

Giving Gifts To Employees: Review of Islamic Law and Law of the Republic of Indonesia Number 20 of 2001

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Info Articles	Abstract
<p>Article History Received : 2018-09-06 Revised: 2018-09-15 Published: 2018-09-29</p> <p>Keywords: <i>Law, Employee, Gift, Statute</i></p>	<p>As is common with gifts given to officials/employees, the giver's intention cannot be separated from one of two things, namely the gift giver aims to win the favor of the official/employee so that they get convenience and relief in all their affairs both at that time and in the future. The gift giver who does give it out of affection and does not expect any reward, either material or services. In this problem, the author emphasizes the perspective of Islamic law and Law No. 20 of 2001 concerning the law of gifts given to officials and the conditions that allow officials to receive gifts. The results of the research from this discussion are gifts given to officials/employees because of their work and position are forbidden for both the giver and the recipient as prohibited by Islam and the law. The basis for the prohibition and impermissibility of these gifts is the failure to realize equal rights between fellow human beings, both individual and social. As for gifts given to employees/officials not because of their work and position, then the law is permissible for both the giver and the recipient. Especially if the giver intends to strengthen ties of kinship and strengthen relationships between each other.</p>

I. INTRODUCTION

The increasing number of criminal acts occurring on earth is causing people to...People live in hardship and misery, especially the vulnerable. This is inextricably linked to leadership within a government, whether at the level of groups or individuals, that fails to pay attention to its citizens, who desperately need its policies and assistance. This is further compounded by the increasing number of financial irregularities. This results in the rich becoming richer and the poor increasingly suffocating, unable to meet their daily needs, as the prices of essential goods rise annually.

One of the crimes that frequently surface is corruption. This crime frequently disturbs the public and fails to receive the attention it deserves from the government. Corruption has become commonplace among officials in various forms, including overt corruption. Bribery, extortion, and even gifts. The Prophet (peace be upon him) encouraged his followers to give gifts to one another, as this fosters compassion among Muslims. However, this law can change at any

time depending on conditions and circumstances, such as gifts given to officials or government officials.

Gift comes from the word *hadâdî*, derived from the root word consisting of the letters *hâ'*, *dal*, and *yâ'*. Its meaning revolves around two things. First, appearing to the front to give guidance. From this comes the word *hadâdî*, which means guide, because he appears at the front. Second, conveying with gentleness. From this comes the word *hidâyah*, which is the delivery of something gently to show sympathy (Sahabuddin, 2007).

Gifts are often called grants. Some also say that gifts are a type of grant. According to the Encyclopedia of Islamic Law, gifts are categorized as grants (Abdul Aziz, 1996). Meanwhile, according to the Great Dictionary of the Indonesian Language, a gift is a gift (a memento, award, or respect).

In essence, giving gifts is permissible in Islam. In fact, Islam encourages giving gifts to one another to foster affection. Of course, gifts that

foster affection are given from a sincere and honest heart, solely seeking God's pleasure.

Gifts can be categorized into two forms. First, gifts in the form of gifts to someone because of their achievements or purely out of respect. There is no other purpose than that respect. Second, gifts are given to someone for a specific purpose, either for their own benefit or the benefit of others. Gifts categorized in the first category are given by someone with sincerity. This is justified if the recipient is truly accomplished, or if the recipient is an ordinary person with no interests or position within an institution or organization. This is because people in positions of power are vulnerable to unfair lobbying using gifts. If all aspects are not considered, the gift is likely to be classified as *risywah* (bribery) (Abu Yasid, 2002).

If we follow current developments and realities, gifts are sometimes used as a tool for specific purposes, as a means of gaining advantage and security. Among the gifts in question are those given to government officials or those in power.

In Indonesia, such things are commonly referred to as gratification. Gratuities are payments given in addition to salaries to employees whose salaries have been set by the state or company. This type of payment is often done by officials and executives in an agency. Generally, people who give gifts to officers, employees, or officials aim to influence the officer to make their affairs easier Later Today. Although gratification falls under the category of gifts, it is not the gift intended by the Prophet Muhammad (peace be upon him). The recommended gift is one given out of love, appreciation, and sincerity for the sake of Allah SWT alone. The Prophet Muhammad (peace be upon him) said, "Told us Abû Mush 'ab, he said: told us Mâlik, from 'Atha' bin Abdillah al-Khurasânî, he said: Rasulullah saw. said: shake hands with each other, surely (shaking hands) will eliminate hatred, give each other gifts, surely (gifts) will make you love each other and eliminate grudges." (Malik, 1412 H).

