ethics that uphold transparency, accountability, and justice. Only with a systemic and integrative approach, gratuity reporting can function optimally in order to create a government order that is free from corruption and based on the substantive rule of law.

### **Irresistible Gratuities**

Irresistible gratuities are a phenomenon that is often encountered in corrupt practices in Indonesia. Normatively, gratuity is defined in Article 12B of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 as any gift to a civil servant or state administrator that is related to his position and contrary to his obligations or duties. Basically, the gratuity is considered a form of bribe, unless it can be proven otherwise by the recipient. Therefore, the existence of gratuities in the context of criminal law must be viewed in a more complex evidentiary framework, namely by using reverse proof applied in corruption crimes, especially in gratuity cases.

Reverse burden of proof is a legal mechanism that transfers the burden of proof from the public prosecutor to the defendant. In the case of gratuities, the defendant is required to prove that the gift he received was not a bribe or unrelated to his position.<sup>15</sup> Although this mechanism is intended to increase the effectiveness of the eradication of corruption, its implementation poses legal dilemmas, especially related to the protection of the rights of defendants. One of the main problems that arises is the potential violation of the fundamental principle of innocence in the criminal justice system, as well as the principle of non-self-incrimination, which requires defendants not to be forced to provide incriminating information.

First, reverse proof in gratuity cases challenges the basic principle of criminal law that applies in almost all modern legal systems, namely the principle of presumption of innocence or the principle of presumption of innocence. In this context, criminal law views that everyone accused of committing a criminal act must be presumed innocent until there is valid proof. The application of reverse proof shifts the burden of proof from the public prosecutor to the defendant, which can be considered an exception to the principle of presumption of innocence.<sup>16</sup> In theory, this is contrary to constitutionalism and the principle of due process of law which prioritizes a fair and transparent judicial process, where every defendant has the right to defend himself without being required to prove his innocence.

Second, the application of reverse proof in gratuity cases also risks ignoring the concept of substantive justice. Substantive justice requires that every legal decision is not only based on the formal provisions of the law, but also considers the social, moral, and contextual conditions of each case at hand. In the case of gratuities, especially those involving state officials, local culture often provides space for giving in the form of gratuities that are not intended as bribes, but as a form of appreciation or legitimate social

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<sup>15</sup> Kahar, M. P., Rahmatullah, K. L., Yuris, F., Azizah, A., & Prihatmini, S. (2023). Delik suap dan gratifikasi dalam tindak pidana korupsi: Studi kasus putusan hakim dalam praktik penegakan hukum. *Jurnal Anti Korupsi*, 13(1), 46-58.

<sup>16</sup> Hamdani, H. S. (2023). Tindak pidana korupsi dalam bentuk gratifikasi. *Innovative: Journal Of Social Science Research*, 3(2), 2946-2959.

relations. Treating any gift received by a state official as an unlawful gratuity, regardless of the social and cultural context surrounding it, can lead to overcriminalization, which does not reflect substantive justice.<sup>17</sup>

Third, from the practical side, reverse proof in gratuities tends to present legal uncertainty. There is no firm and uniform standard regarding what can be considered a legitimate or unauthorized gratuity. Differences in interpretation between law enforcement officials, judges, and lawyers in assessing whether the award is directly related to the position or not, exacerbates this situation. Therefore, in many cases, the judgment of gratuities is subjective and often relies on individual perceptions that can give rise to injustice, especially against defendants who do not have adequate legal access to prove their innocence. This situation adds to doubts about whether reverse proof really provides justice for all parties or instead creates detrimental uncertainty.

Fourth, more broadly, the consistency of jurisprudence in handling gratuity cases is also one of the issues that need to be examined. In some court decisions, there are differences in interpretation between one judge and another in deciding whether a gratuity can be considered a criminal act of corruption or not. This inconsistency creates legal uncertainty, where on the one hand, the law must provide certainty and justice, but on the other hand, law enforcement officials and judges often treat gratuities with varying approaches, depending on the context and background of the case. In fact, to create an effective and fair legal system, clarity in the application of the law is very important.

Fifth, in the context of human rights protection, reverse evidence invites debate about whether the defendant's basic rights, such as the right not to incriminate oneself, are still properly protected. When a defendant is forced to prove that the gratuities he receives do not constitute bribes, then implicitly, he is obliged to disclose information that could prejudice his position in legal matters. This is certainly contrary to the basic principle of human rights which states that every individual has the right not to be forced to provide information that can be used to incriminate himself. This mechanism also opens up opportunities for abuse of the law, where defendants who are unable to meet the burden of proof can be sentenced even if there is no valid or strong evidence to show malicious intent or abuse of office.

Sixth, in further study, the role of the Corruption Eradication Commission (KPK) as an institution that handles gratuity cases must also be evaluated. Although the KPK has a vital role in the eradication of corruption, the assessment of whether a gift includes gratuities or bribes is often seen from a narrow perspective and does not consider all relevant aspects. As an institution that has special authority in handling corruption cases, the KPK needs to prioritize the principles of transparency, accountability, and fairness in assessing whether a gratuity can be considered unlawful or not.

In the end, the application of reverse proof in gratuity cases requires a more appropriate legal reformulation and does not contradict the basic principles of criminal law. For this reason, efforts are needed to formulate clearer provisions regarding the limits of gratuities that can be considered as a criminal act of corruption, without sacrificing the principles of justice, human rights, and the principle of presumption of innocence. In this regard, there needs to be a balance between effective corruption eradication and the protection of the basic rights of individuals involved in legal proceedings. A wiser legal reformulation based on the existing social and legal context will ensure the achievement

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<sup>17</sup> IRAWATI, D. (2020). *Dekriminalisasi Tindak Pidana Gratifikasi Menjadi Suap Dalam Perspektif Keadilan Bermartabat* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

of substantive justice without compromising fundamental principles in the criminal justice system.

## CONCLUSION

Based on the results of the research that has been described earlier, it can be concluded that the proof of gratuity as a criminal act of corruption in the Indonesian legal system has been expressly regulated in Article 12B and Article 12C of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. This provision establishes a legal construction that places gratuities received by civil servants or state administrators as acts that are assumed to be bribes if they are related to their position and contrary to their obligations or duties, as long as they cannot be proven otherwise by the recipient of the gratuity. Furthermore, the gratuity reporting mechanism is designed as a legal protection instrument for whistleblowers, both gratuity recipients and third parties who know of indications of giving. Article 12C of the Corruption Law, which was affirmed through KPK Regulation Number 02 of 2019, provides space for gratuity recipients to report the receipt to the Corruption Eradication Commission within a period of 30 working days, so that the reporting functions as a form of exculpation that can free the recipient from criminal liability.

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