The growing sense of mutual love among fellow Muslims is what is desired behind the gifts given. Not expectations of anything else, such as being acquitted of a crime, or obtaining a permit for a project they are working on, or being promoted, or other worldly hopes mixed with doubt and injustice.

In ancient times, Queen Bilqis (Queen of Saba) also offered bribes to the Prophet Solomon. This story is recorded in the Quran, "And indeed I will send messengers to them with (bringing) gifts, and (I will) wait for what those messengers will bring back. So when the messenger reached Sulaiman, Sulaiman said: Are you (proper) to help me with wealth? So what Allah has given me is better than what He has given you, but you feel proud of your gift. Return (the gift) to them, indeed we will come to them with an army that they are powerless to resist, and we will surely expel them from that land (Saba') humiliated and they will become despicable (captives). The above verse, as explained by Ibn Kathir and quoted by Abu Abdul Halim, depicts one of the negotiations undertaken by the Queen of Saba with the Prophet Solomon. The gifts are described as beautiful vessels made of gold (Halim, 1996). This is a real portrait of a case of gratification which is strongly indicated in the category of bribery which was once taken by the Queen of Saba' (represented by her people) to the Prophet Solomon, with the assumption that Solomon could be influenced and bought and allowed the Queen of Saba' to live in polytheism and astray. However, the Prophet Solomon firmly rejected it.

However, considering the gifts or gratuities described above, which have the potential to cause harm to individuals, can this issue be classified under the principle of *saddu al-dzarf'ah*, and does it disallow gifts given to officials in general? Considering that these gifts or gratuities are misused for personal enrichment and can harm many people.

From the description above, the author suspects that the giving of gratuities, categorized as corruption, still frequently occurs due to several factors. First, there is insufficient knowledge regarding the limits of recommendations and prohibitions from two perspectives: the law concerning gratuities themselves and the permissible limits. In terms of Islamic law, represented in this case by Islamic criminal law. Second, from a cultural perspective, because it is strongly suspected that the phenomenon of gift-giving is inseparable from deeply rooted and cultural customs, whether consciously or unconsciously. The purpose of discussing the law on giving gifts to officials is to emphasize the concept of justice and equal rights among human beings. Through this discussion, we can clearly understand and eliminate any doubt or ambiguity regarding the law on gifts given to officials.

II. RESEARCH METHODS

This study uses a normative juridical research method with a qualitative approach, focusing on the analysis of legal norms related to gratification from the perspective of Islamic law and Indonesian positive law. The research relies on secondary data, including the Qur'an, Hadith, scholarly opinions (*fuqaha*), legal literature, Law No. 20 of 2001 concerning Corruption Eradication, and other relevant regulations. The data were analyzed descriptively to understand the legal position of gratification and its implications within Islamic legal principles and national legislation.

III. RESULTS AND DISCUSSION

From the background of the problems described above, the question will arise whether in the concept of saddu al-dzarî'ah officials are not absolutely permitted by the Shari'a to accept gifts? In response to this, sharia does not absolutely prohibit gifts to officials, because gifts

are one of the doors of silaturrahim recommended by the Prophet Muhammad (peace be upon him). However, the procedure and purpose of the gift itself must be considered. For example, if someone performs the Hajj using money obtained from gambling, then what is prohibited by sharia is the way the person obtained the money and does not prohibit the Hajj at all. Then, it is conceptualized in saddu al-dzarî'ah that the government prohibits (does not grant permission) someone who performs the Hajj using money from gambling because basically this act has been prohibited by Islam.

The Sharia provides ways and conditions for an official/employee to receive a gift. First, gifts that have been approved by the government or its agency. These gifts are given to employees/officials and are authorized by the leader (someone with a higher rank) to accept them. This is based on the saying of the Prophet Muhammad (peace be upon him). "told us Abû Kuraib, he said: told me Abu Usamah, from Dâwud bin Yazîd al-Audî, from al-Mughirah bin Syubail, from Qais bin Abî Hâzim, from Mu'adz bin Jabal he said: Rasulullah saw. sent me to Yemen. When I left the Prophet sent (someone) to follow in my footsteps, so I hesitated because of it. He said: do you know why I was sent to meet you? Never accept anything without the permission of the Messenger of Allah, because that is ghulûl (corruption)." (Turmudzi, 1975). Imam Ibn Hajar said: The hadith above explains that employees are prohibited from accepting gifts without permission from the leader (a person with a higher position) to accept them (Ibnu Hajar, 1379 H).

From these, the prizes are categorized ghulul (corruption) if the gift is received by an employee/official without permission from the leader (superior) who has authority. On the other hand, if the gift is received by an employee/official after being given permission from the leader (superior) who has

authority, then it is not called corruption. Prophet Muhammad saw. said: "Told us Abû Bakar bin Abî Syaibah, told us Waqî' bin al-Jarrâh, told us Ismâ'îl bin Abî Khâlid, from Qais bin Abî Hâzim, from 'Adî bin 'Amîrah al-Kindî, he said: I heard the Messenger of Allah say: whoever we asked to do something (was given wages), then he hid (something) from us, even if it is only the size of a needle, then the rest is corruption and he will take it with him on the Day of Judgment (what he has hidden)." The above hadith is a strong threat to employees/officials who take even the smallest gifts without permission from the leader. This act was one of the acts that the Prophet hated. and is a form of betrayal of trust.

Second, gifts given to employees/officials that have nothing to do with the work of the employee (who is given the gift). If someone gives a gift to employees whose work is completely unrelated, the gift is believed to be purely for the purpose of fostering friendship and strengthening bonds of brotherhood among Muslims. This gift is permissible to give and accept, as it does not serve any specific purpose or interest in the employee's position. Ibn Hummâm explains in his book, "gifts in this situation are permitted for the giver or who received it, because there was no indication or way to carry out the bribe from the party giving it, and there was also no process that would violate the authority regarding the work of the party receiving it." (Kamaluddin, t.th)

Third, gifts from superiors to subordinates, namely gifts given by people who hold a higher position than the employee. The gift is given solely because Good performance and work done by employees, both individually and collectively. This form of reward is often called a bonus. Officials are permitted to receive such rewards because there is no way for the employee to be accused of embezzlement or bribery. The gifts given by the government (agency) to its employees can be considered a form of affection from them.

Fourth, it is unusual for people to give gifts to an employee whose testimony is not valid, such as a Qâdhi (judge) testifying for his child, and the gift has nothing to do with his job and position.

Fifth, gifts from someone unrelated to their job (position). Before the person took office, they often gave gifts, due to family ties or other reasons. And these gifts remain unchanged, even though the person who gave them is now in office. Ibn Qudâmah said: If someone was accustomed to giving gifts to a certain person before he was appointed as an employee/official, then the gift may be accepted by the employee even if the gift is given after taking office. This is because the gift is not given for a specific purpose but is purely a gesture of friendship. As proof of the purity of his intentions, he often gave gifts to the official before being given the mandate to become an official (Qudamah, 1405 H).

Sixth, rewards after leaving office, whether through dismissal, resignation, or retirement. In this regard, the official/employee has the same rights and obligations as anyone else. As the Prophet Muhammad (peace be upon him) said: "Why should I hire a man from among you and then he says, 'This is for you and this is a gift for you?' Why not just stay at his mother's house and get a gift?"

Seventh, gifts given to honor and glorify people who have knowledge, people who have noble personalities, mosque guards or teachers and these people work as officials/teachers. So gifts may be accepted by the official because they are judged solely on their merits, goodness and sincerity, not because of their position in office (M. Amin, 1412 H).

Eighth, a gift given by someone to an employee/official who at that time is outside their area. This means that the prize given has nothing to do with the official's work. For example, an employee/official who goes to the city of Mecca to perform the Umrah pilgrimage, then meets and gets to know someone he didn't know before, then

that person gives him a gift. Gifts in this form are acceptable and even sunnah. In essence, the form of gift an official may receive is that the person giving the gift has no particular interest in the employee's position and authority. In cases like this, gifts are more appropriate to receive.

Meanwhile, according to Indonesian law, gratification is as follows: as explained in Article 12 B paragraph 1 is "giving in the broad sense" which includes giving money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, accommodation facilities, tourist trips, free medical treatment and other facilities, whether received domestically or abroad and carried out using electronic means or without electronic means (Surachim, 2011).

Examples of gifts that can be categorized as gratuities that often occur are as follows. First, the giving of gifts or parcels to officials during religious holidays, by their colleagues or subordinates. Second, gifts or donations at the wedding of an official's child by colleagues from the official's office. Providing free travel tickets to officials or their families for personal use. Third, providing special discounts for officials to purchase goods from colleagues. Fourth, giving gifts or souvenirs to officials during regional visits. Fifth, illegal levies on highways and without proof of the purpose of the donation is unclear. The individuals involved could be police officers (traffic police), retribution (regional revenue services), LLAJR and the community (thugs). If this case occurs, the KPK recommends that the report be published by the mass media and firm action be taken against the perpetrators. Sixth, the construction of places of worship in government offices (because usually there is a budget for the construction of places of worship, where the budget must be used according to the budget post and additional funds can be used from the charity box).

So what is the difference between bribery and gratification? According to Law No. 20 of

2001 concerning Corruption, bribery can be in the form of a promise, while gratification is a gift in the broad sense. In the case of bribery, there is an element of intent to influence public officials/state administrators in their policies or decisions so that it benefits the bribe giver. In gratification, which is defined as a gift in the broad sense, it can be categorized as bribery if it is related to the position of state administrators/public officials and is contrary to their obligations or duties. In essence, bribery is definitely gratification. While gratification is not necessarily bribery. If the bribe is directly related to a project, then gratification is not always related to a project. Generally, gratification is given to establish good relations with state officials/state administrators.

Furthermore, the determination of the status of gratification is regulated in Article 17 paragraphs 1 to 6 and Article 18 of Law No. 30 of 2002. First, the Corruption Eradication Commission (KPK) must determine the ownership status of the gratification within 30 working days from the date the report is received, along with considerations. Second, in determining the ownership status of the gratification, the KPK may summon the recipient of the gratification to provide information related to the receipt of the gratification. Third, the ownership status of the gratification is determined by a decision of the KPK Leadership. Fourth, the KPK's decision can be in the form of determining the ownership status of the gratification for the recipient of the gratification or becoming the property of the State. Fifth, the KPK is required to submit the decision on the ownership status to the recipient of the gratification no later than 7 working days from the date of determination. Sixth, the handover of gratuities belonging to the State to the Minister of Finance must be carried out no later than 7 working days from the date of determination stipulated. The Corruption Eradication Committee is obliged to announce

gratuities that are determined to belong to the state at least once a year in the State Gazette (Ermansjah, 2010)..

In Islam itself, a "gift" is a gift from one person to another without any compensation with the intention of honoring them. (Suhendi, 2002). And it has permissible or permissible laws, as the Hadith narrated by Imam Bukhâri from Aisyah ra said, "told us Musaddad, told us 'Isâ bin Yûnus, from Hisham from his father from 'Aisyah ra said: The Prophet saw. never received a gift and returned the gift (with the same reply)." (Ismail, 1422 H)

The hadith states that the Prophet (peace be upon him) once received a gift and reciprocated it with the same gift. Some scholars also say that it is not permissible to refuse a gift that has been given.²⁵The argument used as a basis by some scholars is the hadith of the Prophet narrated by Imam Bukhari and Turmuzi from Abu Hurairah ra that the Prophet saw said, "Muhammad bin Bashar narrated to us, Ibn Abi 'Adî narrated to us from Shu'bah, from Sulaiman, from Abi Hâzim, from Abi Hurairah ra, from the Prophet saw. He said: If I were invited to eat the legs of a goat (front and back), I would certainly fulfill it and if I were given the legs of a goat (front and back) I would certainly accept it." (Idris, 1986).

However, if we look at the gifts or gratuities explained in the previous chapter, which cause harm to someone, then this problem can be included in the rule *saddul-dzari'ah*, because the gift or gratuity is misused for personal enrichment and can harm many people. In this case, the gratuity or gift can be categorized as bribery, and bribery is an activity that is highly cursed by Allah, as stated by the Prophet Muhammad (peace be upon him). "told us Hajjâj, told us Ibn Abî Dzi'b, from Al-Harts bin Abdurrahmân from Abî Salamah from Abdullâh bin 'Amr, from the Prophet Muhammad saw. He said: Allah swt. curses bribers, people who are bribed and people who help the bribery process." Not only the

person who receives a bribe, but also the person who gives it will be cursed by Allah SWT. This is because the amount of money or goods can reduce or damage the rights of others.

The current understanding of gratification is very different from the understanding of gifts in Islam. In this modern era, gifts in Islam, which are intended to help and honor each other, are far from being accepted as gifts intended to enrich oneself and degrade others. And as we know, most of those who engage in these gifts are civil servants and state officials, who can be described as "ulil amri" (the people in authority).

The consequences of this gratification activity are injustice and loss of policies of the government, state officials, company officials and employees. This is a form of injustice to oneself and others. Therefore, it is not wrong for the government to prohibit gratification. Similarly, Islam, considering the benefits and harms gratification brings, forbids it. If gratification were still permitted, it would be possible for the state and its people to become uncontrollable and destroyed.

Therefore, injustice committed by a ruler in Islamic law must be held accountable by forcing the supervisors who supervise officials to those who cheat should be punished more severely in order to achieve justice. This is not only to punish, but also to prevent such acts from occurring. Because upholding justice is the goal of sharia (God's provisions or laws). (Farid, 2005)

One of the characteristics that must be maintained by State officials or other officials and employees is the quality of trustworthiness, which when they are holding the position they are appointed to occupy is not misused to bring profit to themselves or their immediate family (Ibrahim, 2006). This act can also occur starting with gratification or bribery. Rasulullah saw. said: "Told us Zaid bin Akhzam Abû Thâlib, told us Abû 'Âshim, from Abdul Wârîts bin Sa'îd, from Husain al-Mu'allim, from Abdullâh bin Buraidah, from his

father, from the Prophet Muhammad. He said: "Whoever we employ in a job and then we give a salary, then what is taken apart from that (salary), then that is considered corruption." (Abu Dawud, t.th). In another hadith, Rasulullah saw. said: "Gifts for worker that's betrayal". This Hadith clearly explains that all forms of gifts given to officials or employees are not permitted.

Gratuities are classified as a form of corruption. And in Indonesia itself, corruption continues to disturb the conscience of the Indonesian people and has even become a problem. black culture which adorns the historical life of the Indonesian nation (M. Thalhan, 2006). . In the Qur'an, Allah SWT. mentions: "And do not consume the wealth between you in a false way, and (don't) you bribe the judges with this wealth with the intention that you can consume some of other people's wealth in a sinful way, even though you know."

From the above description, the focus and main issue are focused on the issue of gratification. From an Islamic perspective, this falls under one of the tenets of Islamic law, namely *saddu al-dzarî'ah*. Therefore, gratification is prohibited to close the way for bribery or corruption. Because it is clear that most gratifications do not bring much benefit to others but instead bring harm to many. However, from the perspective of the Constitution of the Republic of Indonesia, gratification is not permitted because it violates the values of Pancasila, namely social justice for all Indonesian people.

The briber and the oneBribery is considered a sin under Islamic law and is considered guilty under Law of the Republic of Indonesia No. 20 of 2001 concerning Corruption, so the perpetrator deserves punishment. The reasons are as follows. First, bribery is generally considered a major sin. Allah SWT curses all parties involved in it because they have helped each other in sin and evil and violated the rights of others. It also includes the practice of consuming haram money, and Imam

Ali (ra) defined it: "haram money is bribery." Second, for law enforcers or officials, bribery can encourage them to make decisions outside the legal procedures established by Allah and the State. Decisions made by law enforcers or officials are in accordance with the desires and needs of the person giving the bribe. This practice clearly constitutes an illegal act of subverting the laws of Allah and the State. Third, bribers can be positioned as oppressors and destroyers on earth and cause damage to the rights of those who cannot afford bribes. This phenomenon will clearly cause disparities and chaos in the patterns of human interaction.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Islam encourages its followers to give and receive gifts to each other, both Muslims and non-Muslims. This is based on the Hadith, which states that giving gifts fosters mutual love. In this regard, Islam divides the law of gifts into three categories. First, gifts that are permitted and even encouraged to be given and received are gifts given with the aim of seeking the pleasure of Allah SWT, strengthening ties of kinship and compassion among Muslims, or fostering Islamic brotherhood, without any intention of worldly gain.

Second, gifts that are forbidden for the recipient and not forbidden (allowed for leniency) for the giver. This is a gift given under duress because something that is his right is not given or is deliberately made difficult by the employee concerned with the aim of getting the right owner to give the gift as wages other than what he receives from the State. For example, a gift given by someone to an employee or official to reclaim his rights or to prevent injustice against him. This is after prior investigation, it was found that giving a gift is a primary requirement to avoid injustice against him.

Third, gifts that are forbidden for both the giver and the recipient, namely gifts that are given with the aim of realizing or allowing something false, then the law of this gift is forbidden and may not be accepted. Gifts that are forbidden for both the giver and the recipient are gifts intended for rulers, officials and employees for a task that is basically obligatory for them to carry out with the aim of them giving something that is not the recipient's right while getting certain benefits for them. Likewise giving gifts to them with the aim of gaining their sympathy so that the gift will later facilitate matters now or in the future. Therefore, gifts in this form fall into the category of bribery.

Meanwhile, Law No. 20 of 2001 concerning Criminal Acts of Corruption does not permit the giving and receiving of gifts to employees/officials, because this can damage the rights of others and the creation of selective treatment between the rights of one person and another. If the employee/official has already accepted a gift from someone related to their position, they must report it to the Corruption Eradication Commission within 30 days of the first day the gift was received to prevent criminal action that could ensnare them.

A. Suggestions

Government institutions should strengthen supervision and transparency mechanisms regarding gifts and gratification received by public officials. Public education on ethical governance and anti-corruption values also needs improvement. Furthermore, Islamic legal principles concerning trustworthiness (*amanah*) and prevention of harm should be reinforced to develop integrity among public officials and prevent corruption practices in society.

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